May 24, 2000

MEMORANDUM

TO: Dr. Bill Hogarth
FROM: Jenny Biggs
SUBJECT: March 2000 Council Minutes

Per Mr. Rolland Schmitten’s memorandum of February 22, 1999, I am forwarding a copy of the completed and approved set of minutes from the March 22-23, 2000, Council meeting held in San Antonio, Texas.

JB

Enclosure: March 2000 Council Minutes

c: George Darcy, w/enclosure via email
Gulf Council
Staff
MINUTES

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

ONE HUNDRED AND SIXTY-NINTH MEETING

SAN ANTONIO, TEXAS

MARCH 22 - 23, 2000

The 169th meeting of the Gulf of Mexico Fishery Management Council (Council) was called to order by Chairman Robert Shipp at 8:30 a.m., Wednesday, March 22, 2000. Council members in attendance were:

VOTING MEMBERS

Pete Aparicio ............................................................. Texas
Irby Basco ................................................................. Texas
Maumus Claverie ....................................................... Louisiana
James Fensom ........................................................... Florida
Myron Fischer ............................................................. Louisiana
Karen Foote (designee for James Jenkins) ................................ Louisiana
William Hogarth ........................................................ NMFS
Douglas Horn ............................................................. Mississippi
Alex Jernigan ............................................................. Florida
Albert King ................................................................. Alabama
Karl Lessard ............................................................... Florida
Vernon Minton ........................................................... Alabama
William Perret (designee for Glade Woods) ................................ Mississippi
Hal Osburn ................................................................. Texas
Robert Shipp ............................................................. Alabama
Roy Williams (designee for Allan Egbert) ................................ Florida
Kay Williams ............................................................. Mississippi

NON-VOTING MEMBERS

Columbus Brown (designee for Sam Hamilton) U.S. Fish and Wildlife Service, Atlanta, Georgia
Lt. David Fiedler (designee for RADM Pluta) Eighth Coast Guard Dist., New Orleans, Louisiana
Larry Simpson ........................................... Gulf States Marine Fisheries Commission, Ocean Springs, Mississippi
Dr. Shipp read the opening statement and requested voice identification.

Mr. McKinney introduced Deputy Chief of the Office of Law Enforcement Mark Spurrier from Silver Spring, Maryland.
Dr. Shipp presented Mr. Osburn with a plaque of appreciation for his service as Chairman for the Council in the preceding year.

- **Adoption of Agenda**

  The agenda was approved with the following changes:

- **Approval of Minutes**

  The minutes of the January 2000 Council meeting held in Fort Walton Beach, Florida, were approved with the following changes:

  Dr. Claverie stated that on page 50, paragraph 7, last sentence, the sentence should be changed to read: “... to have informed National Marine Fisheries Service (NMFS) that if the only closed area was Area B in the Gulf, then the entire fishery would be impacted negatively.” He stated that paragraph 9 also needed to state that “… his motion was not in support of the NMFS plan, explaining that his motion would in effect be telling NMFS, ‘Don’t do it.’”

  Mr. Simpson stated that he needed to make a correction regarding a report he made at the previous meeting. He pointed out that page 38 summarized his report. He stated that he was technically mistaken when reporting the facts of the second bulleted line, “Review of SEAMAP data (SEFSC).” He gave the following written statement as a correction:

  At the January Council meeting, I stated in the Reef Fish Management Committee that “SEAMAP data are in two parts: federal and state. The state data are not currently in a usable form, and there are ongoing efforts by both NMFS and GSMFC to get the state SEAMAP data into a usable form.” I was technically mistaken when I stated this. Currently, the SEAMAP database is undergoing a revision. It is being converted into an Oracle database. The SEAMAP database is being converted into Oracle because it will be easier to manage and access. There have been some problems converting the old database into Oracle because of the file structures that were originally used. These problems are being worked out and the Oracle database should be completed by the end of the year. State and federal data can be accessed through the current SEAMAP data management system, and there is not a problem using state and federal data for stock assessment purposes.
Committee Reports

Joint Reef Fish/Mackerel Committee Report

Mr. Williams presented the summary of the Joint Reef Fish/Mackerel Committee meeting (Tab E).

Bob Zales II, Chairman of the Ad Hoc Charter Vessel/Headboat Advisory Panel (AP), presented the AP's proposal for a charter vessel permitting system under Tab E, No. 4(a). The Committees reviewed each section of the report and asked questions for clarification, but decided to review the whole document before they developed recommendations to the Council.

The Committees decided to vote as a Committee of the whole. After the Committee review was completed, Ms. Williams moved to recommend to the Council that Staff integrate the management measures of the Ad Hoc Charter Vessel/Headboat AP's proposal into the Council's draft amendment for a moratorium for later Council review. After much discussion on whether the Committee should develop their recommendations during the Committee session, the motion carried by a vote of 6 to 5.

Mr. Jernigan offered a motion to recommend to the Council that any proposal for a moratorium be killed. Mr. Williams, Chairman, ruled the motion out-of-order.

The Committees then discussed whether Staff should insert the AP's proposal into the moratorium amendment prior to the Council session on Wednesday. Ms. Williams clarified that her intent in her motion was not to delay the process. She moved that Staff integrate the two documents and give the revised document to the full Council (by Wednesday). After much discussion, of the pros and cons of such actions, Ms. Williams withdrew her motion.

Dr. Hogarth indicated that he was anxious to know if the majority of the Committees' desired to proceed with a charter vessel moratorium. He, therefore, moved to hold a non-official vote to proceed with the moratorium. A number of the members felt that the non-official vote of the Committees would serve no purpose. Dr. Hogarth withdrew his motion.

Mr. Williams asked if the Committees wanted to act on the other recommendations of the AP under Tab E, No. 4(b). The consensus was that the Council had already acted on almost all of the them.
Mr. Fischer stated that if the Council chose to discontinue with the amendment, the Council still needed to consider a control date. He pointed out that the control date had been established. Mr. Swingle stated that the Council could rescind the control date.

On behalf of the Committee, Mr. Williams moved to recommend that Staff integrate the management measures of the Ad Hoc Charter Vessel/Headboat AP’s proposal into the Council’s draft amendment for a moratorium for later Council review.

Ms. Williams stated that many members of the Committees and fishermen had stressed that something had to be done due to overcapitalization and growth in the industry. She noted that the Council moved quickly in the area to help the commercial sector, but seemed reluctant to help the recreational sector in the same manner. She stressed that the recreational fishermen had requested this action. She stated that Mr. Twiggs had told her that there used to be 50 charter vessels in Mississippi; there were 120 in January 2000, with 124 currently in the industry. She pointed out that these individuals were aware of the shorter seasons and bag limits, and they had asked the Council to take action.

Mr. Minton moved to table the motion. Motion to table carried without objection.

Mr. Lessard moved to accept the Ad Hoc Charter Vessel/Headboat AP’s recommendations on the moratorium.

Mr. Aparicio stated that he had a problem with one of the recommendations made by the AP, specifically the inclusion of the items referring to the shrimp fishery. He stated that the Shrimp Management Committee, and other relevant bodies, should be allowed to address the actions that would affect them directly.

Mr. Lessard offered an amendment to his motion “to include pages 1 through 7.” (Tab E, No. 4a)

Mr. Perret felt that the motion was out-of-order. He favored proceeding with the amendment, noting that the industry had asked for this action, but stated that he had some problems with some of the specifics outlined in the AP’s document. He stated that he was not ready to vote for a motion specifically accepting all of the AP’s recommendations at this point in time. He explained that he was not against the concept, but felt that there were details that needed to be worked through.

Mr. Fensom concurred with Mr. Perret. He noted that the votes of the AP during their meeting were not unanimous. He stated that while the Council needed to continue to examine the issue of the control date and the concept of a moratorium, the Class 1 and Class 2 permits needed to be more closely reviewed, as well as many other details of the AP’s plan.

Mr. Lessard withdrew his motion.
Mr. Jernigan moved to terminate all action on development of a charterboat permit moratorium. He stated that the problem with overfishing/pressure on the stock was not the number of vessels, but rather the number of people fishing on these vessels. He pointed out that the number of trips had declined since 1987 in Florida, Gulf-side. He disagreed with the thought that adding more vessels to the fishery would negatively impact this fishery, but felt that it was the number of fishermen that would add the pressure to the fishery. Therefore, the currently accepted premise for this moratorium was faulty, and the moratorium would not solve the problems.

Dr. Hogarth spoke against the motion, feeling there was sufficient evidence that the number of charter vessels had increased between 1981 and 1998 and had reached 149 percent, while the number of charter vessel trips in the Gulf had increased 288 percent between 1981 and 1997. He noted that the proportion of the total recreational catch landed by the for-hire vessels had also increased in the past decade. He pointed out that from 1981 to 1983 the red snapper was at 34.3 percent, but in 1995-1997 had grown to 70.7 percent; in 1981-1983 king mackerel was at 17.4 percent, but had grown to 61.5 percent; gag was 14.5 percent and had grown to 32.7 percent; red grouper grew from 19.4 percent to 31.6 percent. He stated that the number of Gulf stocks that were currently considered overfished or approaching the overfished condition had increased, including red snapper, king mackerel, red drum, jewfish, Nassau grouper, gag, and vermilion snapper, with red grouper likely to join the list. He stated that further expansion of the for-hire fleet would undoubtedly result in an increase in the catch rates, a shorter red snapper recreational season, and a need for additional regulations. He stated that the moratorium could be considered a 3 to 5 year proposition while other issues were addressed, such as the red snapper data. He stated that if something was not done to help the fishery, the seasons would continue to be short, and more economic impacts would result. He stated that the National Oceanic and Atmospheric Administration (NOAA) had a plan to examine the overcapitalized fisheries, and that by 2004, the numbers of overcapitalized fisheries would have to be reduced. He stated that in 1998, the for-hire industry’s percentage of the red snapper catch was 78 percent of the total recreational catch.

Mr. Fischer asked if elimination of the control date would be included in Mr. Jernigan’s motion. Mr. Swingle responded that another motion would have to be made to eliminate the control date.

Mr. Jernigan explained that his intention was to abolish the control date, not seeing the need for it. He modified his motion to add “and to rescind the control date.”

Mr. Fischer stated that there had been an approximate increase of 30 percent in charterboats in the area that Mr. Jernigan had mentioned. He asked what the increase had been for the private recreational vessels. He recalled reading some data that indicated that the recreational fleet doubles about every seven years.

Mr. King concurred with Dr. Hogarth’s comments.
Mr. Basco spoke against the motion. He felt that trip numbers might be down because of the shorter season. He stated that many people were moving to the coast, and he anticipated an increase in the charterboat fleet. He stated that the Council needed to get control of this fishery now. He reiterated that the industry wanted this action.

Dr. Claverie spoke in favor of Mr. Jernigan's motion. He felt that the Council was getting involved in this issue too soon and that action was not necessarily going to accomplish what the industry believed it would. He stated that the availability of more snapper would lead to an increase in the catch of snapper regardless of the number of the vessels. He stated that the focus was too narrow. He stated that the Council should take action for the entire charterboat industry, rather than just targeting red snapper, noting that many of the charterboats fished for other species, too. He insisted that the Louisiana charterboat industry was underdeveloped, and that action on this issue was too soon, noting that many communities in Louisiana needed the opportunity for growth.

Ms. Williams concurred that this issue developed primarily because of red snapper, but that other stocks were now also being considered overfished or approaching an overfished condition and in need of regulations. She stated that the recreational sector wanted to proceed with a similar Class 1 and 2 license type of system and limited entry such as in the commercial reef fish fishery. She recalled that there were 7 percent more for-hire licenses issued on the west coast of Florida in 1999 than in 1998. She spoke against the motion. She stated that the industry and the Coastal Conservation Association (CCA) supported the moratorium in an effort to stabilize the fishery. She pointed out that the numbers of recreational Saltwater Products Licenses (SPL) in Florida had also increased dramatically.

Mr. Horn stated that the charterboat industry in Mississippi supported the moratorium, and he would, therefore, support the moratorium. However, he wanted the industry to understand that NMFS might not be giving an accurate picture of the future with and without the moratorium. He stated that with the use of modern equipment, the catches would most certainly increase, and that when the catches did increase, by law, the fishery would be closed. Therefore, NMFS could not guarantee that the moratorium would maintain the length of the seasons.

Mr. King spoke against the motion. He recalled that when the limited access regulation was implemented in the commercial fishery, the fishermen had been promised the “gain for the pain” when the stock improved. However, the stock had been seen to be improved, but the stock assessments produced by NMFS did not indicate a sufficient recovery, and the fishermen were still waiting. He stated that he had noticed that the supporters of the moratorium were also the supporters of the complete banning of the longline fishery in the Gulf before considering the relevant information. He felt that this showed the bias present in the industry and the willingness to change the reallocation of the commercial and recreational total allowable catch (TAC).
Mr. Jernigan concurred with Mr. Horn’s statement. He stated that it was a misconception to think that if a moratorium was imposed, the charter fishermen would be guaranteed the fishing season that was presently being presented. He recalled that many of the fishermen had stated that if the season was shortened by one day, they would be forced out of business. He reiterated that the problem was actually the number of people fishing, not the vessels, and felt there were several ways to handle this problem: 1) limit ownership of charter vessels to one per person; 2) restrict the number of people permitted on a charter vessel fishing, thus reducing the fishing days; 3) implement a differential bag limit for fishermen on charter vessels, for example, the charter vessel fishermen have a 2-fish bag limit, with the other recreational vessels having a 3-fish bag limit. He stated that anything that negatively impacted the charterboat industry also reduced effort; therefore, he surmised that the problem could actually be solved by approaching the problem from the opposite direction. He also pointed out that there were many charter vessels in the waters off south Florida that were not part of the problem, but would be impacted by this decision. He felt that the moratorium was unfair to these fishermen, as well as the rest of the recreational community.

Mr. Minton refuted Mr. Jernigan’s statement that angler trips had declined, noting that in Tab E, No. 5 there was a series of tables that indicated the opposite. Mr. Jernigan responded that his statement was based on the report *The Operations and Economics of Charter and Head Boat Fleets* from Holland and Fiedler of the Center for Tourism, Research, and Development. He specifically noted page XVI, that stated, “The aggregate number of Florida charter passenger trips has remained flat,” in discussing the time frame between 1987-1997. He stated that the paper continued to say that there had, in fact, been a 1 percent decrease.

Mr. Perret stated that Attachment 3 to the AP minutes (Tab E, No. 7) was a table indicating the charter recreational effort in thousands of individual angler trips. He noted that the trips had ranged widely. He admitted that the table had been created from data generated by the Marine Recreational Fisheries Statistics Survey (MRFSS), and that many people questioned the accuracy of the data.

Mr. Jernigan pointed out that conflicting information was often used by the Council on which to base decisions.

Mr. Swingle stated that he had looked up the number of angler trips in the charterboat sector as indicated in the MRFSS surveys in 1981 and 1982. He stated that the angler trips in 1981 had been about 3 million, with a confidence interval of about 2 million, and in 1982 the number of trips was about 2.5 million. He stated that these data had been used for a long time, but that MRFSS had gone back and corrected these data. However, this indicated the accuracy of the early data recorded by MRFSS.

Mr. Simpson stated that a fundamental concept of the MRFSS survey was that it was designed to record effort at trailerable points of entry. He stated that as bad as these data might be, for the offshore species, it was not relevant.
Dr. Claverie felt that the implementation of a limited entry system by the government was an extreme government intervention into ordinary business practices, which were usually controlled by market factors. He felt that unless it was a last and only resort, he would not favor government intervention. He stated that the Council had not addressed other methods of slowing down the catch of snapper, especially since there were many more snapper available to be caught. He stated that it was a natural assumption that the more fish were available to catch, the more fishermen would participate in the fishery. He stated that this particular situation was the result of good conservation and management efforts on behalf of the Council, and now the Council had to deal with the negative side effects. He concluded that if the Council wanted to reduce the number of charter fishermen participating in the fishery, the Council should reduce the bag limit before attempting to reduce the number of people who could participate. He did not feel the bag limit had been reduced to the point where attrition would take place because of the fewer number of fish that could be caught. He pointed out that the charter fishermen entered the fishery because the fishery was still perceived as profitable. He stated that this continued entry indicated that the Council was still allowing a regime where too many trips were taken. He stated that if the bag limit reduction did not reduce catch, then it would be time to consider further actions such as the moratorium.

Mr. Williams spoke against the motion, but concurred with Dr. Claverie's statement that there was more optimism regarding the red snapper fishery, resulting in more fishing. He referred to the snook fishery in Florida as a possible example of what might happen with the red snapper fishery. He felt that the improvement of the red snapper stock would lead to more private and charter vessels entering the fishery. He stated that the yields would not increase, but rather remain stable or possibly have to be decreased. He felt that decreased bag and size limits, and shorter seasons were the ultimate solutions and were inevitable, even if the moratorium was put in place. However, he felt that the moratorium would reduce the extent to which these other measures would have to go. He was unsure whether the state of Florida would support the moratorium in state waters.

Mr. Aparicio stated that personally he did not support quotas or limited entry systems, since it denied people an opportunity. However, he understood that there were times when unfavorable measures were necessary to protect the resource and the people in the industry. He stated that one specific problem that he had with the AP's proposal was that once a system that locked in participants was established, there was no opportunity for much change. He pointed out that the current distribution of issued licenses for for-hire vessels in all classes indicated that the majority were in Florida, with the fewest in Mississippi. He believed that this basic break-down would continue to exist once the moratorium was implemented. He stated that the moratorium would lock-in the availability. He added that commercial fishermen would go wherever necessary to harvest fish, while the recreational fishermen were more localized. He stated that he did not necessarily support the moratorium, but also did not support the motion.
Dr. Hogarth stated that the moratorium would allow the Council to examine other options. He stated that the industry had asked for this moratorium, and did not consider it government intrusion. He observed that the limited entry system was used extensively in the commercial sector, and questioned why the Council seemed so reluctant to use it in the recreational sector. He pointed out that the Council had the right to remove the moratorium at any time in the future. He stated that the southeast region led the nation in recreational fishing. He stated that the 5 Gulf states harvested 34 percent of the nation’s recreational catch, excluding the east coast of Florida, equating to approximately 284 million fish, 53 million fishing trips, and 6 million anglers.

Mr. Perret respected the motion, but did not agree with it. He stated that the Council had discussed the inaccuracies of the data. He recalled that public testimony indicated there were many fishermen in the industry who were not aware of the permit requirement, indicating that there was really no accurate estimate of the numbers of fishermen in this industry. He again emphasized that the industry had asked for the moratorium and had even developed a proposal. He admitted that he did not approve of the AP’s proposal entirely, but felt that it was up to the Council to take the proposal and refine it and implement it for the industry. He felt that it was needed to keep the true historical fishermen in the industry.

Mr. Lessard stated that in 1992 he sat on the Florida Keys National Marine Sanctuary (FKNMS) advisory council, and that at that time the charterboat industry from Monroe County had asked for a limited entry system. He recalled that in 1996, the guide-boat industry had asked the Florida Marine Fisheries Commission (FMFC) for a limited entry system. Neither request was successful. He stated that originally he did not support the industry proposal because he thought it would keep these others out of the Class 1 permit; however, he had since understood that these fishermen would fall within the criteria, and he now supported the proposal.

Mr. King stated that the charterboat operators in attendance indicated to him that they did not have more customers than space available. He stated that these operators could not run a successful business if they were prevented from booking trips one and two months in advance because of the fear of a crisis at the Council level or a shortened season. He stated that if the Council was going to allow a fishery to expand, there should be a valid reason for it, with the main reason being that there was availability of the resource to the public to do so; however, this was not currently the case.

Mr. Osburn acknowledged that there was not a perfect solution for this problem and felt that the Council did not have the proper tools to use. He believed that the Council had accepted that its goal in this issue was to have the red snapper stock reach 4 billion pounds; however, he was unwilling to accept this as a goal. He stated that if the Council was trying to achieve a false goal, then the methods used would be incorrect. Therefore, he believed that the goal needed to be corrected, then measures taken. He recalled Dr. Shipp’s testimony before the Senate Ocean and Fisheries Committee in December 1999, in which he spoke to the very
large problems with the red snapper status, primarily that the scientific data were just not readily accepted and that the National Standard Guidelines were forcing the Councils into some “fishery engineering exercises rather than fishery management exercises.” He stressed that the Council needed to re-establish their authority as a “fishery management group not driven by fishery engineers,” and then pick the tools that the Council wanted to use to get the fishery to the goals that everyone could accept.

Ms. Williams again emphasized that the industry had asked for this moratorium, regardless of the fact that it was not necessarily a likeable measure. She agreed that it was the “best of the worst.” She stated that the only other way out of this problem was for NMFS to issue 1,191,467 red snapper stamps and then allow everyone to catch one red snapper.

Dr. Shipp stated that he would reluctantly vote against the motion because he wholeheartedly concurred with Mr. Osburn’s comments. He felt that the industry and Council were being “held hostage by an erroneous model.” He believed that the goal of 4 billion pounds was “absurd.” However, he did not feel that taking action on a moratorium was accepting the 4 billions pounds as the ultimate goal.

**Motion as modified failed by a roll call vote of 4 to 13 to terminate all action on development of a charterboat permit moratorium and to rescind the control date.**

<table>
<thead>
<tr>
<th></th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>Yes</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basco</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fensom</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perret</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R. Williams</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minton</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>King</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>K. Williams</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fischer</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aparicio</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This action automatically reinstated the previously tabled motion: **Motion: to recommend to the Council that Staff integrate the management measures of the Ad Hoc Charter Vessel/Headboat AP’s proposal into the Council’s draft amendment for a moratorium for later Council review.**

Dr. Claverie stated that the idea behind this motion was to have Staff integrate the two documents so that the Council members could examine the proposals as one document. He stated that the question was, should the Staff expend maximum effort to have the integrated document ready for the current full Council session. He pointed out that if this motion carried now, and Staff had not already integrated the two papers, this motion was moot. Mr. Swingle stated that the Staff could integrate the two papers once the Council meeting ended,
Mr. Minton spoke against the motion, stating that the Council ought to go through the AP's document, reviewing the alternatives, and give the Staff direction. Otherwise, he felt that simply combining the two documents would just result in an extra long document to review. He suggested that the Council incorporate the elements it supported, and then have Staff integrate, refine, and bring the completed paper back to the Council at the next meeting.

Mr. King asked if Tab E, No. 4b was included as part of the integration, stating that he had problems with it. Dr. Shipp responded that the Staff would integrate Tab E, No. 4a only.

Mr. Perret suggested that the Council pass the motion, and then go through the paper to indicate to Staff what elements to include.

Mr. Jernigan stated that he would like to have some additional options in the document also.

Dr. Claverie offered an amendment to the motion to specify that only Tab E, No. 4a, pages 1-6 be integrated into the amendment. Amendment carried by consensus.

Motion as amended carried without objection to recommend that Staff integrate the management measures of the Ad Hoc Charter Vessel/Headboat AP's proposal, Tab E, No. 4a, pages 1-6 only, into the Council's draft amendment for a moratorium for later Council review.

Dr. Hogarth stated that he would like the Council Staff to have the freedom to work with Ed Burgess in the Permits Division of NMFS in clarifying some of the issues that NMFS had concerns about.

Mr. Williams was concerned that the AP proposal treated the transferability of permits differently under the Class 1 and 2 types. He felt that transferability needed to be the same for these participants.

Mr. Fischer stated that under Section K, “Boats Under Construction,” he wanted Staff to add language indicating that if a boat was under construction prior to the control date as a multi-passenger vessel under Subchapter T, the owner would receive the appropriate permit for that type of vessel. He added that if it was not prior to the control date, then the vessel would be classified as a six-passenger vessel. He stated that if someone was constructing a multi-passenger boat, the blueprint had to be approved by the Coast Guard prior to laying the keel; therefore, it would be a known fact that it was going to be a multi-passenger boat.
Mr. Perret referred to Section A, line 3 that stated, "... implementation of this regulation a review of the status of the stocks ... every three years." He stated that the Council currently had plans that stated that stock assessments would be every two years or one year. He felt that three years was too long a time frame to wait for a stock assessment and asked Staff to change this.

Mr. Fischer stated that he would like to have the portion of the document relative to the status of the stocks removed because the pelagics permit also covered species such as bluefish that many of the charterboats in the Gulf targeted. However, if a bluefish problem suddenly developed, the Council needed the leeway to take action, beginning with a stock assessment. He pointed out that the proposal indicated stock assessments for "stocks" be every three years, and not just for red snapper.

Mr. Swingle stated that the intent of this was to create a scenario so that if at some time in the future these stocks were found to be restored, then more participants would be allowed in the fishery.

Mr. Fischer asked what if a stock was found to have deteriorated. He asked if the open market system would be stopped. Mr. Swingle responded that he did not believe this would change anything, that if a stock was found to be restored, then the fishery could be opened to participants.

Mr. Perret stated that "as appropriate" or some other terminology should be added so as to not lock the Council into a fixed number.

Mr. McLemore referred to the last sentence in Section A and asked if some priority was specified, and if so, what the rationale would be. Mr. Swingle responded that this document created these three classes, and specified that the intent was that as the permits were not renewed or were permanently revoked, then these permits would enter the NMFS database, and at the time the stocks were restored, these permits could be used to allocate these three classes of licenses back to people. Mr. McLemore stated that the document indicated that the new endorsements would come from this newly established database, but did not indicate how these permits would be allocated. Mr. Swingle responded that the process of allocation fell under a different section. Mr. McLemore asked if NMFS had the ability to maintain such a database. Mr. Swingle responded that NMFS was currently maintaining the records of all vessels with transferred permits. Mr. Simpson stated that if NMFS did not have the ability, then the Gulf States Marine Fisheries Commission (GSMFC) did.

Mr. Fischer stated that if someone had a permanently revoked Class 1 permit, he did not feel they should be eligible in the database to receive a permit. Mr. Swingle responded that this was simply the way the permits would enter the database. If the permit was revoked it would be just like one that had not been renewed. If the stock was deemed restored, then the permits would simply be declared available to new participants.
With the approval of Chairman Bob Shipp, the remainder of the Council’s discussion and actions regarding the Joint Reef Fish/Mackerel Committee agenda were provided “near verbatim.”

NEAR VERBATIM TRANSCRIPTION

King Point of clarification when it said “should the condition of the stock controlled by restricted endorsements,” now, I want a definition of what they are referring to as meaning “restricted endorsements.” Because are you talking about something that, you know what I mean, the restricted species of Florida, or are we talking about? I just don’t know what they’re talking about there.

Swingle Bob, you want to field that one? We probably ought to change that wording.

Zales Bob Zales, II. That may be a bad choice of words. What that applies to are these permits or endorsements themselves. The fact that you go into a moratorium that creates that restricted...it’s restricted because the fishery service will not issue any more of them. It’s just a bad choice of words. I guess change it however, but it applies to the reef fish charter permit and the coastal pelagic permit. That’s what that applies to. There only restricted in the fact that they would be restricted from the fishery service to issue them if this goes into place.

Swingle But are you using the word “restricted” to mean that they’re either a reef fish or a migratory pelagic [permit]?

Zales Right. It’s not that they restrict anything; it’s just that you’ll be restricted from getting them if you don’t comply with these provisions in here. In other words, the moratorium creates the restriction because the fishery service won’t issue any more from a certain point.

McLemore Is what you’re intending with language the condition of the stocks for which the permit is required?

King Yes.

Zales Yes. Because you could have a mackerel permit, and you could have a reef fish permit, or you could have both.

Shipp Anything else on Section A? Section B, “New Gulf of Mexico Federal Waters For-Hire Fishing Permit.” Bill?

Hogarth Just for point of clarification. We have been looking at going to a decal system with the endorsements on the decal. And we feel like we’ve got that worked out and so it’s just getting set-up to do that. But in the future we plan to issue decals with endorsements on
them so they’ll be clearer for everybody (unintelligible). We think it’ll be a great improvement for enforcement and everybody (unintelligible).

Claverie Mr. Chairman, I have a list of topics I would like added for discussion in the document. Some of them have to do with some of the details we’re talking about, and some of them don’t. When should I bring those up?

Shipp If the topics are related to these sections, when we get to that section. If they’re not, when we get to the end, if there are new sections to add, that would be the time to do it.

Claverie Okay, that’s when I’ll do it because they’re all intertwined with all of this.

Shipp Okay. Pete?

Aparicio Bob, I’ve got one item that I don’t know if it fits here or not, but I think that under the permits, the issuance of the permits, I think that we need to consider the distribution of these permits equity between the use of the states and so forth. As I mentioned earlier, the majority of the licenses, recreational for-hire, right now are in Florida. Mississippi’s got a very small portion. And I think we need to address the equity issue in the issuance of these documents.

Swingle That would probably fit better under G, on page 3, where we’re reissuing these once the stock has been restored, and if you think there ought to be some sort of proviso that the vessels in a state with an underdeveloped charterboat fleet would have higher priority than those in other states where there are a lot, then it should go in there.

Aparicio No, I was getting to the distribution, the equity in distribution or opportunity if you will, for all the participants as required by the National Standards.

Shipp I don’t understand what we can do. I mean we’ve got the control date. So the universe already exists. You’re suggesting some sort of redistribution of the current universe?

Aparicio I think we need to discuss this issue. I don’t know if it fits here or not.

McLemore I think the question is whether capping things given where the distribution currently is, is equitable or not. And under the Act, you’re not only required to make a fair and equitable allocation, you’re also required to consider things in order to do a limited entry system under 303(b)(6), such as historical participation, present participation, and economics, and so on and so forth. The fact that you have a greater concentration of historical participation in one area than another doesn’t necessarily mean you’ve got a violation of National Standard 4 or that it isn’t fair and equitable. But the question is, I think, build a record on why it is fair and equitable. And maybe the argument for it is that it’s historical participation, and that’s where it is. And the
argument against it might be well, you're sort of freezing that, and that wouldn't allow sufficient flexibility.

Aparicio I just think it needs to be considered, Bob. If it could be worked in. I think it does need to be considered, and whether it can be applied, I don't know.

Shipp I will rely on Wayne. Albert, did you have something to say?

King Yes, it was relative to, I guess, relocation more than reallocation or redistribution. And having been a migrant when I was actively in the boats, I don't see that being a real problem. I feel like that if there's going to be a void in an area, that there's going to be some that's overpopulated, and some area will be glad to move up there where it will be less competition and more attractive for them to bring people in. So as far as I'm concerned I think a fish has got a tail and it swims across state lines, and I think boats can do the same thing. That's my own opinion so that actually when you're talking about the people that would be willing to do that, you know, economics makes people do strange things, and I know I've had to do some strange things for the sake of work. It wasn't pleasant, but we still overcome those type things. And I think it's better to let them decide than for us to tell them what to do.

Aparicio I was thinking more in terms of the availability or the fishermen or the tourist. I'm talking about the consumer, the customer, the availability or the ability to go fishing. It should be about the same all over the coast.

Shipp I agree with Wayne and Myron. I think this issue really comes under G. Anything else on B? Let's get into "Eligibility Requirements for Class 1 Endorsements." Got a bunch of hands here; Myron, Vernon, and then Jim.

Fischer The only comment I'd like to make to Staff on this is when you read the paragraph and it tells you that you qualify under C1, C2, and C3, then it says or unless you've been in the fishery five years, I really think this should also be listed as a C4, and remove C4. It sort of gives being in the fishery, the way it's phrased, it gives you the idea that being in the fishery the last five years is higher priority than C1, C2, and C3. I think they should all just be in one vest.

Swingle Basically what he's saying is the lead paragraph has got that statement that they have been in [the fishery for] five years, and he's saying that should be a subsection under here [C].

Fischer Correct. It looks as though you might disapprove a subsection, but you'll always be leaving the five years because that's part of the main sentence.
Minton  I would suggest that when we hit sections in this document which are similar to the draft document we have from Staff, is that we try to do them both, and that can eliminate a lot of verbiage. For example, here under C(1) the Ad Hoc [AP] has recommended November 18, we have a preferred alternative of September 16. Now maybe we can address that and move on rather than just have two layered upon each other when we finish this document. There’s only about three sections I think in the draft that came from Staff under Tab E, No. 3, and then this document. We might be able to make it a little bit clearer for how Staff is going to handle it.

Shipp  We have several other folks. I don’t understand exactly what you’re saying, Vernon. Sounds to me like you’re saying we ought to get into the original document and make some other preferred alternatives, and I don’t think that’s the purpose of this.

Minton  If I may, Mr. Chairman, I think that’s exactly what I’d like to do. In that I think that we’re just going through this document and leaving this other one laying over here when we have an opportunity to possibly address some preferred alternatives at this point, and move on.

Shipp  I don’t think that’s what we’ve agreed to do. We’ve agreed to address the Ad Hoc document. Wayne, do you want to comment?

Swingle Yes, I’m just saying that all of these alternatives in the amendment that we prepared earlier that pertain to eligibility would still be in your options paper, and then you decide which of the ones we would list Council’s preferred alternative, we would list another one as the AP’s preferred alternative, and you would decide which ones would be alternatives and which ones to throw out.

Minton That’s what I’m saying we ought to just go ahead and do right now.

Shipp That’s what we’re going to do in May. I disagree, I think we’re saving time by doing this. Jim?

Fensom Add as an alternative a control date of January 1, 2000. Add that as an alternative. And eliminate as an alternative only having one class of endorsement. And an alternative for the 50 percent earned income would be just a gross income minimum for people that I know in Texas is a school teacher issue. And not debating all this, just add that. A gross income minimum, not percentage.

Shipp I definitely think those need to be added as alternatives.

Swingle Can you run those back again to be sure we have them?

Fensom The control date?
Swingle  Yes, the control date January 1. They had used January 7 in this document primarily because we had a print-out of who was in the fishery at that point in time.

Fensom   I mean I’m not particular about six days. January 7.

Swingle Then the other two alternatives?

Fensom A gross income minimum rather than a percentage. And only having one class of endorsement, not two.

Perret Just clarification so we understand. Under A, Class 1 permit eligibility requirement, that section on C. I am in a Gulf recreational for-hire fishery; I’ve been in it for 25 years, but I’ve never had one of the required federal permits. Would I qualify for a federal permit since I’ve been in a Gulf for-hire fishery?

Swingle Yes, that’s what the...in the first sentence...

Perret I just want it on the record.

Swingle Yes. Anyone that can demonstrate they’ve constantly in the fishery for five years, through their records, would qualify for the Class 1 permit, and that would include, presumably, all of the guide boats and whoever that chose to apply and present those records.

Perret Whether they had any federal permit?

Swingle Whether they fished with no federal permit or whether or not they even fished in the federal waters.

Claverie One of the problems is the guides who fish in state waters have records that they’ve been fishing, but the records would not distinguish between whether they were fishing in the Gulf or in tidal inshore waters.

Swingle It doesn’t really ask for that; just that they were in the recreational for-hire industry.

Claverie Well, we’ve got to define Gulf. In other words, my records show, this is a theoretical guide boat in the state of Louisiana, okay? My records show that for five years or more, I’ve been taking passengers for-hire in the charter fishery, for-hire fishery, whatever you call it. I do occasionally fish offshore the beach; I mostly fish inshore of the beach. Or I may never go to the beach, only fish inshore. My records under either circumstance would be exactly the same. Because my records don’t show where I was fishing, just that I took a passenger for-hire.
Swingle: Okay. Would it clarify it if we just said in a Gulf state fishery? I don’t think it was intended necessarily you were fishing in the Gulf of Mexico rather than state jurisdiction.

Claverie: Well, then we should say Gulf or Gulf state fishery. Do both.

Fensom: Specifically to that point. This is a technical consideration, but along the lines of your discussion. I want to make sure the Council is aware of this. In our permit records, we have no way, currently, to distinguish where a person fishes who holds a coastal migratory permit. Remember, that’s developed and issued under a joint plan. So, again, through tax records, we can’t discern whether the person is truly fishing the Gulf or the south Atlantic or wherever under that permit. And, again, I don’t present this as a problem, but I would say that the predicted result is that we could issue under these particular eligibility requirements a Gulf permit for someone fishing out of New Jersey. There’s no way to distinguish that.

Swingle: Well, if I could? General Counsel, at the last meeting, clarified that it would be a violation of National Standard 4 to insist that vessels be fishing from Gulf ports. So that kind of leads to the same point you raise, that if they [persons from the South Atlantic] chose to apply for the new Gulf permit, then those persons could do it, as I understand it.

McLemore: I think that the point also arose during a committee discussion that the tax returns aren’t necessarily going to show not only not where you’re fishing, but whether you’re commercial or charter fisher. So you need some rationale as to why you are requiring that or what you’re going to look at to make the determination.

Perret: The question I was going to ask was about vessels that, you know, we’ve got a legal described line that separates Gulf from south Atlantic. And I’m sure there are south Atlantic for-hire vessels that are right over that line and some a lot farther over that fish the Gulf. But the discussion now has brought something else to my attention. There are tournaments now where very substantial prizes are offered, and we have for-hire vessels coming from different parts of the country to fish those tournaments in the Gulf. How do these guys...they’re not going to have one of these permits if they come down. They’re going to have their licensed recreational guides and so on and so forth. How can they legally catch a king mackerel or red snapper?

Swingle: Legally, if they’ve been coming down since 1987 to fish the Gulf...

Perret: Tournaments haven’t been there that long. We haven’t had those gaming businesses.

Swingle: No, I’m just saying that it’s been a matter of law that if they were going to fish for king mackerel in the Gulf EEZ, since 1987 that they had to have the permit in the EEZ, even though they were out of state vessels. And there are a lot of...
Perret   That’s in an ideal world. Look at the number who testified at the last meeting that they’d been fishing out of Florida for years, never knew anything about these federal permits.

Swingle   There are some Gulf reef fish permits held by people in other states, even some as far north as Maine and Massachusetts. So I just presumed they probably came to the Keys and fished as a charterboat in the wintertime or something. I don’t know.

Jernigan   What we’re doing is adding options, is that right?

Shipp      Giving guidance to Staff.

Jernigan   I’d like to see a, if I understand it correctly, there’s no provision in this for a commercial fisherman who is displaced by regulations of some sort from obtaining a Class 1 permit. There is no provision. I would like to add a provision that commercial fishermen displaced by regulations imposed by the Council or National Marine Fisheries Service can obtain a charterboat permit. And I’d like to add a provision that says that a minimum of 25 percent of the future Class 1 permits that are available, be available to walk-in applicants, people who just come in off the street and say I want to buy a permit.

Swingle   Is that Class 1 or 2?

Jernigan   Class 1. Just walk in off the street and say, “I decided I want to go into the charterboat business, and I want a permit. I’ve got a 36-foot boat. I’ve been recreational fishing off of it for years. I now want to go into the charterboat business.” I want a percentage of those Class 1 permits set aside for them.

Perret     Mr. Jernigan, you said displaced by NMFS or Council. What about commercial fishermen displaced by state regulations? Do you want to include them or not?

Jernigan   Yes, I do. I want to make a provision that people who are displaced by our system have an ability to get into another part of our system. And, so, yes.

Shipp      We have three people who want to speak to that point. Myron, Vernon, and Kay. To that point.

K. Williams   To that point, we’re not under G. We’re in the wrong place.

Shipp      It’s kind of both places. Here’s there’s eligibility requirements and also...

Jernigan   It doesn’t matter to me where you put it. I just want it in there.

Fischer   I think we need to define what we call displaced. And following that, I think we also have to address recreational charterboats that maybe just fish state waters, and our
regulations displaced them or pushed them into federal waters, such as the grouper fishermen. If we go to 24-inches one day, they’re going to have to move from state waters to federal waters, where they did not need a permit to now they do need a permit. I think we have to accommodate these people.

Minton Yes, Alex. I think this is way too open-ended. I see a lot of problems: 1) we close the commercial fishery, ...(unintelligible)...a guy says, “Well, I was displaced because now after regulations close it down, I want to jump into the charter fishery.” Longline fishermen displaced by regulations are now charterboat fishermen. Louisiana shrimp trawlers; persons whose licenses are revoked because of violations could argue they’ve been displaced by regulations because regulations created a law which they have broken. Now they’re charterboat people. I know we’re not going to debate it and put it in there, but, doggone it, there’s a lot of holes there.

Jernigan Well, that’s the purpose of putting it in there so we can flush out those things that should be exceptions to it, and add those as exceptions and then...But I just think for legitimate commercial fishermen that we sat right here and do the same thing to them that we’re doing to people all the time, there ought to be some provision for them to move around in the fishery, and there isn’t in this current proposal.

McLemore Well, I was going to ask for what the rationale was for these two; I think I’ve heard it for the first measure, which I’m not sure is consistent with sort of wanting to sort of cap effort in the first place, but I’ll leave that to you. The second measure about set aside for some walk-ins, I guess is that intended to be an alternative to the appeals process? Because it seems like someone who didn’t qualify could just turn around and go walk in.

Swingle It probably would be G(5) on page 3. It’s kind of already there other than people of that category that walk in are the lowest, I guess, of the 5 categories of eligibility. I mean, it would initially issue a Class 1 to the people under [Class] 1, then [Class] 2, because those are in priority order.

McLemore But G is re-issuance of those [permits] not renewed or revoked, isn’t it? I thought he was setting aside at the initial allocation.

Shipp Alex, it wasn’t the initial allocation was it?

Jernigan No, it’s permits that become available by virtue of being revoked or virtue of not being renewed or otherwise available, for some reason become available.

Shipp And you’re asking for 25 percent of those?
Jernigan  Yes, see you have a provision in here of how those are allocated to people, and I’m just saying set aside 25 percent of those that can be allocated to a guy that stumbles in off the street out of the bar.

R. Williams  Reverting to the 5-year business again. I think there should be a provision in there, at least an option, that this person would have secured one of the EEZ permits by such and such a date because this is going to make it open-ended for every back-country guide, every spotted sea trout fisherman that never goes into the Gulf to fish, that they could go ahead and get one of these. So I think there should be some cut-off date that they would have secured one of our EEZ permits.

Swingle  Do you have any suggestion for a cut-off date? Is that something that would happen in the future, you know, like upon the date of implementation? They’ve got that long? Or sometime in the year 2000?

R. Williams  Why don’t you use Jim’s control date of January 7, 2000?

Swingle  Well, a lot of people that would qualify under that 5-year period probably did not qualify by January 7. We could use it.

R. Williams  Is that your objection, Karl? Is it that they’ve...

Lessard  They’ve never needed it, and if it goes into state waters, it’d be displaced.

Swingle  If you set something in the future like a cut-off date or something like that. And the cut-off date is used in this as part of the control date for some of these activities.

R. Williams  Okay, use a future date.

Claverie  I’m confused as to what has and hasn’t been covered. I had a few things. One of them was this 30 days before and 30 days after in C, I’d like that clearly explained because I’m a little confused, in the document.

Swingle  Those were suggested by Ed Burgess in the Permits Branch, and probably Bob Zales, might be able to better explain it. I think it’s because they’re permit records need a little flexibility so they’re just saying a period of 30 days before or after the control date.

Claverie  I don’t see how we can go prior to the cut-off, control date.

Swingle  Well, we’re saying everybody in that category has to be in before the control date. So we’re talking about you had to be in the fishery before the control date. I don’t know. Bob, you chitchatted with him [Burgess].
Claverie: All I'm saying is that I'm confused. Please put a clarification in the document. That's all.

Zales: So he just wants clarification in the document is what I was going to say. That's good enough.

Basco: I had a question about what Jim suggested about taking the percentage of earned income completely out. Did I hear that?

Shipp: It's just an option.

Basco: I understand, but the earned income is still part of the document? One of the alternatives, okay. I was just wondering, there are some people who are in it that maybe don't make $25,000 gross. So that percentage, some percentage would need to stay in. Thank you.

Shipp: We're discussing D. Anything else on C?

Claverie: I don't know if it's under C or not, but I would like to have a future control date considered. There was some discussion about that in Committee yesterday about a 2001 or something. That may be a way to get out of all these exceptions and everything.

Swingle: But if you use the implementation date, 2001 would be as early as it could be. Because we project it might be [implemented in] May or June of 2001.

Claverie: I'm not suggesting what the future control date would be, but just that we do arrange a future control date for discussion in the document.

Foote: Just a question about the eligibility of the people who have held state only licenses for the past five years. Will their vessel be permitted or will they be able to permit any vessel?

Swingle: No, the permit is always tied to a vessel by National Marine Fisheries.

Foote: So if they've had a state guide boat that holds one and a half people, that's all they can carry into this?

Swingle: You can transfer once you get a permit for your vessel, anytime you purchase a new vessel, you can transfer the permit to that new vessel under provisions.

Foote: Good, I just wanted to make sure that's clear.
Swingle But if they had a Class 2 license, there was some limitation that people that had a small guide boat, six-pack or lower, could only transfer that to a six-pack boat. And if you had a multi-passenger boat, then you could transfer it between multi-passenger boats.

Shipp Anything else on C? Let’s go then to D, “Eligibility Requirement for Class 2 Endorsement.” Myron.

Fischer Thank you, Mr. Chairman. This is just for clarification. I think we need clarification when Staff types it up because I’m still confused, and I’ll explain you. On C, for type 1, which is supposed to be the platinum, diamond-embedded certificate, it states about if you could prove you were in the fishery for five years. Under D for Class 2, which is just in the barely eligible gold, you have to prove, you have to have had a permit after the control date, prove you were in business as far back as possibly ‘96, have earned income 50 percent, and a gross income. It seems to me these are more stringent requirements, and all you’re getting is the tin permit.

Swingle I think it was intentionally made that way because the AP seemed to feel that those people that had been in the fishery and had been complying with the laws to have a permit would have a Class 1, and those who could not meet that would get a Class 2. And basically what’s the triggering thing is whether or not they got their permit after the control date of November of ‘98, and do not qualify for Class 1. Now, if they had been in the fishery for five years, they would qualify for a Class 1 even though they had no permit, nothing.

Fischer Seems like they come out ahead; they get the Class 1. It seems like if they went and applied for the permit, they’d be ahead because then they’d be eligible for the Class 1. But if they slipped up and got a permit in December ‘98, they’re not eligible for Class 1 now. I’d just like some clarification. I don’t see...

Zales Let me clarify. First of all, when it talks income requirement, it’s not “and,” it’s “or” 50 percent or $25,000. Anybody dealing with a prior fishery, $25,000 gross, not net. Gross [at $25,000] to me is 25 days, is all. I’ve got $25,000 gross. A guide boat, if you’re not making $25,000 in the for-hire fishery, you don’t need to be. I’m sorry. That’s a crude way to say it. What this is for, you’re talking about the guy, this if for somebody that was out there that for whatever reason didn’t get his permit, if this same person has been in the business for five years, he falls under that five-year provision. This takes care of that person that was just out there, says that “I just didn’t know.” And out of one of these three years, he can show that he was there, then he would qualify, too. It’s a very minimum requirement. This actually is very relaxed. So you know, like the guy you’re talking about that’s been there for five years, he falls under the five-year provision, he falls under the Class 1. This just takes care of that part-timer, so to speak. And he gets Class 2; he can stay, he just can’t transfer.
Fischer I understand. I just find we’re giving more credit to a person who never had a permit than a person who got a permit November 20th.

Zales No.

Fischer Yes, the person who never had the permit qualifies for a Class 1.

Zales Only if he’s been there for five years.

Fischer Okay. This person here could’ve been there back three...

Zales If he’s there for five [continuous] years, then he qualifies under the five-year deal, is what I’m saying. If he wasn’t there for five years...

Fischer Yes, I just think...I don’t know how the public is going to perceive it because I’m having a hard time.

Claverie All right, when I first raised my hand, I wanted to talk about the note here, but I also want to talk about something else after this. In D(1), we’ve got to clarify that language. Number one, I think what Bob just said was that at least 50 percent of your earned income has to be $25,000.

Shipp No, no, “or $25,000,” whichever one you have. If you have one or the other, you qualify.

Claverie Well, I thought he just said if you don’t gross at least $25,000, you’re not in the business.

Zales No, to throw this out, let’s say that Kay and Charlie, who are now married; Kay’s in the for-hire business; Charlie’s working for Corky. Charlie makes $100,000 a year; Kay is out there, working hard to be in the business, but she only makes $26,000 gross in her business. Obviously, in a tax return, joint return, she’s not going to show 50 percent income out of that operation. But she could show $26,000 gross. So she would qualify under that provision. It’s an either or thing. It’s in no way combined. Whichever one qualifies.

Claverie Two other things. One is I thought we had learned that the tax return does not show this. It shows there’s no distinction between commercial fishing income and charter fishing income.

Lessard May I answer that? To that point, Mau, there may be, but I left mine as liberal as possible by just putting “fishing.” Some people may put “commercial fishing” and some may put “for-hire.” My sister’s an attorney so that’s why I did it that way.
That’s what I mean. It may be that the tax return, we can’t distinguish which is what. So that needs to be discussed in here somehow. In the “Note,” I’ve tried to see how this would work. The example that I have is one of the 145 people that came to Rebecca’s hearing in New Orleans about longlining, and most of them were Vietnamese longliner fishers. And one of the vessel owners is a hairdresser. He never goes on the boat, but he’s the only one in the family who’s a U.S. citizen. So he owns the boat, and his father, uncles, and cousins fish the boat. And so under this you would have somebody who is not the vessel owner who’s the person that’s really doing the fishing, and somehow we’ve got to accommodate this kind of situation. I don’t know how, but I just know that it’s apparently some specific kinds of laws that allow that to happen in the Vietnamese community that don’t allow it to happen any other place.

May I? The person operating that vessel is required to be a U.S. citizen.

They tell me not true with the Vietnamese fleet.

That’s not accurate because if you’re operating a [documented] commercial fishing vessel or a for-hire charter vessel, you have to be a U.S. citizen.

Well, then maybe we don’t need a longline closure in the Gulf, we could just turn you guys loose on them. But I think Catholic charities got some specific legislation on that.

It is one of our big enforcement problems, but...

Well, that was the circumstance, and this guy was telling me how it worked, and I don’t know his name because I wouldn’t even know how to pronounce it or spell it, but we need to have it when the owner is not the operator. The operator can get the credit.

To that point, because of Alabama’s limited entry system on gill nets, I’ve had to do an awful lot of searching and going through tax records and so forth, and I see a tremendous problem with this 50 percent earned income. The state of Alabama and the state of Florida does not recognize retirement benefits or Social Security as earned income. Therefore, a lot of people, most people that are in that bracket, do not file an income tax. They don’t have to; the law doesn’t require it. Now what they can do under this provision here is come back and say, “You know, I can make me some extra money by getting me a Class 2 endorsement.” All you’ve got to have is 50 percent of what? 50 percent of a dollar? Put down $1 on a tax return, and I’ve got some, believe me, people have tried that. So you’ve got $1 from fishing, your buddy, you took him fishing, so he gave you a dollar. You do that for three years, and now you’ve got this, you’ve fulfilled the letter of the requirement. It’s a huge loophole. Somebody could make a pretty sizable amount of money by sacking up a bunch of these Class 1 endorsements and peddle them on the street. Well, they can’t peddle them on the street, but still a lot of people can get into this because it’s wide open.
You’ve got to look at it again. It says at least 1 of 3 years, ‘96, ‘97, ‘98. Now, if that
person was there one of those three years, yeah, he’s there. But if he didn’t think about
it back two years ago, he can’t get in it.

That doesn’t address the problem. If he didn’t file an income tax [return], he could go
back and file one right now.

But he would have to show that he was there doing that kind of work in one of those
three years.

Not according to this. This just says an income tax return.

Well, it’s from for-hire charter fishing. Which is the legal thing Mike McLemore and his
people are going to have to work out. But that was the intent, that you would have to
show. And in Alabama, how long have you required your for-hire fishing license now?

We don’t require it. It’s an option. It says they may purchase; doesn’t require it.

It would probably be a fraudulent return if he didn’t actually earn that dollar.

Prove it.

Mr. Chairman, the thing that I asked to be provided for Class 1 permits regarding 25
percent available to people coming in off the street, walk-ins. I’d like to do the same
thing for Class 2 permits. When I did that I was thinking that we were going to eliminate
2 and just go with 1, but in the event we wind-up with both classes, I want to have that
provision for both classes.

So noted. I got Corky. Corky? Okay, then, Myron.

Under D[1], the sentence starts out “vessel owner,” and I realize it also says it under C.
I’m not talking about new vessels from this day forth, but people in the past, there’s a lot
of people who fish vessels who are not the owner, and we’re putting requirements on the
owner, fishing requirements. The owner may not fish at all. I’m just saying that
somewhere we may have to identify the fact that, I don’t know what this is going to
cause.

The permit is issued to me as the vessel owner, and I have to put that on a vessel that I
own. Whoever operates that vessel, he don’t play there because he can’t get one today.
Your permit’s issued to either you or your corporation, however you do your business as
the vessel owner. And that vessel then has that permit there. It’s not issued to the vessel.

No, we’re permitting boats that did not have a permit as of yet.
Well, the permit is issued to the vessel owner. And the vessel owner has to be the qualifier for all the permits. And you have to have a vessel to put that permit on. In other words, Fishery Service won’t give you a permit if you don’t have a boat.

I’m well aware of that. What I’m getting to is we addressing this to the vessel owner; the vessel owner may not qualify; the captain may, but the vessel owner may not qualify.

And then the captain would have to do his historical captain thing. The captain is not going to play there.

I mean I’m aware, but what I’m saying is I think it opens up a ball of bees. The captain could get a permit, but he has to purchase a boat. The owner may have a half million dollar boat, but the captain can’t afford to buy it, but they’ve been in business together for years, captain running the owner’s boat. I think we need to have an option, I don’t know how to word it, but I think we need an option to that effect.

That vessel owner, let’s assume it’s Bill Gates. Obviously, he’s not going to have half his income come from the charter fishery, but if that boat makes better than $25,000 gross, that vessel owner will qualify; Bill Gates could qualify under that provision, and he could still have you run his boat.

Anything else on D? Kay, did you want to say something?

Thank you. I was just going to say if you need a provision, I thought it was a little strong to tell this historical captain, “You’ve got to go buy a boat.” What you need to say is, “Yes, if you prove you’ve been in the fishery, you get this license, but this license goes with you. If you work on the boat, you’ve got to have a license. You can’t go give the license to somebody else to use.” I don’t think they should have to buy a boat.

So we’re talking about another section, historical captain, Section J?

We’re going to get to it. Okay, Mike.

Yeah, I was just thinking about these provisions about the 25 percent set aside and wanted you to clarify whether you’re intending that to be 25 percent at all times as they accrue or at some annual cut-off point. At what time would we calculate the 25 percent?

So you’re saying if three become available? Yeah, we’ll let Staff work on that.

Now what is this now?
McLemore Just clarify when you calculate the 25 percent. Is it to be a running 25 percent as they become available or like an annual basis?

Swingle They would not be issued until you had restored that fishery, I mean the Council had restored that fishery. So I'm presuming it would be all of those non-renewed permits and those permanently revoked that occurred in the period of the time from implementation of this until the king mackerel stock is...

McLemore So there would be some future Council action?

Swingle There's a provision in here, G, to reissue them at that time.

McLemore When the stocks become available, but that would require some determination and action by the Council to say that they're...

Shipp Either Council or NMFS.

McLemore Right.

Shipp So that's the point. But it's still theoretically, if there's just three available at that time...Okay, let's move on, we've got 50 minutes to do this, and we're going to quit at noon. In E, "Endorsement Transfers During the Moratorium." Alex?

Jernigan Mr. Chairman, let me find it; I've got it written down somewhere. I'd like to see an option, since what we're trying to do is reduce effort in the charterboat fishery, I'd like to see an option that says essentially that these permits are not transferable except if a person has a 20-foot boat and buys a 21-foot boat, he can transfer it to his other boat, but not transferable from people to people or people to other people and so forth until NMFS advises that the fisheries have been rebuilt and effort is not excessive, and then people, at will, can enter the fishery. And when NMFS says the fishery has reached that state, then the licenses can be transferred, but until that time, I would like to see it that they are not transferable, and what that does, is over a period of time, that will slowly cause a decrease in the number of licenses, which will do similar in effect to what the lobster and stone crab trap tags do.

Shipp Alex, is your intention...what about the "Clair situation" where it's going from an individual to a corporation? Is your intent...

Jernigan I don't have...I mean that's a legal thing. I don't have a problem with transferring to a corporation. What I have a problem is Clair transferring her permit to Bob Zales.

Shipp Well, the language has got to be clear, though, that there are exceptions because technically those are two different entities. Clair, do you want to say something?
Pease  Alex, what if I wanted to transfer it to you? What if you wanted to go into the charter business?

Jernigan  Can't do it.

Claverie  Unless you're drunk in a bar and walk in off the street.

Pease  What about all those ones...you just said you wanted all those walk-in people to have a chance to get into the fishery. Suppose I'm ready to get out and I want to transfer to a walk-in?

Jernigan  I want them to have a chance to get into the fishery without having to buy a permit.

Pease  They wouldn't. What if I just wanted to transfer it to them and give it to them?

Jernigan  I don't think they...What we're trying to do is reduce the effort in the fishery and the number of boats in the fishery. And the way to reduce the number of boats is as you get out of fishery, your permit falls by the wayside.

Pease  We've not said anything about reducing it to begin with. We were talking about capping it.

Jernigan  You haven't said anything about reducing it, but NMFS keeps telling us that it's overcapitalized; there are too many people in it, and it's overfished, and all of that. And what I'm saying when NMFS tells us that it's not overfished, and the fisheries are rebuilt, and the effort is not excessive, and the capitalization is not excessive, then the permits can be transferred.

Pease  So what you're saying is you're wanting the people in the charter business for their businesses to be worth nothing because if their permits are not transferable, their business is worth nothing. They can't sell their boat or business if their permit doesn't transfer with it.

Jernigan  I didn't realize what we were doing was creating value for people who were in the business. I thought we were trying to reduce effort and trying to reduce the number of boats in the fishery so that we could improve the condition of the fish.

K. Williams  To that point, we are trying to cap effort. If Alex would like to have just another provision added in there, I don't have a problem. You know that way we've most restrictive, less restrictive, and we've done our job.

Hogarth  To that point, the purpose was to cap, and every limited entry permit system we've gone to, limited entry permit, we have had reduction. You know, in every one of them, but a
reduction occurred with the system. I think that’s what we hope happens, but the purpose right now was to cap and hope a reduction would take place within in the normal process. And every system we have in the region that’s been put in place with limited entry in a permit system, we’ve had a reduction in effort.

Claverie Alex’s point. I thought that should be discussed, but I think that the range of options should be who, you know, exceptions to the general rule, family, and whatever. I’m not saying I’m for or against it, I’m just saying it’s an option to be discussed. Because if not, we’re just misleading people to where it may go. As Bill just said, that’s typical of all these kinds of programs.

King (Inaudible) 1991 in November when I made the statement on limited access as to what the three options were as how to limit access. You know we had economic attrition, that’s where you put such regulations on them and put the things so that they can’t survive so they go out and go broke. So that reduces effort in one way. You got the second way was a buy-back program, you know, which that’s being proposed. And, of course, I entered the third one, which was genocide. You might kill them, you know what I mean, and sometimes that’s the most humane thing to do. And I just wanted to remind you that those are the three options that you have.

Fensom Earlier I mention only having one class - just to kind of clarify that, that class could include what is now Class 2. I’m just saying have one class of licenses. The other I want to add under E would be the capacity thing of being simply 6, 12, or as certified above 12, basically six passengers, 12 passengers, or a headboat.

Claverie Alex had mentioned the criteria for when the licenses can become available when the fishery gets good, the biology. Well, I wanted to point out that G(1) may or may not cover what you had in mind, but that talks about when these other, when the licenses have collected become available under what circumstances which, when the condition of the stocks controlled by restricted endorsements improve to allow for increased effort, then the endorsements that were collected by NMFS can be started to be given out. I don’t know, so I don’t know whether your thing should be over here or over in G.

Swingle I think yours was related to transfer, there would just be no transfer allowed until those conditions existed.

Jernigan That’s right.

Shipp All right, let’s move on to F so we can get finished here. “Vessel Restrictions on Class 1 Endorsement Transfers.” We’ve kind of done that already I think.

Fiedler I just want a point of clarification back on E, if I could just real quick. E(3) just the semantics on there, but I think it might help if it was amplified. It’s really not considered
a "non-inspected"; it's considered officially "uninspected." And where it says six passengers in parentheses on the first line there, I think we should amplify that "six or less passengers for-hire." Just to bring that to the attention. For the certificate of inspection it should be "greater than six passengers for-hire" just in case there's any confusion.

Claverie When you say six or less, that means if my boat can only carry two passengers for-hire, I get a six-pack. It doesn't say two only; it says six or less.

Fiedler Right, six or less, but you're still required to have a license to operate that vessel.

Claverie Yeah, but the fact that I have a six-pack doesn't mean that I'm actually carrying six passengers.

Fiedler Correct, that's why I wanted to make sure it said six or less.

Shipp Okay, anything on F? G, "Reissuance of Permits and/or Endorsements Not Renewed or Revoked."

Claverie On E, I think we ought to also consider Jim's situation. What happens, in other words, if we get rid of having two classes and it's all one class, how this applies to that one class.

Swingle That might fall under F. If it all becomes Class 1 then there's a provision for transfer, if you agree that that's the way it should be. But we do have about six options in our amendment that will be alternatives, too.

Shipp All right. Reissuance of permits. This is G. Anybody got any additional options there?

Claverie I'm a little confused as to following priority order. Does that mean that all the people standing in line under category 1 have to get a permit before anybody gets one under 2?

Swingle I think the way that the database has the record of the permits turned in, they'll be classes of vessels, they'll be, for instance, inspected vessels with passenger capacity of 20 people, inspected vessels with capacity of 12. So those will be stored in those categories. Someone under [G]1 were to apply for an inspected vessel with a 20-passenger capacity, then he would get it before someone under [G]2 that applied for the same vessel.

Claverie So basically however many people are in line under number [G]1 have to get permits before the first person in line under number [G]2 gets it. Then, Alex's prior thing about 25 percent of these should be given to Class V, that goes in here, in this section?

Swingle Yes, that would become another alternative for that.
Maybe if we're going to discuss it, a set-aside for number [G]5 of a percentage that we might want to consider giving set-asides of percentages on all 5, each of the 5. I know it makes it complex, but we ought to discuss it.

Yeah, just put set-aside? Okay.

Anything else under Section G? If not, we'll move onto Section H. Yes, Jim?

This has to do with the requirement that the appeal process consider hardship. First all, based on our experience, and some of you may have served on appeal boards, I would ask that hardships either not be included in this appeals process or that it be rigorously defined because it comes in every imaginable fashion, and it's difficult for individuals serving in this appeals process to put any criteria to hardships. And the other thing is if you feel that consideration of hardships is appropriate, then we need to specify some set-aside, so to speak, so that the appeals board could deal with that particular equation. So I just point that out as based on our experience on the appeals process.

Well, we could let you talk with Wayne about that and work that out.

Yeah, I did want to point out that once this document is incorporated in the Council document, then we do have a number of hardship sections with set-asides up to 100 vessels permits, and I think, in about three categories. And then we tried to use some of the language out of [Reef Fish] Amendment 15 in trying to describe what hardships are. That was, I guess, some language that had previously been provided to us as alternatives. So some of that would be in here. Then the Council would need to make the decision at that point in time whether they want to eliminate hardships altogether or not. I don't think they took...there's not a preferred alternative for that appeals section.

The same comments I made at the Committee. And I'm not, it's not clear to me whether they're addressed by what's in the Council's document or not, as to whether those alternatives are mutually exclusive, but the document needs to be clear that the ultimate determination on the appeal would be by NMFS because it's sort of the operational function aspect of it. The appeals board - you should specify who's going to be on it, and they would need to be making individual recommendations to NMFS.

I know we're supposed to be adding points, but I have a problem with hardships, and I'd almost like to address removing it, but it's not what we're doing here. I don't know what you define by a hardship. We've given permits to people based on merit, years in service, years when they got the permit. Now, what's a hardship? If my dad has cancer, does he apply for a permit? Because he's got a hardship. Does that qualify him? I have a problem with the word hardship.
Shipp  I agree with you, but I don’t think now’s the time to...I think it should be at the May meeting. Okay? Let’s move on. Anything else on G? Oh, we’re on H. I should leave again. Okay, go on to I then, “Charter Vessel Reporting and Endorsement Renewal Conditions.”

Claverie  I think we ought to have some options that say “less or no.” These options all say that everybody gets in on the reporting game. Now, that sounds good and so forth. One of the problems with data gathering has always been that samples are all they can afford, all NMFS can afford. So you have to use a sampling process rather than a complete...So I think we have to defer to NMFS’s scientific and financial capabilities to handle this, and that ought to be discussed in here, and it’s not.

Swingle  Okay, I think that’s probably the reason the AP selected I(2), and they defined, you know, the surveys; whereas, in our amendment we had an option for requiring logbooks. But I’m not sure; my understanding is the pilot charter survey will be the prime way for collecting those data by National Marine Fisheries Service now.

Fischer  I’d like to see, when it goes to public again, under I(4) a range of income, just to see what the general public, see what the charter fishermen have to say. Lock it in at $50,000 and $25,000, have a high and low.

Shipp  Okay, that’s easy enough. J, “Historical Captain Permit.” Irby, then Vernon.

Basco  Okay, thank you Mr. Chairman. Maybe Bob could answer this question. I have one particular captain, actually two of them that came to me, and they for the past, one in 12 years, one in 10 years, has worked for an individual who owns a company, and he has not listed them as captains of their particular private boats. And, of course, these fellows have fished for years and years. And I wonder just how that would be addressed. You know, there’s no way for them to, they can show an income, but it was this John Doe Corporation paid the money to them, and it could’ve gone in like some labor force thing. So he’s not actually listed on the payroll as a boat captain. Obviously it’s a tax dodge, but anyway. I’m not going to tell you their names, but I mean, what will happen to these people?

Zales  If they could, if the vessel has had current permits to fish as a for-hire boat...If he didn’t have that, in other words, he would probably have to go to some form of legal affidavit form the owner saying in all reality this is what this boat did and this is where their time was spent. In other words, what this is for is to prevent somebody from working the oil field, two on/two off, and never been on a fishing boat, but being a licensed captain coming, “Hey, I’m a historical fishing captain.” “Well, no you’re not; you worked the oil field.” That type thing.
Minton To Bob’s point there. So then we’re going to issue two licenses then? One to the owner of the vessel, and one to the captain that runs it?

Swingle No, this [J] allows historical captains to qualify for a permit or permit endorsement under the system, and they have a 5-year period in which to purchase a vessel in order to be awarded that license.

Zales In other words what that is, is if a captain that’s worked for me, he’s chosen to do that for whatever reason he wants to do that, but he sees this and he knows that he would like to be in this fishery, he can qualify for historical captain, he would be given a letter of eligibility. If he chooses to purchase a boat within five years once that letter’s issued, then he could have that permit, that letter of eligibility turned into a permit for a vessel, as a vessel owner that he owns and now operates. Now if he chooses to stay as a captain for the rest of his life, he doesn’t need to do that.

Fischer I understand what this is about, but I would also like to see us tie up the loophole. I know considerable amount of recreational for-hire vessels owned by wealthy doctor/lawyer corporations that have a hired captain on the boat. They charter on the books, I don’t know if they make charters on the books, but this captain would seem to qualify that’s not a real charter captain.

Simpson That’s included in here, isn’t it?

Fischer Well, I’m under J(2).

Zales Yes, that captain would qualify under that situation so that if Bill Gates decided to sell his boat and that captain no longer had a job, but he had worked for Bill fishing for five years, and you have to understand the man, it can’t be somebody who’s gotten his license recently, the captain would’ve had to have had his license since a minimum of November of 1993. And see, in the commercial fishery to qualify for historical captain, there was a time frame, I think ‘90, ‘91, ‘92 that he had to be operating the commercial boat, there was a contract between him and an owner stating that he was substantially responsible for all activities on the boat, paying the crew, disbursing fish, collecting money, whatnot, just giving the owner his share; the owner didn’t play other than to collect his share of the deal, and he had to land so many pounds of fish. Well, in our situation, we can’t do that because I don’t know of any charter operation where the captain takes care of everything for an owner, and the owner just trusts him to give him the money off of it. They don’t land fish with records of logbooks so there’s no way to do that so the only thing we could do was to come up with a time frame, the license to qualify, and the fact we’re trying to prove that he worked on a vessel that fished more than 50 percent of the time in the for-hire business. And so that could be done either by that record of the vessel owner showing, yeah, this is a for-hire boat or affidavits from the owner and
maybe some friends saying, “Yeah, this is what this boat did.” And being able to prove it substantially that that’s what happened.

Fischer I still think we have a lot of private boat captains who aren’t real charterboats who would be allowed into the fishery. Now, if that’s our intent, that’s great.

Zales Well, it’s not the intent to open it wide open, but those people would fall...that person what he’s going to have to do because for whatever reason he’s chosen to work for Bill Gates all these years, he’s chosen not to buy a boat, but if he decides to do that now, then yeah, he would qualify for this. And, we just couldn’t figure out a way to restrict it any further.

Claverie In this J section, I think to be consistent, I think we ought to add the 50 percent income, some dollar amount, too. A range or whatever we’re doing. And I think it’s unrealistic to put a 90 day reaction time from enactment of the regulation, and we ought to put in either no limitation or a much longer limitation. I doubt that people would learn that this was in the air until way after 90 days after the enactment.

Zales Under the historical commercial captain, I guess Kay could correct me if I’m wrong, but wasn’t there a specified period? Can a historical snapper captain just 10 years from now go back and say 20 years ago I was there? He had a specific time frame. That’s what that’s for, so you don’t leave it open.

Claverie I think 90 days is unrealistic. Just for discussion, put...

Swingle We could put a 120 days, and that would be a sub-option.

Claverie Or indefinite or 10 years. Put a range of options and hear what people say.

McLemore I would encourage you not to leave it indefinite because you’re trying to cap effort here. You know, and that seems inconsistent with that notion to me. I think NMFS could probably handle 90 days, but there’s no problem in specifying some other range of time; 90, 120, whatever.

K. Williams First, I have a question for Captain Zales. That question is, because I know I was asked I know for probably five years at every meeting, how many historical captains do you think are out there in the for-hire sector?

Zales I really can’t give you a number. I can give you a range, and I think that range is what we suspect is not extremely large. It’s going to be more than the commercial side, but it’s not going to be a tremendously large number because when you look at the time frame of ‘93 basically through now, most of those captains have, they’re either happy what they’re doing, they’re not going to do anything else. The ones that aren’t have
already gone to the expense and trouble to go to be a vessel owner. So a number, I don’t know if it would be 10, 50, or 100, because I really don’t know how many captains are out there, number one. And I don’t know how, if you’ve got 3,200 boats, I guess you could say you’ve got 3,200 captains, but out of 3,200 boats, I don’t know how many are owner/operators. I’ve got three captains that work for me.

Fischer (inaudible) private boats; there’s a slew of private boat for-hire captains.

Zales They could be there, too, but like I said this was to try to accommodate because, you know, we’ve heard from the public so to speak of, “Yeah, but what about me? I’ve worked on a boat; I may want to get a boat now.” Well, the option was, “Well, you could buy a permit from somebody that had one.” “But, yeah, I don’t want to do that. You know, I want to do this.” So that’s where that comes in. So you know y’all can deal with trying to make it more restrictive, if you chose to do that.

K. Williams I’m not through with my comment because I had a question. First of all, I think 90 days is plenty time to notify these people to get in their paperwork so that you can go through the system, issue what you have to issue, and be through with it; very much like what we did on the commercial end of it. As far as proving on the commercial sector, they had to prove they were in the fisheries, they had to submit their income tax forms and everything else. For these people that are out there on these vessels, and they’re not paying income taxes, well, guess what? I’m sorry, you know, I mean, you choose to cheat the federal government, then you’re out of the system for whatever reason you chose to do that. You’re going to have one or two that’s going to fall through the cracks; that’s happened before, but if...and that was a requirement that you had to pay your taxes. You had to prove on your tax form that you were paying taxes on your commercial fishing income. So I think the 90 days is more than fair. If the people didn’t pay their taxes, if they can’t prove it by tax records, then I’m sorry, they’re just out. They violated the law anyway.

Zales To that point, that was discussed on the AP, as a matter of fact. The people from Marco Island, Fred Lifton, who’s a panel member from Marco Island, he addressed that very same point, and made statements that he knows of captains in that area of south Florida that have been paid cash forever; what happens to them? And everybody said, “We’re sorry. If they don’t, haven’t paid their tax...” This basically came from the red snapper deal. So I’m sorry, you’re not gonna play, you get left out.

Simpson I thought I understood all this, but I have a question based on what Myron said. And maybe you can clear this up for me, Bob. I was under the impression that these were captains who commercially for-hired. Now if Bill Gates has a captain, and that’s his only job is to captain for Bill Gates, I didn’t think that man qualified. I thought if it was Bill Gates had the boat, and he captained for him, but he did do some chartering on the side.
Now, Myron brings into question the other. And I didn’t think that person was considered a “historical captain.” Am I...

Zales No, Bill Gates would have had to have his boat operate in the for-hire charter fishing business for better than 50 percent, more than 50 percent, of the time. Now as far as some doctor out here just running around having a captain run his boat and he does a lot of fishing, and it’s not in the for-hire fishery, no, that man doesn’t qualify.

Simpson That’s what I understood. And Myron was homing in on something different.

Fischer Most of the boats are being wrote off; I don’t want to say most - I don’t know the percentage; but a certain percent of these boats are being wrote off by these wealthy people as charterboats. So they would qualify.

Simpson No, the captain we’re talking about here. The historical captain has got to be involved in the chartering for-hire business, not just being paid to do a job.

Fischer Well, he’s being paid to do a job, but the job is on the books as a charterboat.

Shipp Well, these are things we can hash out in May, though.

Aparicio (inaudible) I think we’re going to have to try to get a handle on what kind of numbers we’re talking about. Without it, and I don’t know if Staff can, but I would request that they do the best they can because if we want to consider this provision, we may be opening up a Pandora’s box that may be a size we can’t imagine.

Fischer I think, just to make a statement. Right now, we’re around 1,200 or 1,300 permits. We’re going to have a lot of people come in, and I think that after we print this and it goes to public, we’re going to have 3,000 permits on our hands. I think we’re opening it up to every exception in the loophole.

Shipp I’ll refer back to Alex’s motion this morning.

Zales May I make a quick point? There are 3,200 for-hire boats listed in the Gulf of Mexico. In other words, to be in the for-hire business, you have to, right now, you’ve been identified in Larry’s frame. And if you’re not in that frame, regardless of what you call yourself as a tax record, you don’t work with this; you don’t go there. So the number is currently 3,200. It may increase a little from there.

Fischer Well, I agree, Bob. But in Louisiana there’s only 50 permits because there’s only about 50 who fish the EEZ. The other 200 or 300 something are trout guides that we can’t identify. And they’re in the frame; they’re in that 3,200.
Zales  Right. If you're outside that frame, you don't go.

Shipp  Again, I remind you, this is stuff for May. We want to finish this now, and Mau, is your comment something that relates to an additional alternative?

Claverie  Yes, sure is. First off, in defense of 90 days and the other options, I understand what Kay's feeling is, but that may not be everybody's feeling, and I would like everybody to have an option, opportunity input. And us to have the opportunity to change what we want to do. But we also named the control date in here as November 18, '98; we've included an option in here of changing the control date so I don't, to make the language in here to, or whatever the control date may be, kind of thing, so that that's an option that's available to us. If we change the control date elsewhere, we can change the November 18 to whatever that control date is.

Swingle  You're saying that if we pick another control date, then it would be a minimum of five years prior to that control date?

Claverie  Yes, in other words, they pick the control date here as the five-year gauge to go back from, and if we change the control date, we ought to have the option to change this date, too. We may or may not, I don't know. The other thing is that I don't know in here where Bob's deal is about 50 percent of the vessel's trips have to be for-hire or something. Is that in any of the documents or is that something we need to put in here? He mentioned it, but unless a vessel was 50 percent for-hire, Bill Gates' vessel...

Simpson  J(2) - That's referring to the captain.

Claverie  That's his income; that's not the vessel's income. And as I understood what Bob said, he was talking about the vessel's, 50 percent or more of the vessel's trips had to have been for-hire trips or else this captain didn't qualify.

Swingle  Yeah, I agree with you, Mau.

Claverie  But, I don't see where that's in here anywhere. Maybe we ought to put it in.

Swingle  There was language at one time in this, am I not right, Bob, that required him to provide affidavits that the vessel was fished at least 50 percent of the time and for those 5-year periods. And I think maybe that's been replaced with earned income, has it not?

Claverie  Well, whatever. We should put in there for discussion, if it's still on Bob's, on this agenda.

Zales  Yeah, and the wording that income came from recreational for-hire fishing, it was kind of generic that it encompassed that because obviously if he's working for Bill Gates, if
Bill Gates isn’t doing recreational for-hire fishing, he ain’t gonna qualify under that provision.

Claverie He is under the provisions as we have it now. When you just stated 50 percent of the boat trips have to be for-hire, too, then that’s the first time I heard it. And I think, well, I’m not saying I’m for it or against it, but it ought to be in here for discussion.

Simpson Well, now you’re getting into that question I had.

Claverie And then, I do know that in one of the big game tournaments in the Gulf that for several days, big game fishing crews from all over the world come to the Gulf to operate vessels in that tournament. And, those captains and crews from San Juan or Hawaii or wherever it may be, certainly individually probably comply with the 50 percent charter income thing, but it’s from Hawaii or San Juan or something. They only fish one week in the Gulf as a captain of a vessel. Whether that vessel is a charter vessel or not, probably some of them are, so that could be a possible source of a number of additional eligible people that might have escaped your radar scope, I don’t know. So I don’t know if we want to add a provision for discussion about the fishing that they did that they earned their income from has to be in the Gulf.

Zales Yeah, and that was our intent essentially. I understand where you’re coming from there that, no, you couldn’t work in Maine as a for-hire fisherman and come to the Gulf and get a permit.

Claverie Well, the way it’s written now, you could. There’s no provision.

Zales Well, our intent was for that not to happen so whatever we need to add...

Claverie You need to add a provision, Wayne, towards discussion that an additional restriction could be, it has to be earned in the Gulf or the five Gulf states.

Shipp Let’s go on to K, “Boats Under Construction.” Okay, now we’re on General...

Brown Did you want any provision for replacement vessels. Let’s say a person’s vessel was in a fire or got damaged or destroyed, such that they could build a new one consistent with...

Swingle (inaudible) We have a provision in here somewhere that allows (inaudible) Class 1 license [holders] to transfer their vessel permit to another vessel they buy. So that’s there, but it’s not for the Class 2 permits.

McLemore I had a couple of comments on K, actually. Under K(2), I think you need to have some more specific guidance about what you mean in terms of substantial expenditures. What’s substantial for one individual might not be for another, and I
think we need some idea about what you’re talking about. And in K(3), I think there’s a contradiction there because it’s referring to contracts after November 18, 1998, but then it refers to K(2), which says “prior to that date.” So you might just want to delete that reference to K(2) in K(3). I don’t know if that solves your problem or not.

Claverie Yes, again we need to change the control date, be able to change the dates in this thing, too, Wayne.

Jernigan This entire program is predicated upon the fact that it’s going to protect the charterboat industry from destruction because of regulations and because of the shorter season. And all of that’s predicated upon a TAC of 9.12 million pounds. I’d like to see some provision that says if NMFS, between now and when we have the next stock assessment for red snapper, if NMFS lowers the TAC from 9.12 million pounds that this all becomes moot, null and void, canceled, whatever, because all this is predicated upon trying to save the industry, and I can tell you that based on all the testimony we’ve heard that if you drop to 6 million pounds, the industry’s out of business. And so I would propose that NMFS, that we have a provision in here that if NMFS reduces the TAC between now and the next stock assessment when this Council sets regulations again, that this program terminates.

Claverie Okay, I have a few generals. Let’s see, some of them have been covered. Let me go through this. Okay, one thing is that somehow we’ve got to coordinate, well, first let me start at the beginning. I think we ought to cover all species in the Gulf under our jurisdiction that are fished by for-hire vessels. For instance, this is reef fish and coastal pelagics. We’re going to have dolphin and wahoo; we’ve got red drum, and we don’t have the ability to really cover those species because it’s under these two plans. So somehow or another we’ve got to cover that situation. Whether or not there are any charterboats that are fishing only for wahoo or something, I don’t know, but they’re out of our loop.

Swingle In B(1) on page 1 under the new permit, it basically says it would apply to anyone fishing the reef fish, coastal migratory pelagics, or any new or future FMPs. And I’m sure we would also send a letter for the HMS NMFS and ask that they incorporate...

Claverie Well, that was my next thing, but it’s unusual to have a plan for one species also cover other species. I don’t know if that’s allowed or not allowed or whatnot, but it’s unusual, and we have to do whatever we need to do to be all encompassing. The other thing is that big NMFS HMS, and when I say HMS I include billfish as well as the others in that section/division, is considering some of these kinds of things, and logbooks, and permits and all that kind of stuff. And I think we definitely ought to somehow coordinate with them. Now, Rebecca made the statement that they couldn’t, both them and us, require logbooks so an individual boat would have to have two logbooks. I don’t know if that
was just her policy or if that’s in the rules or what. But we’ve got to somehow put provisions in here that coordinate with HMS and what they may do with this fleet. Let’s see. I think we ought to have provisions in here, we may have covered this, where transferability is not allowed. I’m not in favor of that, but it ought to be discussed. I think we ought to have provisions in here on how we would go about reducing the fleet if we had to do that. I’m not in favor of that, but that, in the real world, that may happen, and historically has happened in most other things. And, get into the discussion about lottery or qualifications or whatever if we’re going to do a reduction program.

Swingle But, don’t you want to wait? I mean, if this is just going to be a moratorium, do you really want to get into the arena of creating a limited entry system as part of this amendment?

Claverie Sure want to discuss it going in because they may change how they want to qualify and get one now. In other words, what could happen in the future if you’re blind to that, you may regret you didn’t have a chance to change a decision.

Shipp That’s a whole other plan.

Claverie I don’t know that it’s a whole other plan; I mean Bill admitted to us earlier that historically you start losing people. We know that the status of the stocks is such that if there’s any change in the science or the status of the science as such, if there’s any change in the science, they may cut the thing way down, and we would only have the opportunity to do that.

Shipp (Inaudible) That seems to be another issue.

Claverie I don’t know that it is. It’s part of a system to limit participation by the charter fleet.

Swingle Maybe you could, you could certainly if you wanted to have some options to require that, the vessels demonstrate or owners demonstrate 50 percent of their earned income came from recreational for-hire fishery. That would eliminate all of the part-time fishermen right off the bat. So you do have an option if you want to require that the gross income be from $25,000 to $50,000 or $75,000, and you would also get rid of part-time fishermen.

Fischer HMS does require a charter/head boat license (inaudible). I think I would like to see if we could have options, or if there was a way Staff or National Marine Fisheries, small NMFS locally, could coordinate, incorporate this moratorium to the HMS charter/head boat permit. And, that would encompass the tunas and billfish. It’s out of our jurisdiction, but they’re trying, Rebecca’s trying to reduce effort and reduce catch. And, she may embrace this.
K. Williams    Mr. Chairman, I had a question and we’re under general provisions, right? And there was something that was brought to our attention; I believe it was yesterday. I don’t know whether to put it here or if it was done at the end of the Reef Fish Committee or the Council part of it, where we state in a letter or in this document that it is our intent that your history follows you such as the problem that Clair could foresee. Would that go in this document?

Shipp    No, that’s a letter, I think. Isn’t it, Wayne?

Swingle    Yes, that would probably go under reef fish or mackerel either one really. Or maybe this discussion, too. It could come out of this.

K. Williams    Well, I would just like to see that happen.

Claverie    It would seem to me that we should put that as a provision in here, and then at the next meeting, if we vote for that provision, then that’s pretty indicative. And, that’s what the industry wants.

Shipp    Yes, but I think that even before that, a letter wouldn’t be out-of-order.

Claverie    Oh, if you want to write a letter now, but it would seem to me that it would be even better if we put that provision in the document so that the first we consider it, we could pull that out and say...

Shipp    We’ll do both. Okay. Is there anything else before we adjourn? Yes, Irby, I’m sorry.

Basco    Thank you, Mr. Chairman. Couple of little quick ones. Is it possible to put a cap on the amount of permits? A number cap on, is it possible?

Shipp    We would need more information before we came up with a number.

Basco    I understand, but should there be a provision for maybe a cap, if we’re talking about 3,000, 5,000 permits. Anyway, whatever. The other thing is, is there anything about American citizens only on this or how does that work? Or is that implied in the plan?

McLemore    I think we can do that. I’ll look into it, but I think we can do it.

**END OF VERBATIM TRANSCRIPTION**
Red Drum Management Committee Report

Ms. Foote presented the Red Drum Management Committee report:

After approving the agenda and minutes, the Red Drum Stock Assessment Panel (RDSAP) meeting held February 7-8, 2000, was summarized by Mr. Hood. The results of additional runs suggested by the RDSAP to Dr. Porch, the NMFS assessment biologist, still indicated that the red drum stocks were overfished and that overfishing was occurring. The new base case scenario that included the fishery divided into four seasons and three areas, age specific natural mortalities, release mortalities distributed across ages 0 and 1, and with shrimp bycatch data did result in better fit to the length data than the base case model (single season) used in the initial assessment. Other runs suggested by the RDSAP (spreading release mortalities across ages 0-4 and ignoring shrimp bycatch) did little to improve the assessment. Dr. Porch ran an additional run using age slicing, a technique to assign ages to length. While age slicing did result in a more optimistic assessment of the stock, Dr. Porch had serious reservations about using this technique for red drum because it tends to underestimate total mortality.

The RDSAP had several concerns that they felt needed to be addressed in further runs. One concern was that F values predicted by the model in the last two years of the assessment were higher than predicted for previous years. Another concern raised by the RDSAP was that the estimated recreational selectivities across ages were M-shaped with selectivities for age 3 lower than for ages 2 and 4. Finally, the RDSAP was concerned that the offshore portion of the stock may have too much influence on the model considering that the degree of variability for population estimates of this segment were very high. The RDSAP asked that five additional runs be conducted to address these concerns. Because the model runs take weeks to run, the RDSAP recommended that the results be discussed in mid-April via conference call. The final report would then be written using electronic mail so that it could be presented to the SSC and AP during the first week in May.

Several concerns about the February 2000 report on stock status were expressed by Committee members. These included: 1) need for sampling of the offshore stock and recommendations on methodology; 2) mediation of selectivities on various age classes by angler behavior and/or environmental conditions; 3) effect of slot limits on the model, particularly because they limit the fish available to fishery-dependent sampling; and, 4) effect of differences between past and present assessment models on the status of the stock. The Committee also questioned whether the available data for red
snapper assessments should be considered superior to data used in the red drum assessment.

The Committee recommended, and Ms. Foote moved that Staff review the above concerns with the RDSAP and ask that these be addressed by the RDSAP in their final report.

Dr. Claverie asked for clarification of “the red snapper assessment should be considered superior.” Ms. Foote responded that it had been indicated that the data available for the red snapper stock assessments were superior to those available for red drum stock assessments. She stated that a Committee member expressed a concern that this might not be accurate.

Mr. King stated that action was going to take place in a February meeting and that the February results would be available. Mr. Swingle responded that the RDSAP was convened in February, and that time elapsed before there was time to run some of the scenarios the members wanted to review. These scenarios were going to be run, but that it would take some time, and then more time would have to be allowed in order for the RDSAP to review these scenarios in April.

Mr. Hood stated that the RDSAP members had been concerned that when the model was run, the mortality (F) values for the terminal years of the last couple of years were quite high; the members worried that this might be a result of the model as opposed to what was actually occurring in the fishery. Therefore, the RDSAP wanted a retroactive scenario run, using terminal years from further back in time to see if the same F pattern developed. He added that the members were also concerned about the fact that the selectivities in the recreational sector for the various age classes were M-shaped and there was a dip for age 3. Therefore, the members wanted a scenario run where selectivities on age 4 and above were set the same, hopefully eliminating the M-shape selectivity curve. He stated that there was a lot of variability in the information for the offshore stock so the members asked for another run that would basically lower the effects of the offshore stock in the assessment in an attempt to minimize some of the variability. He stated that it would take Dr. Porch approximately 6 weeks to run the desired models, with the results and report being available for the May 2000 Council meeting.

Dr. Claverie stated that he would like Dr. Porch to meet with the RDSAP since he actually ran the models and wrote the report. He offered an amendment to add “NMFS scientist” after the first “RDSAP” in the motion. Amendment carried by consensus.

Mr. King stated that the RDSAP had not considered his concern that too many small fish were harvested in the state waters. He wanted to ensure that this issue was addressed. He felt that one of the problems with the Council’s credibility with fishermen was that the Council kept asking fishermen to “bear the pain now and enjoy the gain later.” However, the “later” never came. He pointed out that this fishery had been closed for 13 years, and it had been promised that when the stock had recovered that the fishery would be re-opened.
Motion as amended carried without objection that Staff review the above concerns with the RDSAP and the NMFS scientist and ask that these be addressed by the RDSAP in their final report.

Ms. Foote continued with the Committee report:

Mr. Osburn and Mr. Simpson praised the RDSAP for not accepting the assessment at its face value and making sure that data generated by the states were used in the assessment. Ms. Foote stated that Dr. Porch and the RDSAP were working in a collaborative manner on the assessment.

Mr. Simpson expressed some dismay that the results of the offshore tagging study that cost millions of dollars did not yield the results needed for the stock assessment. Dr. Claverie understood that the problems with this study were weather-related and out of the control of the researchers. Ms. Foote stated that Dr. Porch and the RDSAP understood these difficulties and tried to use these data to the greatest extent possible.

Dr. Hogarth questioned why the Council was investing so much time into red drum because they had closed the fishery in federal waters. Red drum appeared to him to be a state issue, and he questioned whether the states were prepared for preemption. Dr. Claverie related that the Council had recommended to the states that 30 percent escapement was sufficient to maintain red drum stocks and that the Council needed to re-evaluate this level to make sure this recommendation was correct. In addition, some people would like to see a red drum fishery developed in the federal waters. Mr. Simpson further stated that if red drum stocks were in fact in good shape, then states should be given relief in the current management strategies.

Mr. Chairman, this concludes my report.

Dr. Hogarth stated that the only alternative concerning the red drum stock that the Council had was to preempt the Gulf states, which he did not believe would ever happen. He felt that the Council should consider whether there was a need for a red drum FMP at this stage until the stock was considered rebuilt and off the overfished stocks list. He stated that the Council could withdraw the FMP, and have the Secretary of Commerce implement concurrent regulations to close the EEZ until the stock was rebuilt. He felt that this action would place the emphasis on the states to increase their efforts to help rebuild the stock.

Mr. Swingle pointed out that the Council could not preempt the states in regards to internal waters, such as estuarine systems. He stated that most of the juvenile red drum population lived in these inland waters. He recalled that there had only been one preemption in the Councils’ history, in which the Oregon governor actually approved the preemption because
he did not like the rules that the fishery commission had implemented. He felt that it would be a bold step to preempt five states.

Mr. Perret stated that if NMFS wanted to attempt preemption, then they should try it. He recalled that when the issue first arose regarding development of a FMP for red drum that three members lost their seats after the vote was made, noting that this was a “hot issue.”

Dr. Hogarth stated that NMFS did not want to preempt the states; he explained that he was just pointing out the Council’s alternatives.

Mr. Perret stated that the states have “bit the bullet on red drum and the regulations that have been put in place.” He felt that the models were probably the problem in this situation, as in so many others.

Mr. King stated that if the ultimate goal was to eliminate the commercial sector in the red drum fishery, then the Council should “quit beating around the bush, and just do it.”

Dr. Claverie felt that not much would be gained by preempting the states since the states’ scientific data indicated that more than the requested 30 percent escapement was being generated in the state waters.

Dr. Hogarth emphasized that NMFS was not going to preempt the states. He again explained that if the Council had a FMP for an overfished stock, then the Council had to take action to rectify the situation. Therefore, if the Council continued with its FMP, then the Council could possibly be left in the position of having to preempt the states in order to reduce overfishing. He questioned why the Council was spending so much time, effort, and money on what was essentially a state fishery. If the stock assessment indicated that the stock was still overfished, then he suggested that the Council request that the states take further action; however, if the states did not, then the Council should take action under the Magnuson-Stevens Act and preempt the states. He stated that the only other option was to ask the Secretary to close the EEZ until the stock was rebuilt.

**Reef Fish Management Committee Report**

Ms. Williams moved to immediately develop a limited entry options paper for red grouper in the EEZ to be available at the next Council meeting. She stated that many fishermen feared that the 400+ tuna fishermen potentially impacted by the proposed highly migratory species (HMS) closures would enter the grouper fishery. She also pointed out that 80 percent of the longline fisheries catch was comprised of red grouper. She felt that quick action was necessary because of other actions already in place. She stated that this could possibly reduce the effort from approximately 800 fishermen down to approximately 300. She requested that Bob Spaeth be allowed to address the Council concerning this issue.
Mr. Spaeth stated that there were about 1,200 permits, with about 700 showing landings. He estimated that there were approximately 250 to 300 true commercial fishermen that would qualify for a directed permit. He stated that the main problem was that other fisheries were being closed, and these fishermen needed to move their businesses into a different sector to continue to make a living. He stated that there were about 400 permits issued that did not show any landings. He explained that for about $3,000, a longline fisherman could get a reef fish permit and begin grouper fishing. He felt that this was contrary to the goal of reducing grouper effort. He stated that only about 34 boats of the 60 boats on the eastern coast of Florida would “get under the Breaux bill.” He questioned what would happen with the other boats that were eliminated from the longline fishery. He observed that most of these boats were in the 40-foot class. He stated that these boats could not go north to fish, but would come south instead. He requested that some action be taken now to protect the current historical fishermen in the Gulf.

Mr. Swingle stated that the reef fish vessel permit was freely transferable on the market. This raised the question of how to get around the problem of discriminating against the longline fishery individuals who wanted to purchase a permit. He was unsure of how to structure such a measure that would restrict additional longline boats from entering the grouper fishery.

Mr. Spaeth responded that he did not want to just stop the longline vessels from entering the red grouper fishery, but any new vessels.

Mr. Williams recalled that Dr. Lamberte had presented many options for reducing effort on grouper at the Committee meeting the previous day. He stated that the option that appealed to him was the fractional license. He pointed out that it would take at least one year to implement any action.

Dr. Claverie asked if the November 1, 1989, control date covered grouper. Mr. Swingle responded affirmatively, explaining that the control date covered all reef fishes.

Mr. Fischer stated that something that the Council needed to consider when developing a closed system was the “use it or lose it” method. He pointed out that these 300 permits that were not being used could be eliminated from the fishery since they were not in use.

Mr. Williams asked if a new control date could be established. Mr. Swingle responded affirmatively. He asked if the new control date would only apply to grouper.

Mr. Lessard asked if a control date of 1989 would hold up in court if a moratorium was established in an effort to keep the longline vessels from entering the fishery. Mr. McLemore responded that it would depend on the wording of the original control date, but noted that it would be considered “stale” by now. However, he also noted that the Council had been discussing development of a limited entry system for one complex or another in the reef fish
fishery in the intervening 11 years. He stated that a newer control date would certainly be more defensible, and would be more likely to result in more people being notified.

Ms. Williams did not feel that a new control date would solve this problem, noting that the permits would still be there. She stated that this was mainly a red grouper, longline problem, and needed to be addressed specifically as such.

Mr. McLemore stated that the purpose of a control date notice was to put people on notice that they may not be able to continue to participate in the fishery at some future point if a certain management regime was adopted in order to help eliminate speculative entry into the fishery. However, he noted that the general experiences of the past had had the opposite effect. He noted that there were always exceptions for people who entered the fishery after the control date. He stated that in this case a permit was needed to harvest red grouper, and noted that there was a moratorium already in place on these permits. Therefore, a control date might be unnecessary.

Mr. Swingle asked if a control date notice could be filed signifying that the Council was about to develop a limited access system for the longline participants in the Gulf of Mexico reef fish fishery. Mr. McLemore responded that a control date notice could be filed, and pointed out that there was no immediate regulatory effect as a result.

Mr. Williams suggested publishing a control date that stated that any vessel without grouper landings as of the control date may not be assured of a spot in the fishery in the future because the Council was considering a controlled access system. He felt that this would at least give some notice to the longline fleet that they may not qualify since they did not have any grouper landings.

Ms. Williams stated that a potential problem with that idea was that fishermen might begin targeting grouper to ensure sufficient landings records. Mr. Williams responded that the records would only be necessary after the control date.

Dr. Hogarth agreed with Mr. Spaeth, feeling that a major problem could potentially develop, and probably would with the time/area closures proposed by the NMFS HMS Division. He believed there would be displacement. He stated that the only problem he saw with the motion was that there were no red grouper permits, only a snapper/grouper permit. He stated that the Council would have to take additional action to separate the grouper from the reef fish permit.

Mr. Swingle pointed out that logbook records existed for everyone in this fishery for the past six to eight years. Therefore, it could be determined who was catching grouper.

Mr. King questioned if identifying specific species within one permit was the best method of handling this problem. He stated that the bigger problem with this would be in
designating gear types. He recognized that the Sustainable Fisheries Act (SFA) led to gear specification. He asked that the Council listen to Mr. Spaeth and other fishermen as to what effect the Council’s actions would have.

Mr. Swingle concurred with Mr. King, stating that separating the species on the permit would be overly complicated. He felt a much simpler solution would be to say in the control date notice that the Council was proceeding with development of a limited access system for longlines used in the reef fish fishery. He pointed out that longlines were not used in the western Gulf since the fishermen had to fish outside of 50 fathoms. So basically this problem was concentrated in the eastern Gulf and in the grouper fishery.

Mr. Jernigan felt that the predicate this issue was based on was wrong. He recalled that legislation to close areas in the Atlantic and the Gulf provided for a buy-out of the 68 longliners involved. He explained that this buy-out had the condition built-in that these bought-out vessels and captains could not enter any other commercial fishery. Therefore, these fishermen could not enter the Gulf and harvest grouper commercially.

Ms. Williams stated that the grouper fishermen were concerned about the tuna fishermen entering the grouper fishery also.

Mr. Fensom offered an amendment to the motion to change “red grouper” to “all grouper and tilefish.” He stated that the deepwater grouper fishermen he had spoken with were concerned about fishermen targeting the yellow-edge grouper and tilefish. He stated that the gag grouper were also very stressed.

Ms. Williams asked if Mr. Fensom’s amendment still targeted the longline fishermen. She stated that the reason she had not included all grouper was that in the western Gulf fishermen did not target red grouper, but did have a bycatch of black grouper, gag grouper, and other groupers. She stated that she could support Mr. Fensom’s amendment if he meant longline fishermen, but could not support the amendment if he meant every grouper in the Gulf.

Ms. Williams offered a substitute motion to immediately develop a limited entry options paper for the longline portion of the reef fish fishery.

Mr. Williams questioned why this action should be taken only for the longline sector. He stated that the red grouper was an overfished stock. He pointed out that lowered quotas on red grouper would be necessary. He asked why the Council would not try to reduce effort in the entire fishery. He stated that the western Gulf did not have a grouper fishery.

Ms. Williams responded that the western Gulf fishermen did catch red grouper, and if this action became an “across-the-board” action, then a bycatch problem would be generated for the western Gulf. She stated that the problem was primarily in the longline fishery. She felt
that the phase-out of fish traps and this action regarding longlines would alleviate the problem for red grouper.

Mr. Williams felt that a derby fishery would be created when the quota was lowered for the grouper fishery because of the overfished status. He again questioned why the action to reduce effort on red grouper would be limited to the longline gear.

Ms. Williams responded that there were simply too many species involved to take such a broad approach as suggested by Mr. Williams.

Mr. Osburn stated that the Council needed to establish a control date first. He stated that other gear types could be added later, but at this time a control date needed to be established for each gear. He pointed out that the control date could then be used as needed in the future.

Ms. Williams pointed out that there was already an established control date for the reef fish fishery, but recognized that this control date was not gear-specific. She did not oppose establishing the control date in regards to the longline fishery, but did if the control date was used in regards to the rest of the reef fish fishery.

Mr. Osburn felt that the fishermen would not have a problem with a new gear-specific control date for the gear that they had been using. He explained that this would keep a handliner from becoming a longliner and vice versa. He believed that this action would give the Council the flexibility to deal with the problem presented by Mr. Spaeth, as well as future problems. If the Council did not want to limit handline entrants, then the Council would simply not use the control date it had established for that gear. He pointed out that this would keep any fleet from simply entering a new fishery with whatever gear was allowable.

Ms. Williams withdrew her substitute motion.

Mr. Osburn offered a substitute motion to establish a control date as soon as possible for each of the currently existing legal gear in the commercial reef fish fishery.

Mr. Osburn stated that a current control date would allow the fishermen to demonstrate landings since 1994.

Mr. King stated that the fisherman had to be presently in the fishery with current landings.

Mr. Williams felt that the motion was more general than it needed to be. He questioned why the western Gulf needed to be affected when the problem was in the eastern Gulf. He also asked why the species were not specifically listed, such as grouper, amberjack, and tilefish.

Dr. Shipp stated that the motion simply set a control date, and that the actions Mr. Williams was suggesting could be done subsequently.
Dr. Claverie asked if the establishment of a new control date in any way diminished the ability of the Council to use the original control date. Mr. McLemore responded negatively. Mr. Osburn pointed out that there was no other control date for gear in the reef fish fishery. Mr. McLemore stated that if the prior control date notice was broad enough then it would not limit the Council in terms of the types of limited entry systems the Council might implement in the future. He stated that the point was that the Council needed to decide if they were satisfied with the original control date or if they wanted to establish a new one. He added that if the Council intended to retain the older control date for other purposes, then when the newer one was published, the notice could reiterate that. He again stated that a newer control date would be more defensible in court.

Mr. McLemore asked if there currently was any different gear than there had been in 1989 when the original control date notice was published. Mr. Swingle responded negatively. Mr. McLemore pointed out that since there were no new gear types in the fishery, then it might appear that the Council was simply renewing the control date with a new date. Mr. Swingle responded that the 1989 control date was for the commercial reef fish fishery in general and that the new control date focused on the specific gears.

Dr. Claverie again questioned if the establishment of a newer control date would diminish the ability to use the older control date in the future. He asked if this action would eliminate the ability to go back further than the new date for criteria. Mr. Swingle responded that the Council could not go beyond the beginning of the reporting period because of the lack of data, but that the Council could certainly use the data collected before the control date in management of this fishery. He explained that the control date was simply a mile post that notified anyone entering the fishery after the control date that they may be eliminated from the fishery at a future point in time.

Mr. Williams felt that the language of the motion was too confusing, stating that a pelagic longliner might not gather that he could be eliminated. Mr. Swingle responded that if the pelagic longline fisherman had a reef fish permit on his longline vessel then he probably would fall under this action, unless the limited access system required that the landing records for that vessel demonstrate that grouper or a different species had been harvested.

Mr. Fensom concurred with Mr. Williams’ concern. He questioned if a pelagic longline fishermen read the notice, then purchased a valid but unused permit, would this fishermen understand that he could possibly be eliminated from the reef fish fishery.

Mr. Osburn modified the motion to add “for commercial reef fish permit holders” after “as soon as possible.” Amendment carried by consensus.

Mr. McLemore stated that the language of the motion was actually different from the nature of the language of the actual control date notice. He stated that typically this language was cast in very general terms, and it would basically state that if someone was not a participant
in the fishery prior to the control date, participation could not be guaranteed depending on Council action regarding limited entry systems. He added that the limited entry system could be based on a number of factors. He felt not having this specific language in front of the Council members as they discussed this issue was leading to the confusion and hindering members from deciding how to limit the fishery.

Dr. Shipp suggested that the Council give the Council Staff editorial license in drafting the language of the notice to comply with the Federal Register notice. He was confident that the Staff understood what the Council members desired in this action.

Mr. Swingle stated that initially the language would be drafted by the Council, then it would be sent to NMFS, where the General Counsel and NMFS would revise it as needed. Therefore, the exact wording of the control date would be developed through this process. He assured the Council members that he understood what they wanted in this action.

Substitute motion as amended carried by a unanimous vote with Dr. Claverie’s abstention to establish a control date as soon as possible for commercial reef fish permit holders for each of the currently existing legal gear in the commercial reef fish fishery, with Staff given editorial license to draft language for the control date in conjunction with NMFS/NOAA Staff.

Mr. King pointed out that the sale of the reef fish permit was not an issue since no one could enter this fishery who had not been in the fishery in the previous years.

Dr. Claverie stated that the substitute motion that was passed did not offer the protection that Ms. Williams was requesting. He pointed out that the longline fleet had already invested the larger expenditures of being in a fishery and $3,000 was probably not too much to add in order to enter a different fishery. He remarked that unless the Council was very quick in taking restrictive action after the control date notice, then the longline fishermen might enter the fishery for whatever length of time they could to make extra money.

Ms. Williams moved that the Council develop as soon as possible a limited entry license limitation options paper for the longline portion of the reef fish fishery.

Mr. King asked if a fisherman made a decision to purchase a reef fish permit, but did not have any history of using a gear type, could this fisherman use his gear under the previously passed motion. Mr. McLemore responded that the motion simply established a control date, explaining that the answer to the question depended on what action the Council took in the future.

Mr. Williams again asked why the motion was limited to the longline sector. He emphasized that there was an overcapitalization problem anticipated for the entire fishery. Ms. Williams responded that action on the bandit sector or any other relevant sector could be taken later,
but that the longline sector needed addressing immediately. She felt that dealing with only one sector at this time would greatly speed the process up. Mr. Williams stated that one reaction that could occur from taking action only for the longline sector would be that some of the other fishermen would feel that the longline grouper fishermen were being vested in the fishery at the expense of others not included in the action. Ms. Williams responded that two of the largest sectors of the reef fish fishery were the red snapper sector and the red grouper sector. Mr. Williams spoke in opposition to the motion.

Mr. Fensom asked if this action would have an impact on the option to move the longline fishermen out to 50 fathoms. Ms. Williams responded negatively.

**Motion carried** by a vote of 13 to 3, with one abstention, that the Council develop as soon as possible a limited entry license limitation options paper for the longline portion of the reef fish fishery. Mr. Williams asked that it be noted that he was opposed to this motion.

Mr. Minton presented the Reef Fish Management Committee report:

**PRELIMINARY OPTIONS PAPER FOR AMENDMENT 18**

Steven Atran reviewed the preliminary Amendment 18 options paper (Tab B, No. 3a). The Committee then reviewed the sections to recommend which should be left in, and which should be deleted. Committee Chairman Vernon Minton stated that it would be the Committee’s recommendation to delete a section unless Committee members wanted it left in.

Section 6.0 - Gear Regulations  
Sub-section 6.1 - Traps, Pots

The Committee noted that Reef Fish Amendment 16A contained a proposal to speed up the fish trap phase-out off south Florida. That proposal was rejected by NMFS because of insufficient justification. However, since then, the Council has reviewed stock assessments on gag and red grouper indicating that these species are in worse shape than previously thought. There may therefore be new justification to speed up the fish trap phase-out.

By consensus, the Committee recommended, and Mr. Minton moved, that options be added to Section 6.1 to speed up the fish trap phase-out based on the new information about the status of the grouper stocks, especially red grouper.

Mr. King spoke against the motion. He stated that the Council had made a decision regarding this issue, and that the Council should abide by its decision. He felt that to act otherwise would greatly affect the Council’s credibility.
Mr. Lessard also spoke against the motion. He stated that the status of the gag grouper in the area off the Florida Keys did not have the low male:female ratio that was found in the Panhandle area of Florida. He stated that there had not been a major decline of red grouper in the areas that would be affected by Amendment 16A.

Mr. Fischer asked that the motion specify that the speeded-up phase-out would occur below 25.05° north latitude. He felt that the motion as stated was very misleading. The Council concurred with this modification.

Mr. Aparicio spoke against the motion, not seeing the justification in such an action. He also felt that such action would negatively impact the credibility of the Council.

Mr. Osburn asked if Mr. Williams had any comments regarding this issue. Mr. Williams responded negatively. He stated that he did not object to the motion, but also noted that he was not the author of the motion.

Mr. Minton spoke against the motion. He stated that there was no new information or biological evidence to indicate that such an action was necessary. He understood that it was just an option to be included in the paper, but did not feel it was fair to continue to force these fishermen to take action again in order to protect the original agreement. He remarked that the current phase-out deadline was 2007, and that the typical length of the amendment process would put the implementation of such action so close to the original phase-out deadline that there really was no reason to change the original deadline.

**Motion failed by a vote of 7 to 9 with 1 abstention that options be added to Section 6.1 to speed-up the fish trap phase-out below 25.05° north latitude based on the new information about the status of the grouper stocks, especially red grouper.**

Dr. Shipp abstained, stating that such action would not gain much, but would drain time, money, and effort from the Council.

Mr. Minton continued with the Committee report:

Sub-section 6.2.1 - Endorsement and Moratorium on Use of Longlines and Buoy Gear

The Committee felt that, due to proposed time-area closures in the HMS pelagic longline fishery and the potential for effort to shift to the reef fish longline fishery, options for a longline moratorium should be considered. There was some discussion about whether a moratorium was needed, since the next section contains options for a phase-out. However, the Committee felt that the moratorium options should be left in for consideration. Some of the Committee members questioned the table on page 5 which indicated that
longlines were not the dominant gear for red grouper and gag landings. Dr. Hogarth stated that he would have that information reviewed.

By consensus, the Committee recommended, and Mr. Minton moved that Section 6.2.1, Endorsement and Moratorium on Use of Longlines and Buoy Gear, be retained.

Mr. Jernigan stated that the Council could not make the presumption that any of these options would be implemented and should, therefore, move forward with all of the options.

Motion carried by voice vote.

Mr. Minton continued with the Committee report:

Sub-section 6.2.2 - Other Longline and Buoy Gear Regulations

Jim Fensom related that he has been approached by restaurant owners, commercial fishermen, an recreational fishermen asking that something be done about grouper longlining, and he supported leaving in all of the listed options.

By consensus, the Committee recommended, and Mr. Minton moved that Section 6.2.2, Other Longline and Buoy Gear Regulations, be retained. Motion carried by voice vote.

Mr. Minton continued with the Committee report:

Sub-section 6.3 - Handline, Rod-and-Reel

Kay Williams moved that this section be deleted. She felt that it is primarily directed toward red snapper when the amendment is dealing with grouper. Circle hooks may not be effective on all reef fish. The commercial fishery already uses circle hooks, but a legal requirement may have problems with enforcement. Hal Osburn noted that the Essential Fish Habitat Amendment, under bycatch concerns, had a requirement to require circle hooks based on research that circle hooks reduced release mortality. He suggested that the section be left in and expanded. Dr. Hogarth felt that the circle hook requirement should be expanded to include longlines. The motion to delete this section failed by a vote of 2 to 5.

By consensus, the Committee recommended, and Mr. Minton moved that Section 6.3, Handline, Rod-and-Reel, be retained and expanded to apply to other gears.
Mr. Lessard spoke against the motion. He stated that it was almost impossible to catch a yellowtail snapper with a circle hook in the eastern Gulf of south Florida. He also felt that it would be an enforcement problem since many fishermen carried many kinds of tackle.

Ms. Williams also spoke against the motion. She pointed out that this document did not only address the commercial fishery, but recreational also. She asked if a recreational rod-and-reel angler would be required to use a circle hook. She felt that the commercial fishermen knew which species could be caught with the circle hooks and used them when they could.

Mr. Perret asked if an official definition of circle hook existed. Dr. Shipp responded that in the development of this paper, the Council Staff could draft an official definition.

Dr. Shipp stated that one alternative would be to exclude the yellowtail snapper from this requirement. He stated that he would like these options to go to the public hearings and listen to what the public had to say about this issue.

Dr. Hogarth concurred with Dr. Shipp.

Mr. King stated that he had seen a circle hook expert on a documentary on PBS. The expert had shown that if a fisherman attempted to set the circle hook by jerking it, the hook would simply slide out of the fish’s mouth; however, if the fisherman allowed the fish to “maul on the bait a while,” then as the fisherman reeled in the line, the hook would slide out and lip-hook the fish.

Mr. Minton felt that this measure could not be enforced across the entire fishery. He believed that the Council’s previous action of officially encouraging the use of circle hooks was as far as the Council could go on this issue.

Dr. Claverie concurred with Mr. Minton. He also agreed with Mr. King’s assessment that the circle hook was not offset, but related that there was an offset hook that could be purchased that was also called a circle hook. He stated that this offset hook would gut-hook the fish. Therefore, he encouraged the development and inclusion of the definition of “circle hook.”

Mr. Basco remarked that Captain Ron Hamlin who was a top tagger/flagger on billfish last year had caught about 1,400 billfish using circle hooks on lures. He related that Captain Hamlin held seminars on the use of the circle hook, and that the circle hook did catch the fish in the hinge of the mouth rather than gut-hooking the fish. He stated that this made the release mortality much better.

Mr. Fischer asked how the Coast Guard could enforce the use of circle hooks for the rod-and-reel fisherman. Lt. Fiedler responded that it would be much easier for enforcement personnel if only one type of hook was allowed; however, the boarding officers could be trained to
recognize more than one hook. Mr. Fischer stated that to avoid getting caught using illegal hooks, the fisherman only had to withdraw his line or cut it when he saw a Coast Guard cutter coming. LCDR Cinalli responded that allowing more than one type of hook would be time-consuming for the Coast Guard, and he felt there were other fishery issues on which the Coast Guard could more wisely spend their time.

Dr. Shipp did not feel that this measure would necessarily be to generate fines, but to strongly encourage fishermen to use circle hooks. He felt that mandating the use of circle hooks would garner more compliance than just establishing voluntary use.

**Motion failed by a vote of 8 to 9 that Section 6.3, Handline, Rod-and-Reel, be retained and expanded to apply to other gears.**

Mr. Minton continued with the Committee report:

Sub-section 6.4 - Bandit Gear

Doug Horn suggested that this section be deleted, because there were other ways to control effort. The Committee discussed whether the number of hooks fished affected release mortality or size of fish caught. Vernon Minton recalled that the observer data indicated that bandit rigs had a lower release mortality than other gear types. Kay Williams stated that fishermen will limit the number of hooks they use to avoid gear entanglements. Sh also questioned the enforceability of a limit on number of hooks. Doug Horn stated that most bandit rigs use 20 to 24 hooks.

By a vote of 7 to 0, the Committee recommended, and Mr. Minton moved that Section 6.4, Bandit Gear, be deleted. **Motion carried without objection.**

Mr. Minton continued with the Committee report:

Sub-section 6.5 - Spears, Powerheads

Hal Osburn questioned whether the Council had the authority to implement Alternative 3, require vessels to remain at least 50 feet from hook-and-line vessels. Karl Lessard informed the Committee that most powerheads use .38, .357, or .44 caliber shells, and the concussion of the gasses and impact of the bullet is what kills the fish. He related that there were about 9 to 10 individuals in the Florida Keys who make their living spearing fish, probably 99 percent with a powerhead. They target grouper, snapper, and amberjack, and were used for jewfish when it was legal. Dr. Hogarth moved that an alternative be added to require a permit to use powerheads for reef fish fishing.
By consensus, the Committee recommended, and Mr. Minton moved that in Section 6.5, Spears, Powerheads, Alternatives 1 and 2 be retained and Alternative 3 be deleted. Motion carried without objection.

Mr. Minton continued with the Committee report:

By consensus, the Committee recommended, and Mr. Minton moved that in Section 6.5, Spears, Powerheads, a new Alternative be added to require a permit to use powerheads for reef fish fishing. Motion carried without objection.

Mr. Swingle stated that the Council should recognize that in the stressed area that stretches across the Gulf, the use of powerheads was prohibited for targeting reef fish. He presumed the motion would not affect this area.

Dr. Claverie asked about the request by a fisherman to use a rebreather as gear. Mr. Atran responded that the South Atlantic Council did not allow the use of rebreathers in the fishery. A fisherman had contacted the Gulf Council to ascertain if he could use his rebreather in the waters off south Florida when powerhead fishing. Mr. Atran stated that the fisherman had been told to follow the official procedure to request that the Gulf Council consider adding rebreathers to the list of allowable gear. He stated that it was unclear if a rebreather was actually considered gear or not, but that NOAA General Counsel had stated that since one Council considered it gear, then it could be argued that a rebreather was gear and was not on the list of allowable gear.

Mr. Minton continued with the Committee report:

Sub-section 6.6 - Castnets

Vernon Minton felt that there was no reason to be discussing the use of castnets in the EEZ. Alex Jernigan related that castnets were said to be used to catch pompano.

By consensus, the Committee recommended, and Mr. Minton moved that in Section 6.6, Castnets, be deleted. Motion carried without objection.

Mr. Minton continued with the Committee report:

Sub-section 6.7

Hal Osburn felt that trawl fishing options were inappropriate in a reef fish amendment. However, the Committee felt that the information request in the alternative should be requested at some point.
By consensus, the Committee recommended, and Mr. Minton moved that in Section 6.7, Trawls, be deleted, with the provision that the Committee would like to request the information under Alternative 1 as a separate action. Motion carried without objection.

Mr. Minton continued with the Committee report:

Section 7 - Operator Permits

Kay Williams stated that the Council has discussed this issue previously, and included a similar provision in the Dolphin/Wahoo amendment, but without qualification requirements. She cited similar action by the Mid-Atlantic Council. Gene Proulx stated that, from an enforcement perspective, there was no need to have any qualifiers attached to the permit. Kay Williams felt that having an annual renewal of operator permits was unnecessary and would create an administrative burden for NMFS. Vernon Minton felt that there needed to be some periodic renewal provision to keep the permit records from being filled with inactive permits. Kay Williams added that any renewals should occur on the operators’ birthdays.

By consensus, the Committee recommended, and Mr. Minton moved that in Section 7.0, Operator Permits, consist of only the following alternatives:

Alternative 1: Require operator permits for operators of commercial/charter/headboat reef fish vessels, with permit renewals required:
   a. every 3 years
   b. every 5 years

Alternative 2: Status quo - no operator permit requirement.

Motion carried without objection.

Mr. Minton continued with the Committee report:

Section 8 - Reconsideration of Grouper Management Strategy
Sub-section 8.1 - Basic Management Strategy

Hal Osburn felt that the options presented should be debated, but were not appropriate for an amendment. Steven Atran stated that Staff was compiling data for more specific options, but needed guidance as to which direction to proceed. Dr. Hogarth felt that single-species management isn’t working, and other approaches need to be looked at. He suggested that the NMFS Science Center work up some proposals that could then be sent to the SSC. He will
be meeting with the Science Center on April 5 to discuss the options paper. Roy Williams felt that a north-south regional division of grouper management should be considered. He also felt that recommendations from Alexander Stone for closed spawning seasons for several grouper species should be considered.

By consensus, the Committee recommended, and Mr. Minton moved that Section 8.1, Basic Management Strategy, be deleted, and that NMFS be requested to develop an options paper to present to the RFSAP, SEP, and SSC.

Mr. Williams wanted to ensure that at some point the Council would still consider the closed season option.

Motion carried without objection.

Mr. Swingle asked what the timeline would be on this action. Dr. Hogarth responded that there was no set timeline, but that it would probably be accomplished by July 2000.

Mr. Williams moved that the options paper include options for closed spawning seasons for both shallow-water groupers and deepwater groupers. Motion carried without objection.

Dr. Claverie stated that the graph that detailed the grouper spawning seasons (Figure 13) needed more detail and clarification. He also wanted delineation between the prime spawning months and the other months for each of the species included.

Mr. Minton requested that Dr. Claverie confer with Mr. Hood as to what information and changes he wanted made to the graph. He continued with the Committee report:

Sub-section 8.2 - Changes to the Management Unit

By consensus, the Committee recommended, and Mr. Minton moved that Section 8.2, Changes to the Management Unit, be retained. Motion carried without objection.

Mr. Minton continued with the Committee report:

Section 9 - Jewfish

Dr. Hogarth stated that, in response to a request from the Council, NMFS will present new information on jewfish at the November Council meeting. In that light, Vernon Minton suggested that is would be more appropriate to consider jewfish options at a later time.
By consensus, the Committee recommended, and Mr. Minton moved that Section 9, Jewfish, be deleted. Motion carried without objection.

Mr. Minton continued with the Committee report:

Section 10 - Other (Misc.)

Vernon Minton felt that there had already been several recent actions on greater amberjack, and additional management changes were not warranted at this time. Roy Williams reminded the Committee that there will be a greater amberjack stock assessment presented to the Council later this year.

By consensus, the Committee recommended, and Mr. Minton moved that in Section 10, Alternative 1, Greater Amberjack Size Limits, be deleted. Motion carried without objection.

Mr. Minton continued with the Committee report:

Dr. Hogarth felt that, if regulatory amendment actions were implemented only in January or July, with Council decisions in November, it would be difficult to get a July implementation. The Committee discussed moving stock assessments to earlier in the year, which would eliminate availability of the latest MRFSS data. Wayne Swingle felt that, with stock assessments every two years instead of every year, having the latest data became less important.

By consensus, the Committee recommended, and Mr. Minton moved that in Section 10, Alternative 2, regulatory measures to take effect on January 1 or July 1, be deleted. Motion carried without objection.

Mr. Minton continued with the Committee report:

APPENDIX TO THE PRELIMINARY OPTION PAPER

Tony Lamberte summarized the options in the Appendix to the Preliminary Issues and Options for Amendment 18 to the Reef Fish Fishery for the Reef Fish Resources of the Gulf of Mexico (Tab B, No. 3b). This paper contains options for replacing the reef fish permit moratorium with a permanent limited access system.

Vernon Minton questioned whether the Council was allowed to develop such a system under the Magnuson-Stevens Act moratorium. However, Wayne Swingle clarified that, for species other than red snapper, the Council could
develop a limited access plan but could not submit it to NMFS before October of this year.

Vernon Minton felt that it was premature to be developing a permanent reef fish limited access system at this time. Steven Atran noted that the red snapper limited access system had taken 4 years to develop, and if a reef fish limited access system took the same amount of time, work would need to begin now. Vernon Minton responded by noting that 2 of those years were involved in developing an ITQ system that was overturned by Congress. Roy Williams felt that overcapitalization was a problem that is driving all of the other problems, and the Council is going to have to deal with it.

By a vote of 6 to 1, the Committee recommended, and Mr. Minton so moved that the options in the appendix to the options paper be tabled until the November 2000 Council meeting.

Mr. Swingle stated that the previous motion to develop a limited access system for part of this fishery as soon as possible would override part of the current motion.

Mr. Minton suggested that the Council leave this action up to the Council Staff, believing that the Staff understood the intent of the Council. The Council concurred.

Mr. Minton continued with the Committee report:

Dr. Hogarth informed the Council that there is a National Capacity Management Team set up in NMFS. By the end of this year or by late Fall, they will produce an estimation and characterization of capacity to all of the regional fisheries. By January 2001, there will be a report available on national fishing capacity. By 2004, each Council is supposed to use this report to reduce overcapacity by 15 percent in fisheries that have overcapacity.

The Committee discussed what they would want in the options paper in November. Hal Osburn felt that the effort limitation options would not be as effective as other measures. Vernon Minton asked Gene Proulx if the Law Enforcement Advisory Panel could analyze the effort options when it meets in June. Gene Proulx felt that it would be difficult. He noted that the days-at-sea program in effect in the northeast is extraordinarily involved, and has been in place since 1996. He suggested that the Council look at the experience gained from the scallop and groundfish fisheries in the northeast. The Committee agreed that background information from the northeast would be useful. Maumus Claverie suggested that the Council get Dave Borden
from the New England Fishery Management Council to give a briefing to the Council.

Kay Williams stated that she would like to see an economic impact of a reef fish limited access system included. Tony Lamberte suggested that a limited access could reduce the need for traditional management measures.

Agenda items 4 and 5 were deferred to full Council in order to allow time for public testimony.

PUBLIC TESTIMONY ON RED SNAPPER

**Matt Murphy**, (Texas) - Owner of Captain Murphy’s Charter Service and holder of two commercial permits. He has fished for red snapper for 40 years. He felt that the Gulf of Mexico should not be treated as a single unit. Texas fishing begins at a depth of 100-120 feet and goes to 300 feet, whereas Florida is a shallow-water fishery. Raising the size limit causes him to kill more fish than it saves. He carries 35 to 50 people per day on his party boat, with an average of 40-45 per trip. He suggested a 13-inch minimum size limit and keep the first 4 fish over 13 inches. He felt a fish under 13 inches would have better survival than larger fish because their swim bladders are not as large. Vernon Minton asked Mr. Murphy when, in his 40 years of fishing, red snapper was at its peak. Mr Murphy responded that snapper fishing goes in 10-year cycles. In the 1950’s, he was catching 10,000 pounds every 3-4 days. But in the 1960’s, he was catching 300-400 pounds per day, and a lot of fishermen quit. Catches then went back up. He felt that the snapper migrate, so that when fishing is down in his area, fishing in Aransas and Galveston is up. Irby Basco asked if release mortality would be better with more deckhands on board. Mr. Murphy responded negatively. He added that he is currently fishing in Mexican waters, and Mexico has a rule requiring that fishermen keep the first five fish, with no culling. Mr. Murphy stated that he could target big fish by going to different places and using different baits, but he does not want to because those are the breeding stock.

**Jim Smarr**, Recreational Fishing Alliance - provided written comments. He stated that he read the administrative record dealing with the interim rule for the 2000 red snapper recreational season, and feels that it shows underlying problems that can only be dealt with by Congressional intervention or judicial review. He felt that release mortality is killing 2.5 million fish in the recreational fishery and 1.3 million fish in the commercial fishery. He supported keeping the first 4 fish at 13 inches, and that there could be a 12-month fishery. He felt that the stock assessment underestimated the numbers of red snapper on oil and gas rigs. On the charterboat permit moratorium, he
is adamantly opposed because he feels there are enough fish in the Gulf for everybody. He agreed that a fish under 13 inches had a better release survival because their swim bladders are not fully developed, as per a UT report. He felt that the red snapper fishery has been tied to the shrimp fishery by BRDs, but that BRDs were not working. He noted that he had viewed a video of dolphins eating fish coming out of a BRD.

**Johnny Williams** - He stated that he is being hurt by the current regulations. Spring break is usually a busy time, but has been diminished this year by the red snapper regulations. He supported dividing the Gulf up, and supported a 4-fish, 13-inch size limit. He felt that the TAC should be eliminated and that management should concentrate on controlling fishing mortality. He felt that release mortality is not being taken into consideration in the TAC.

**Pat Murray, CCA** - CCA wants the recreational sector to enjoy the largest portion possible within the context of good stewardship. He opposes short-term increases in TAC if it leads to long term problems and ultimately stronger restrictions. He felt that we need empirically correct, peer-reviewed, and discernable and acceptable data. It appears that we currently have the largest TAC and season allowable within the boundaries of the existing management plan. To change this would require either enhanced data or a different management plan. CCA values the importance of shrimp bycatch reduction.

**Bob Zales, II** - President, Panama City Boatman’s Association - Spoke on the charterboat moratorium. Given the alternatives, this is a necessary evil to continue with a fixed season and current size and bag limits. He went through several TAC/size limit/bag limit scenarios, e.g., if the Council is forced to go to a 6 million pound TAC, a 2-fish bag limit year-round would require a 20-inch size limit. A 16-inch size limit with a 2-fish bag limit and a January opening would result in a closure in August. A 4-fish, 14-inch size limit and 12-month fishery would require a 17.5 million pound TAC. If future growth is not capped, these scenarios get worse for charterboat operators. He recommended that the moratorium process not be killed, that is be continued.

Mr. Minton concluded the Committee report, but observed that two items had been deferred to the full Council. He turned the floor over to Ms. Williams.
Ms. Williams stated that she would like to have a letter of intent follow the participants in the for-hire sector so that they could retain their historical participation in light of whatever action the Council took in the future. She **moved that the Council send a letter to NMFS indicating the Council’s intent that if participants have to change vessels in the for-hire fishery that their history of participation be retained by NMFS for future consideration of eligibility. Motion carried without objection.**

Mr. Williams **moved to add the transferability alternatives from the Charterboat Moratorium Options Paper to the Options Paper for Reef Fish Amendment 18.** He stated that if the charterboat permit moratorium amendment was deleted, then this option would still be available.

Dr. Hogarth stated that this action would simply allow all of the permits to continue, which appeared to be in opposition to the goal of the moratorium amendment. Mr. Williams responded that this motion would deal with certain problems, such as a fisherman whose vessel burned and he had to purchase a new one; the fisherman’s personal history and permit would be transferable to his new vessel. He stated that dealing with the overcapacity of the charterboat fishery was a separate issue. Dr. Hogarth insisted that this action would create a vast loophole in that it would make the permit transferable to anyone. Dr. Shipp commented that this was simply an option on which to get public comment.

Mr. Fischer supported the motion, but noted that if the control date was eliminated, this action would be unnecessary.

Mr. Swingle suggested adding the same relevant alternatives that were included in the charterboat moratorium in this options paper with modifications to the rationale discussion as needed.

**Motion carried without objection.**

Mr. Williams stated that Bob Zales, chairman of the Reef Fish Advisory Panel, had received a letter from William Ward, member of the RFAP, that made suggestions for goals and offered concerns. Mr. Williams requested that the letter be attached to the minutes (Attachment 1).

**Legal Ramifications of Requiring Imported Fish to be Consistent with Federal Size Limits**

Mr. McLemore addressed Committee Agenda Item IV, “Legal Ramifications of Requiring Imported Fish to be Consistent with Federal Size Limits.” He stated that the General Counsel was still developing a definitive answer to this question. He remarked that the Stenson-Kenning case in New England upheld a regulation in the Northeast Multi-Species Plan to the Groundfish Plan, which made it illegal to possess undersized imported species.
within that FMP. He added that this regulation had been challenged as a violation of the Magnuson-Stevens Act and as two counts against the General Agreement on Tariffs and Trade (GATT). However, these latter two counts were dismissed, probably on jurisdictional grounds. He stated that the District Court had upheld the regulation in this case. Therefore, it appeared that the Magnuson-Stevens Act did have some authority in this area, but the question would be if this would constitute a trade barrier. This was the area in which General Counsel had not made much progress. He stated that the local office of NMFS and the office in Silver Spring, Maryland, felt that this regulation would constitute a trade barrier. He stated that the local trade specialist thought there was no justification for it given the condition of the stock and the fact that they were separate stocks from which these fish were being imported. However, the other specialist was less sure of this. He referred to certain conditions in GATT that were designed to protect an exhaustible resource, which a fish stock certainly would be. Mr. McLemore stated that the procedure would have to be examined, and the procedure would have to be consistent with GATT. He questioned if the other countries involved in GATT would have to be consulted and a side agreement reached or would State Department approval have to be established. He stated that some of the factors that weighed against this regulation was that the level of imported fish was well above the domestic harvest. He noted that there were also different size limits for the same species in different areas of the country. He also pointed out that the Gulf size limits changed with some frequency, which would necessitate renegotiation of the side agreements. However, it would appear to be fair if there was a consistent size limit for national harvests and imported fish.

Summary of the Meeting with NMFS on the Sustainable Fisheries Act Issues

Dr. Shipp addressed Committee Agenda Item V, “Summary of the Meeting with NMFS on the Sustainable Fisheries Act Issues.” He stated that the meeting occurred in Tampa, Florida, a month earlier. This meeting was to have some of the Council members meet and talk with the Southeast Fisheries Science Center (SEFSC) stock assessment scientists to develop some new directions or alternatives regarding the red snapper problem. He referred to the paper written by Joe Powers under Tab B, No. 5a. Dr. Shipp expressed some disappointment in the outcome of the meeting. He pointed out that page 2 of Dr. Powers’ report included a chart regarding the importance of bycatch reduction. He asked how the stock could be considered overfished if the maximum sustainable yield (MSY) had never been harvested. He recalled that the highest harvest of red snapper in history occurred in the 1920s, with a harvest of approximately 25 million pounds. He felt that to project a MSY of 100 million pounds was incongruous. He reiterated that new ideas and directions were needed.

Dr. Hogarth suggested that the Council take one-half a day at the May 2000 Council meeting to meet with NMFS to discuss the models used and to brainstorm ideas. He stated that Dr. Powers and Dr. Nancy Thompson would attend this meeting to cover the input parameters, differences in the various models, comparison of the models, etc.
Mr. Osburn stated that the Council did not need to understand any more than it currently did how the model worked. He stated that the output was unreasonable regardless of how the models worked. He felt that it would be more helpful to discuss a possible new or different approach or model. He remarked that a model did not have to be used if there was not enough valid data to use in the model.

Mr. Jernigan stated that he did not need to understand how the model worked, but instead wanted to know how NMFS proposed to correct the problems associated with the models. He felt that NMFS should at least be able to extract results that were "in the ballpark."

Mr. Minton suggested that it would be useful to also discuss bio-energetics. He stated that it might be helpful if NMFS staff examined what would happen to "forage species" with a standing crop of 4 billion pounds of red snapper or a standing crop of "X" pounds of other reef fish, if MSY was achieved for all species. He stated that it would be important to know how much food was needed to achieve and then maintain the goals set for each stock. He questioned if the goals could even be sustained.

Mr. Aparicio asked if the document in Tab B, No. 5 referred strictly to shrimp trawl bycatch. Dr. Hogarth responded negatively, but understood it to include all bycatch; however, he stated that he would have this clarified. Mr. Aparicio pointed out that there should be concern over the bycatch in the directed fishery also.

Mr. Swingle referenced a short paper authored by Mr. Atran that used the Richer model. He pointed out that this analysis indicated a $B_{MSY}$ of about 25 percent of the total indicated by the NMFS ASAP model. He asked if the NMFS scientists could also review the use of the Richer function as a possible different method. Dr. Hogarth responded that some of the NMFS scientists had been concerned that Mr. Atran had omitted some parameters in his analysis that would result in a change of his outcomes. He added that these scientists had already contacted Mr. Atran and were reviewing his paper in conjunction with Mr. Atran. He related that the Richer function had been peer reviewed, and the peer review had indicated that the Richer function was not the best tool to use for study of red snapper for various reasons. However, the NMFS scientists were continuing to look at the Richer function for possible use. Mr. Swingle recalled that one of the reasons NMFS scientists did not favor the Richer function was because of cannibalism in the red snapper stock.

Mr. Atran stated that it appeared that the different types of spawning recruit curves were being confused with different ways of relating fishing mortality to biomass. He explained that he used a very simple formula that was used for relating biomass harvest and abundance of fish that stated that catch was equal to the fishing mortality times the average abundance of whatever time period was being reviewed. He argued that in the case of red snapper, pounds could be substituted for numbers of fish in this formula. If this was done, the fishing mortality rates and the MSY estimates that were calculated in the stock assessment resulted in estimates for two of the three values in the formula; meaning the third value could be
calculated. He stated that using these values, $B_{\text{MSY}}$ equaled approximately 25 percent of Schirippa and Legault's results. He stated that the other parameters, the estimates of current spawning per recruitment ratio (SPR), made more sense when examined from a lower MSY level. Otherwise, SPR would appear to have to be calculated to be a couple of orders of magnitude less than what NMFS had generated. He stated the formula he used was a very simple and old formula, and that no matter how complicated the model was, the results should still at least be in the range of one another.

Dr. Hogarth asked if any of the NMFS scientists had spoken with Mr. Atran regarding his paper. Mr. Atran responded negatively. Dr. Hogarth assured the Council and Mr. Atran that that someone would get in contact with Mr. Atran about his paper. He reiterated that he had been told by his scientists that the inclusion of certain necessary parameters would raise Mr. Atran's results.

Dr. Shipp requested that SEFSC synergize the models with reality. Dr. Hogarth welcomed input from all quarters, and stated that he was open to examining different methods and ideas.

Mr. King wondered who had the authority to say which was the best recruitment curve to use in a stock assessment when the use of different curves could change the results of the stock assessment by 200 or 300 percent. He requested that the NMFS scientists evaluate the landings information he had supplied to Dr. Hogarth. He emphasized that he had requested at least four times that the Council's Stock Assessment Panel (SAP) run several different scenarios using various data; however, to date, Mr. King stated that he had not seen these results. He believed that at the meeting in May that he would, again, only get the results that NMFS ran based on what NMFS stated was the best information to use. He remarked that the Council's Scientific and Statistical Committee (SSC) would then go along with whatever NMFS reported because many of the SSC members were dependent on NMFS grants. He emphasized that he wanted various information used.

**Administrative Policy Committee Report**

Mr. King presented the Administrative Policy Committee report:

The Committee considered the issue of the Legal Status of the National Standard Guidelines.

Mr. McLemore, NOAA General Counsel, indicated that under the Administrative Procedures Act the guidelines would be considered interpretive rule by the agency (DOC) of the statues, i.e. SFA and Magnuson-Stevens Conservation and Fishery Management Act (MSA). He indicated that in many court cases involving litigation under the MSA the judge considered the guidelines as interpretive rule. Mr. McLemore referenced the
definition section of the guidelines on page 24229 of Tab E, No. 5, and pointed out the verb “must” is used wherever NOAA determined the provisions of the guidelines are based on law under the MSA.

Mr. McLemore stated that what he had actually said in the Committee meeting was that it was settled law that an agency’s interpretation of a statute that it administers was entitled to deference by a court, particularly if a statute was in an area of the agency’s expertise. He stated that this was even more so when the agency was interpreting its own regulations. He stated that it was an interpretation that was entitled to some deference, some presumption in its favor, but was not binding law.

Mr. King stated that the issue was that if the stock assessments were used in court and the variations that were discussed earlier in the meeting were noted, there would be some concern about whether this was adequate or if the goals and objectives as set forth were reasonable and followed the guidelines established by NMFS.

Mr. McLemore stated that if the assessments were done with the guidelines in mind and in accordance with what the guidelines set forth, then the presumption would be in their favor. However, it did not mean that it could not be overturned.

Mr. King remarked that because of this presumption, the issue of “best available science” died at the Council level unless the issue went to court.

Mr. McLemore disagreed, stating that the way the guidelines were structured, there was some interpretation, and if someone felt that there was a better interpretation, then this person should write the agency and explain their interpretation and why it was better than NMFS’ interpretation.

Mr. King continued with the Committee report:

Mr. Swingle discussed some of the points in a letter by members of the Senate Subcommittee with oversight over the MSA to Mr. Terry Garcia, NOAA, under Tab E, No. 4. This letter, which included the Senate staff comments on many issues related to NMFS interpretation of the SFA, resulted in NMFS re-opening the public comment period on the guidelines. The letter and Senate staff comments both raise the Subcommittee members position that the guidelines were not intended to be legally binding, and that the SFA clearly states the guidelines do not have the force and effect of law.

Other issues on Congressional intent in the letter included:

- The definitions of “overfishing” and “overfished” were intended to be the same as in the SFA.
• The deletion of the modifier "long-term" before the word "capacity" was not a significant change as interpreted by NMFS in the definitions of overfishing, i.e., fishing at a rate that jeopardizes the [long-term] capacity of the stock to produce MSY.

• The use of the term "fishery" instead of "stock" was an intentional Congressional change to ensure that multi-species or mixed-stocks complexes are considered as a unit. It was clearly Congressional intent that the Councils have the flexibility to manage such multi-species complexes as a single unit.

• In the rebuilding periods for overfished stocks, the Councils should have the flexibility to take into consideration the biology of the stocks in setting the time periods for restoring the stocks in addition to the time period in the absence of any fishing mortality. Congress did not intend that fisheries be entirely closed for a 10-year period if restoration of the stock could be obtained over a longer period without such unnecessary or draconian outcomes.

• The Councils cannot be required to do the impossible in restoring stocks that may decline from non-fishing activities. The Councils are charged with taking reasonable action in these cases and are not required to adhere to strict overfishing and rebuilding provisions of the MSA.

• MSY: (1) the Councils are not required to specify a separate MSY for each stock within a stock-complex; and, (2) the final guidelines should emphasize the Councils may use proxies for MSY.

The revised National Standard Guidelines (Tab F, No. 5) published in May 1998 included many of the changes purported by the Senate Subcommittee members.

In the course of discussion of the Senate letter, Dr. Shipp indicated at the NOAA Strategic Planning Meeting held in February, representatives from each of the Council regions listed as the major issue of concern the need for greater flexibility to manage multi-species complexes as a single unit. He moved that the Council send a letter to NMFS emphasizing the need of such flexibility for the Gulf multi-species complexes. Motion carried without objection (see attached draft letter).

On behalf of the Committee, Mr. King moved that the Council send a letter to NMFS emphasizing the need of such flexibility for the Gulf multi-species complexes (see attached draft letter).
Mr. Swingle stated that the letter had not been written yet because he wanted to discuss it with the Council first. He stated that one issue he wanted to raise with the Council regarding the content of the letter was Penelope Dalton's comments at a meeting that Mr. Swingle, Dr. Shipp, and Dr. Hogarth, among others, had attended. He recalled that Russ Nelson had related that Ms. Dalton had commented to the Executive Committee of the South Atlantic Council that she felt that NMFS had not properly interpreted the SFA when developing the guidelines; she subsequently made the same comment to Congress before the Senate Subcommittee in New Orleans. Mr. Swingle had been hopeful that NMFS was now more flexible in their rigid interpretation of the guidelines as published. However, he had discovered that this was not the case. He felt that he and Dr. Shipp should examine some other issues and consider incorporating these other issues into the letter also. He suggested that if there was any chance of obtaining greater flexibility at this point in time, it would be with the help of Ms. Dalton.

Mr. King offered an amendment to the motion to give Mr. Swingle and Dr. Shipp editorial license to draft the letter to NMFS emphasizing the need of such flexibility for the Gulf multi-species complexes and other issues. Amendment to the motion carried by consensus. He hoped that the stock assessment concerns that had been voiced would also be included in this letter, as well as a review of the definitions of “overfished” and “overfishing.” Motion as amended carried without objection.

Mr. King continued with the Committee report:

Dr. Claverie raised the issue that Congress in the SFA had deleted “long-term” in relation to fishing that would result in the capacity of a stock to produce MSY. Yet he noted that NMFS had continued to use “long-term” in the Guidelines in defining MSY on page 24229 and OY on page 24232 of Tab F, No. 5. He, therefore, moved that the letter to NMFS also request NMFS delete “long-term” in the section pertaining to National Standard 1, i.e., the overfishing standard. Motion carried with Dr. Hogarth in opposition.

On behalf of the Committee, Mr. King moved that the letter to NMFS also request NMFS delete “long-term” in the section pertaining to National Standard 1, i.e., the overfishing standard.

Dr. Shipp requested that he and Mr. Swingle be given editorial license to review the language in question and to decide if this issue should be included in this letter. He stated that he would rather this motion not pass as a formal motion so that he and Mr. Swingle were not mandated to do so.

Mr. McLemore stated that in the relevant discussion that they did not focus so much on a relationship between MSY and optimum yield (OY) as they did MSY and overfishing. He suggested that this was something that the Council might want to consider. He stated that when MSY was considered as a theoretical concept, then it would be a long-term concept; however,
OY was adjusted down from MSY based on factors that would logically change more frequently, and thus, would be more short-term.

Dr. Claverie stated that there was a difference between long-term and perpetual. He pointed out that the federal court and the Department of Commerce lawyers in the Maine vs. Krepps case said that MSY meant “perpetual.” He insisted that “long-term” could mean whatever the Council wanted it to mean, and it could also mean an average, which meant short-term overfishing to obtain the long-term average. He explained that the court was saying that a temporary overfishing condition was not possible, but that it was “perpetual” instead. He contended that it would be more appropriate to use “perpetual” as the court had.

Mr. McLemore noted that the case referred to preceded the SFA.

Dr. Claverie concurred and stated that this was a “typical trick of agencies to let the federal court say the agency did it wrong the first time, and then the agency lets a little time slip by, and then they come up with a different definition all over again.”

Mr. McLemore stated that it was pretty significant that the Magnuson-Stevens Act had changed.

Mr. Minton offered a substitute motion to give Mr. Swingle and Dr. Shipp editorial license to incorporate the intent in the letter. Substitute motion carried by voice vote with some objection.

Mr. King continued with the Committee report:

Under Other Business, Mr. Aparicio reported that he had previously requested the Administrative Policy Committee address the issue when insulting language was used by Dr. Kenchington in review of Dr. Koenig’s gag discussion paper. He asked Mr. McLemore why that could not be handled in a closed session as he requested. Mr. McLemore responded that MSA did not allow closing a meeting for that purpose. The issue was deferred to Mr. McLemore until after he reviewed the documents.

Mr. Chairman, this concludes my report.

Mr. Aparicio stated that the last paragraph of the Committee report was inaccurate in regards to his request. He refuted that he had ever stated that anyone had used “insulting language.” He explained that the basis of his request was that the letter from Dr. Kenchington had contained some charges about the possibility of conflict of interest among some of the members of the Council’s SAP. He felt that this should be discussed, and if there was any accuracy in this claim, then the Council should take action. He added that if there was no accuracy in the claim, then the Council should offer its support to its SAP.

Mr. Swingle apologized for misunderstanding Mr. Aparicio’s intent.
Mr. Aparicio requested that this language be stricken from the Committee report. He also requested that the Council discuss the charge that Dr. Kenchington's letter contained at the May 2000 Council meeting during the Administrative Policy Committee meeting.

Mr. McLemore recalled that in this Committee discussion, there had been some reference to the correspondence in question containing the threat of litigation. He felt that the confusion had possibly arisen from the threat being based on some exchange between the parties involved.

Mr. King and Mr. Swingle asked Mr. Aparicio specifically where he saw the charge from Dr. Kenchington. Mr. Swingle stated that he had read most of the letters, but had not perceived the charge of conflict of interest for some SAP members as Mr. Aparicio had. Mr. Aparicio responded that it was in the letter, and asked that Staff review the letter and place the item on the Committee agenda for the May meeting.

- **Habitat Protection Management Committee Report**

Mr. Frugé presented the Habitat Protection Management Committee report:

The Habitat Protection Committee met on Monday morning to discuss the items under Tab J. The first item on the agenda was the use of oil dispersants in shallow water. Ms. Robin Jamail of the Texas General Land Office and Mr. Don Aurand of Ecosystem Management Associates, Inc., presented a proposal to test the effect and fate of dispersed oil in shallow water on marine organisms in Galveston Bay. Mr. Aurand stated that very little oil is mechanically recovered in an oil spill. Dispersants might be a better way to rid the environment of the spilled oil. The study would determine how effective a dispersant would be, how the oil plume interacts with sediment, and the ecological effects of the oil and dispersant on the environment. In a controlled manner, two 400-gallon spills would be released and then treated with dispersant. Biological samples would be collected, and residual oil collected at the end to determine the efficiency of the dispersant. Acute toxicity would be measured with confined grass shrimp and juvenile red drum. The benthic effect would be measured using blue crabs and oysters. The sublethal effects would be measured through a fish spawning and growth study and a larval oyster development study. Lab data would be used to determine toxicity to larval fish. Several members expressed their concern on the use of dispersants in shallow water. The Council will have the chance to comment on this project when a permit application to the EPA is developed this summer. Ms. Jamail stated that she will keep Mr. Rester informed of the study and permit application.

The next item on the agenda was review of a summary of a fishing gear impact workshop that was held in December. Mr. Rester stated that he attended the workshop along with NMFS representatives, Caribbean Council representatives, and other gear experts from the Southeast. He stated that at the January Council meeting,
the Committee had expressed an interest to review the minutes of the workshop. The main goal of this workshop was to direct future NMFS research on gear impacts. One of the outcomes of the workshop was a table that analyzed the potential effects of fishing gears used in the southeast region on the habitat located in the Southeast. Mr. Rester also stated that the Gulf States Marine Fisheries Commission's Habitat Subcommittee has completed an annotated bibliography of fishing impacts on habitat.

Under "Other Business," Mr. Rester stated that possible future agenda items for the Committee include a presentation on the Gulf of Mexico Offshore Aquaculture Consortium's research plan for development of offshore aquaculture in the Gulf and a proposed natural gas pipeline that would transport natural gas from Alabama to central Florida. Several important habitat areas will be affected by the pipeline. Mr. Rester also stated that the GSMFC's Habitat Subcommittee has developed a draft wetland management policy and submerged aquatic vegetation policy for the Council. These will be presented to the Council for review and adoption at a later date.

Mr. Chairman, this concludes my report.

Dr. Shipp asked what was the Gulf of Mexico Offshore Aquaculture Consortium. Mr. Frugé responded that it was an organization being led by the Mississippi-Alabama SeaGrant Consortium that was research-oriented and non-profit.

It was noted that the Committee would review the Gulf Aquaculture Consortium research proposal and routes of gas pipelines at the May 2000 Council meeting.

**Stone Crab Management Committee Report**

Mr. Lessard presented the Stone Crab Management Committee report:

Mr. Williams presented the details of the stone crab trap certificate program adopted by the FFWCC. The Staff of the FFWCC and Council had worked with the stone crab industry over a period of about three years in developing this effort reduction program. The end-product was approved by all the fishery associations and by the great majority of fishermen. The FFWCC had the authority to implement rules applying to all provisions of the program, except for the fees. Bills establishing the fees are under consideration by the Florida Legislature.

Dr. Claverie raised the issue of whether the spouse of the person who holds the trap certificate would be subject to the provisions reducing the certificates if he/she were divorced by that person. Mr. Williams indicated he did not know, but the FFWCC
could modify the rules to treat that person the same as an immediate family member, i.e., no reduction in certificates.

Mr. Swingle discussed the options for implementation of the trap certificate program. He pointed out that Stone Crab Amendment 5 (Tab H, No. 5) had established the protocol and procedure whereby the state of Florida could implement certain types of rules in the EEZ by submitting a regulatory amendment drafted by Council Staff and the administrative record for the action to the NMFS Regional Administrator. Under this process, the Council would submit the regulatory amendment and administrative record to the SSC and AP for a determination by them whether the proposed rules were consistent with the FMP objectives and the scientific analyses were adequate. The AP and SSC comments, if any, would be submitted to the RA through the Council. Both the Council and RA must determine that the proposed rule was consistent with the FMP objectives and the provisions of the MSA. If such a determination was made, the RA could implement the rules.

Mr. Swingle felt that the trap certificate program could be implemented by regulatory amendment under the provisions of the protocol and procedure, as had been the case for the spiny lobster trap certificate program in 1992 (Tab H, No. 6). The other alternative would be to implement the program by plan amendment.

Mr. McLemore indicated that it would not be possible to implement the program by regulatory amendment, because it was a limited entry system. Mr. Lessard and Mr. Williams disagreed that it was a limited entry system, and indicated from their perspective it was a trap effort reduction program. Mr. Williams felt that because of the precedent of implementing the spiny lobster program by regulatory amendment, the same should be possible for the stone crab program. He, therefore, moved that the Council implement by regulatory amendment a provision that all persons fishing commercially with traps in the EEZ off Florida identify each trap with a tag issued under the state trap certificate program.

Mr. McLemore again indicated that he did not believe it would be legal to implement the rule by regulatory amendment under the stone crab protocol and procedure. Mr. Williams suggested that the Council Staff proceed in drafting a regulatory amendment, and if it is determined that it is not legal, the Council would take another course of action. Mr. Perret suggested that Mr. Williams and Mr. Swingle meet with Mr. McLemore to determine the most appropriate way to proceed and then advise the Council, which could be convened by telephone to address this issue.

Mr. Perret moved by substitute motion that Council Staff proceed with development of a regulatory amendment, and if General Counsel determines that it is illegal, then proceed with development of a FMP amendment. Substitute motion carried with no objection.
On behalf of the Committee, Mr. Lessard moved that Council Staff proceed with development of a regulatory amendment, and if General Counsel determines that it is illegal, then proceed with development of a FMP amendment. Motion carried without objection.

- Mackerel Management Committee Report

Mr. Williams presented the Mackerel Management Committee report:

The Committee noted that previous recommendations of the Dolphin/Wahoo AP and SSC were included in Tab C, Nos. 4 and 5 for reference. The Committee reviewed Actions 1 - 10 with regard to the need to change previous Council actions, as well as those reviewed at the Joint Committee meeting held in February 2000 in Charleston, South Carolina (Tab C, No. 6). With regard to Actions 1 through 4, the Committee made no recommendations for change.

With regard to Action 5, the Committee recommended and Mr. Williams moved to add “in the EEZ” after “for-hire vessels” in the first sentence and to add “it is the Councils’ intent that” before “during the permit sanction period,” in the last sentence to read:

Action 5. Require any individual who operates a vessel which fishes for, possesses, or lands dolphin or wahoo commercially and possesses a valid commercial permit to sell, or the operator with a for-hire vessels in the EEZ; to have an Operator’s Permit issued by NMFS. Any vessel fishing commercially for dolphin or wahoo or recreationally with for-hire permit must have onboard at least one operator who holds an operator’s permit. That operator may be held accountable for violations of the fishing regulations and may be subject to a permit sanction. It is the Councils’ intent that during the permit sanction period, the individual operator may not work in any capacity aboard a federally permitted fishing vessel.

Motion carried with one objection.

Mr. Williams continued with the Committee report:

With regard to Action 7, the Committee recommended and Mr. Williams moved to defer Actions 7, 8, and 9 to the May 2000 Council meeting. Motion carried without objection.
Mr. Williams continued with the Committee report:

With regard to Action 10, the Committee recommended and Mr. Williams moved to revise the first sentence under Section 4.2.1.7, Action 10, paragraph A, to read as follows: “An assessment panel (Panel) appointed by the Councils will review the condition of dolphin and wahoo as needed.” Motion carried without objection.

Mr. Williams continued with the Committee report:

The Committee noted that additional information on these stocks will be provided by NMFS and reviewed by the MSAP, Dolphin/Wahoo AP and SSC in April and early May. Also, the SAFMC is awaiting these data for inclusion into the FMP before their scheduled public hearings in late May to early June.

Consequently, the Committee recommended and Mr. Williams moved to defer remaining actions to the May 2000 Council meeting. Motion carried without objection.

• Joint Marine Reserves/Reef Fish Management Committee Report

Mr. Minton presented the Joint Marine Reserves/Reef Fish Management Committee report:

Mr. Swingle reviewed the provisions of the draft Options Paper for the Tortugas 2000 Marine Reserve Amendment. Principally, he called the Committees’ attention to the sections that analyzed the economic effects of excluding various user groups from fisheries in the Tortugas Ecological Reserve Study Area (TERSA) and from the Gulf EEZ areas being considered as part of either the Tortugas North or the Tortugas South marine reserves. He called attention to the sections comprising the SEIS starting on page 40.

After the Committee members had their questions answered by Mr. Causey or Mr. Swingle, the Committees discussed the management alternatives under Section 7.3 on page 10. Under Section 7.3.1-Marine Reserves Area, Dr. Hogarth moved that the two preferred alternatives be Alternative 1: Establish a marine reserve in the portion of the proposed Tortugas North ecological reserve (Figure 1) that resides in the EEZ; and, Alternative 2: Establish a marine reserve in the EEZ with the same boundaries as the proposed Tortugas South (Figure 1) ecological reserve. Motion carried by a vote of 8 to 2.

On behalf of the Committee, Mr. Minton moved that for Section 7.3.1, the two preferred alternatives be Alternative 1: Establish a marine reserve in the portion of the proposed Tortugas North ecological reserve (Figure 1) that resides in the EEZ; and, Alternative 2: Establish a marine reserve in the EEZ with the same boundaries as the proposed Tortugas South (Figure 1) ecological reserve (Attachment 2). Motion carried with Mr. King opposed.
Mr. Minton continued with the Committee report:

Under Section 7.3.2-Marine Reserve Duration (page 12), Dr. Hogarth moved that the preferred alternative be Alternative 5: Permanent establishment of the marine reserve(s). Dr. Claverie offered a substitute motion that the preferred alternative be Alternative 6 with a 10-year period during which the reserves would be evaluated. He also pointed out the language in the alternative should be modified to provide that the evaluation and Council and FKNMS actions be conducted during and not after the 10-year period, as follows:

Alternative 6: Establish a marine reserve(s) for a period of 10 years to be evaluated annually. During this period, the future status of the marine reserve(s) will be considered by the Council and FKNMS.

Mr. Causey indicated that under terms establishing those portions of the FKNMS in state jurisdiction, that the sanctuary program has to evaluate the benefits for the Florida Governor and Cabinet every five years. The next evaluations are scheduled in 2002 and 2007. Mr. Jernigan moved to amend the substitute motion to provide that the evaluation periods be the same as for the state of Florida, rather than 10 years. Amendment to motion carried unanimously. The substitute motion as amended carried unanimously.

On behalf of the Committee, Mr. Minton moved that under Section 7.3.2, the preferred alternative be Alternative 6 with the evaluation periods being the same as for the state of Florida during which the reserves would be evaluated. The language in the alternative should be modified to provide that the evaluation and Council and FKNMS actions be conducted during and not after the evaluation period as follows:

Alternative 6: Establish a marine reserve(s) for a period of 10 years. During this period, the future status of the marine reserve(s) will be considered by the Council and FKNMS, and the evaluation periods be the same for the state of Florida.

Motion carried without objection.

Mr. Minton continued with the Committee report:

Under Section 7.3.3-Marine Reserve Allowable Activities, on pages 12 and 13, Dr. Claverie moved that the preferred alternative be Alternative 8: Prohibit all gear except trolling within the marine reserve(s). Ms. Williams offered a substitute motion that the two preferred alternatives be Alternative 7: Prohibit fishing for any species in the marine reserve(s); and, Alternative 10: Prohibit all fishing vessels from anchoring in the marine reserve(s), except in emergencies. Dr. Claverie expressed concern that the definition of fishing under the MSA may make it illegal to transit the area with any gear onboard. Mr. McLemore concurred that may be the case. Dr.
Claverie moved to amend Alternative 7 that fishing applies to gear in the water and not aboard when transiting; such gear should be stored when transiting. The amendment carried without objection. The substitute motion carried unanimously.

On behalf of the Committee, Mr. Minton moved that under Section 7.3.3, the two preferred alternatives be Alternative 7: Prohibiting fishing for any species in the marine reserve(s), noting that fishing applies to gear in the water and not aboard when transiting; such gear should be stored when transiting; and, Alternative 10: Prohibit all fishing vessels from anchoring in the marine reserve(s), except in emergencies.

Dr. Claverie stated that subsequent discussion of this issue indicated that enforcement personnel viewed activated fish/depth finders onboard as fishing gear. He felt this might lead to a problem since many boaters used their depth gauges when transversing waters, especially unknown waters. He pointed out that the use of the depth gauges also helped protect the coral reefs by helping boaters avoid the reefs. He suggested a change in the language, from “fishing gear” to “fishing tackle in the water” or some other phrase that clearly did not include depth gauges.

Mr. McLemore recalled that the Committee discussion regarded continuous transit, which would be the exception. Mr. Swingle concurred. Mr. McLemore stated that this difference could make a difference in the view of law enforcement also.

Ms. Williams recalled Mr. Proulx at the Committee meeting stating that there would not be an enforcement problem with the depth gauges. She pointed out that Mr. Proulx had not had a problem with the particular wording of the motion.

Mr. King felt that a potential problem with this motion was that some gear was extremely difficult to store. He used for examples gear such as large shrimp trawl nets and doors. He felt that it was plainly obvious when gear was in operation. He pointed out that there were also very high fines for fishing in a sanctuary. He stated that it should be made very plain that a shrimp trawler's nets were considered “stowed” when on deck.

Mr. McLemore stated that there was a similar situation in the south Atlantic, and that the South Atlantic Council decided that gear was considered stowed when one of the three elements was disengaged.

Mr. Minton asked if this action would take place in the regulatory process. Mr. McLemore responded affirmatively. Mr. Minton explained that the intent of the motion was “no fishing.” He stated that the language, exceptions, etc., would be “fleshed out” when the regulations were developed.

Mr. Minton offered an amendment to the motion that the following language in the motion was out-of-order and should be deleted: “noting that fishing applies to gear in the water and not aboard when transiting; such gear should be stored when transiting.”
Dr. Claverie stated that Mr. Proulx had told the Committee that an activated fish finder was considered fishing since it could be reasoned that the boater was “hunting” for fish. He stated that the problem with this for smaller boats was that the fish finder and depth gauge were the same equipment; therefore, if the depth gauge was on, the fish finder was on also. He agreed that this was not the case for the larger boats since the two tools were generally separate equipment.

**Amendment carried** by a voice vote that the following language in the motion was out-of-order and should be deleted: “noting that fishing applies to gear in the water and not aboard when transiting; such gear should be stored when transiting.”

**Motion as amended carried** with Dr. Claverie opposed that under Section 7.3.3, the two preferred alternatives be Alternative 7: Prohibiting fishing for any species in the marine reserve(s); and, Alternative 10: Prohibit all fishing vessels from anchoring in the marine reserve(s), except in emergencies.

Mr. Minton continued with the Committee report:

Dr. Claverie **moved** the Council send a letter to the appropriate agency [the Sanctuary Program] that the agency use its authority to prohibit any anchoring of any vessels in the reserves. **Motion carried** without objection.

On behalf of the Committee, Mr. Minton **moved** that the Council send a letter to the appropriate agency [the Sanctuary Program] that the agency use its authority to prohibit any anchoring of any vessels in the reserves. **Motion carried** without objection.

Mr. Minton continued with the Committee report:

Mr. Jernigan **moved** that the Council send a letter to the Sanctuary Program requesting the agency use its authority to prohibit non-consumptive diving in the marine reserves to prevent damage to coral and other marine organisms. **Motion carried** by a vote of 7 to 3.

On behalf of the Committee, Mr. Minton **moved** that the Council send a letter to the Sanctuary Program requesting the agency use its authority to prohibit non-consumptive diving in the marine reserves to prevent damage to coral and other marine organisms.

Dr. Shipp felt that this action was “ridiculous.”

Mr. Basco asked if this sanctuary was well-known for diving. Mr. Swingle responded that it was popular, and noted there was a table in the document that indicated the number of man hours spent in non-consumptive diving.
Mr. Fischer stated that divers must be certified before being allowed to dive. He pointed out that there was no "free lance diving," and felt that the diving was controlled. He did not see why people should not be allowed to do non-consumptive diving.

Dr. Shipp offered that the reason for prohibiting diving was enforcement.

Mr. Causey stated that divers were prohibited from contact with coral and spearfishing. He stated that due to previously voiced concerns from the Council, the FKNMS agency had developed several options that would be presented at public hearings that would include a facilitated use permit process for all divers in the Tortugas area. He explained that this meant that anyone visiting the area would be required to have this permit, at which time they would receive the information about the regulations. He felt that this would help make them prudent divers. He stated that it would also help the enforcement personnel since they would be aware of who and how many were diving in the area. He stated that the proposal also included use of mooring buoys only, which would let the enforcement personnel know which vessels were using which buoys in the sanctuary.

Dr. Claverie asked how the "no contact" regulation was enforced. Mr. Causey responded that compliance equaled approximately 80 percent. He added that there were also sanctuary personnel in the water in the more heavily used areas to enforce the regulations.

Mr. Swingle asked if the Council wanted alternatives such as the ones Mr. Causey discussed into the options paper that was going to be presented at public hearings in June 2000. Dr. Shipp responded affirmatively.

Mr. Minton asked what was the penalty for touching coral. Mr. Causey responded that the fine ranged from $25 to $150 per incident, which was a civil penalty. Mr. Minton asked how many officers were currently in use in the sanctuary. Mr. Causey responded that the agency currently employed 7 and were hiring 4 more in 2000, with 4 more to be hired in 2001.

Mr. Minton stated that diving could actually aid in enforcement. He explained that many people had cellular telephones, radios, and other mobile methods of communications, and he felt that many people would report illegal activities in the area when they witnessed it. He also felt that the physical presence of divers in the area might keep some of the illegal activity down.

Mr. Jernigan stated that one of the arguments used to prevent trolling in the marine reserve was that it would be so difficult for enforcement to discern what the vessels were actually trolling for. He pointed out that diving boats might also fish in the area. He stated that it would be very difficult for enforcement to recognize if someone was fishing from a diving vessel. He also felt that it was a "given" that when people dive amongst coral, they would touch the coral. He felt that if the prohibition of physical contact could be enforced, the trolling with plainers could certainly be enforced. He felt it was "laughable" to think the diving regulations could be enforced, and therefore, diving should be prohibited in the marine reserve.
Ms. Williams concurred with Mr. Jemigan.

Mr. Fischer asked what percentage of divers came from private boats versus charter/commercial dive boats. Mr. Causey responded that the vast majority of divers were from the commercial boats. He stated that currently there were two main commercial boats working in the area. Mr. Fischer asked if these commercial dive employees educated and monitored their patrons. Mr. Causey responded that the issue of diver contact was really self-policed and self-enforced by the diver charter captains. He stated that the captains typically contacted the enforcement personnel when they or any of their divers witnessed illegal activity. He stated that there were areas established called “research areas,” in which only permitted scientists could dive in order to observe many things such as the effect of diving, water quality changes, etc., on the coral. He felt that there was very good cooperation with the commercial dive captains.

Mr. Lessard supported no diving in the ecological reserves because he had personally observed the negative effects that divers swimming through spawning fish had on the fishes’ behavior.

Mr. Perret concurred with Mr. Jemigan’s statements. He believed that at least some divers would touch the coral, even if by accident. He felt that the reserve should be a true and complete marine reserve with no activity.

**Motion carried with Dr. Shipp opposed that the Council send a letter to the Sanctuary Program requesting the agency use its authority to prohibit non-consumptive diving in the marine reserves to prevent damage to coral and other marine organisms.**

Mr. Minton continued with the Committee report:

Mr. Swingle discussed public hearings, pointing out that he had proposed holding hearings in Marathon and Key West (Tab G, No. 4). He indicated that the FKNMS had proposed hearings in St. Petersburg and Washington, D.C., for their EIS, in addition to Marathon, Key West, and Key Largo, and had asked the Council to consider concurrent hearings. Dr. Hogarth indicated he would send Georgia Cranmore to the FKNMS hearings in St. Petersburg and Washington. Dr. Claverie **moved** the Council limit its hearings to Marathon and Key West since we are dealing with the fisheries effects of reserves. **Motion carried** without objection.

On behalf of the Committee, Mr. Minton **moved** that the Council limit its hearings to Marathon and Key West since the Council was dealing with the fisheries effects of reserves. **Motion carried** without objection.

Dr. Claverie reminded the Council that the July 2000 Council meeting would be held in Key Largo, and this was the reason for eliminating the public hearing there. He explained that it would be redundant since the public could comment at the Council meeting.
Mr. Minton continued with the Committee report:

Mr. Fensom recommended that the section stating the assumptions used in determining non-use economic values on pages 35 and 36 be deleted, so the public would not think that was endorsed by the Council or originated from the Council. Mr. Causey indicated for the rules applying to sanctuaries, reserves, and no-use areas, this type of analysis is needed. As a compromise, Mr. Fensom moved that a statement be inserted at the beginning of this section on page 34 to read as follows: The following information on no-use studies and assumptions is extracted verbatim from the FKNMS SEIS. Motion carried without objection.

On behalf of the Committee, Mr. Minton moved that a statement be inserted at the beginning of this section on page 34 to read as follows: The following information on no-use studies and assumptions is extracted verbatim from the FKNMS SEIS. Motion carried without objection.

Mr. Minton concluded the Committee report.

Dr. Claverie moved that Council Staff perform an analysis of the depths around the sanctuary areas to determine the feasibility of allowing troll fishing. He stated that only parts of the sanctuary were within Council jurisdiction. He stated that there was a path over deep water through the reserve that allowed surface trolling.

Mr. Causey stated that there was not such an area where trolling was allowed. He pointed out that there was a north and south area of the sanctuary. He explained that the reason a larger area for the reserve was not considered was to allow trolling in other parts of the sanctuary where the water was deeper. He stated that there was a lot of trolling area open.

Dr. Claverie stated that one of the reasons for the marine reserve was to preserve the fish living in the area. He stated that trolling in deeper water would not affect the reef fish. He wanted an analysis done by Council Staff analyzing the depths of the water within the Council's jurisdiction to examine if surface trolling would impact the fish in the area. He felt that the Council would appear "silly" if the Council denied fishing in deep water since the Council was the organization that "promoted fish use," pointing out that the sanctuary even had an area designated for fishing. He clarified that he was asking that Staff develop reasons other than water depth to prohibit fishing in the waters within Council jurisdiction, as well as to bring a map delineating the water depths in the area.

Ms. Williams recalled that the reason Mr. Proulx had given was that the trolling lines wrapped around coral, damaging it.

Mr. Minton stated that the issue did not deal with damage, but with fishing. He stated that if one was allowed, then there would be an argument for allowing the other. He felt that since the
Council had already voted on an earlier motion to prohibit any type of fishing, that Dr. Claverie’s request was out-of-order. He offered an amendment to include that Council Staff also perform analysis to determine the feasibility for shrimp trawling.

Dr. Hogarth stated there was no purpose behind the motion. He stated that these analyses would have to be performed as part of the process of establishing the reserve.

**Amendment to the motion failed by a vote of 5 to 11 to perform analysis of the feasibility of shrimp trawling.**

**Motion failed by a vote of 3 to 14 that Council Staff perform an analysis of the depths around the sanctuary areas to determine the feasibility of allowing troll fishing.**

Mr. McLemore stated that the first page of the report needed clarification regarding the duration and the evaluation period. He stated that the final motion that passed provided the evaluation periods be the same as the state of Florida’s rather than 10 years. However, the 10 years referred to the duration, and the evaluations were annual. Mr. Swingle stated that even under the 10-year duration, it could have continued indefinitely, pointing out that it was just an evaluation at the 10-year period. Mr. McLemore stated that the language was confusing since it referred to the duration and evaluation period as being the same thing. He felt that the phrase “rather than 10 years” was confusing because the only 10 year time frame specified was the duration. Mr. Swingle stated that the Council and the sanctuary program set the same times as the Governor and Cabinet of Florida review the entire sanctuary, which would determine whether or not it got sunset during those two time periods. Mr. McLemore did not think the Council could defer the duration to the state; he felt it needed to be specified. He pointed out that the Council could perform its review at the same time as the state did and follow the state’s lead, but a time frame needed to be specified. Mr. Swingle remarked that the report did not indicate the state, but instead the Council and sanctuary program. Mr. McLemore read from the report, ‘‘...the evaluation periods be the same as for the state of Florida rather than 10 years.’’ He commented that the Council did not know what the state would do. He asked for the duration of the reserve. Mr. Swingle responded that it would be evaluated at the two specified time periods, and the Council would determine if the reserve would continue. Mr. McLemore stated that it could be as short as a two-year reserve.

Dr. Hogarth read electronic mail from Mike Holmes, who had been scheduled to testify at the Committee meeting regarding the red snapper season (Attachment 3). He stated that he had never specified “closed January through April”; he had only told the invited commenters to simply tell the Council what they felt was needed.

Mr. Jernigan asked if any fishing was allowed in the national park that intersected the marine reserves in the Tortugas area. Mr. Causey responded that the national park did currently allow recreational fishing; however, FKNMS and Superintendent Dick Ring were working together to release a management plan for this area that would have a research and natural area that would
encompass the western portion of the Dry Tortugas National Park that would adjoin the ecological preserve. Therefore, the recreational fishing would be prohibited in this western portion. Mr. Jernigan asked if this meant that there were already plans to expand the geographic area covered by a total fishing ban. Mr. Causey responded negatively. He referred to Figure 1 on page 5 of the document that indicated a large portion of the ecological preserve overlapped into the Dry Tortugas National Park. He stated that the proposed area would not encompass much more than was already there, but would simply be a different configuration, oriented more north-south than east-west.

Ms. Williams asked if the Coral Management Committee should be convened to review the concerns in the marine reserves, and possibly take action in an amendment if necessary. Mr. Swingle responded that the harvest of any stony coral or seafans was prohibited except by scientific permit, with a limited harvest of gorgonians. With the exception of the aquaculture business that was allowed, the harvest of live rock has also been prohibited, except for the farmed live rock which required a permit from NMFS. He stated that two habitat areas of particular concern (HAPC) had been established in the Gulf. The largest of these was the Florida Middle Grounds HAPC, with the second one in the Flower Garden Banks off the Texas/Louisiana border. He stated that there had been problems with the latter HAPC with commercial vessels anchoring nearby so the Council requested that this area be designated a sanctuary, which was done.

- **Shrimp Management Committee Report**

Mr. Aparicio presented the Shrimp Management Committee report:

**Review of Bycatch Workshop Meeting Summaries**
Dr. Leard referenced the workshop document that was developed for informational use during the workshops. He explained the procedure that was followed in the workshops to provide information to and solicit comments from participants. He referenced the comments made at each of the seven workshops that had participants (Tab D, No. 4[a-g]). He then reviewed an overall summary of the most often mentioned and pertinent comments regarding the issue of further bycatch reduction requirements for the shrimp trawl fishery in the EEZ off the west coast of Florida (Tab D, No. 5). The Committee made no recommendations.

**Discussion of Distribution of the SEAMAP Real Time Data During the Texas Closure**
Chairman Aparicio noted that the Committee and Council had not indicated a preference regarding the release of real time data for the 2000 fishing year when approving the cooperative closure at the January meeting. He noted that the industry in Texas continued to support withholding the release of these data until after the opening of the season, as has been done in the past two years because of the potential positive benefits from reduced turtle strandings and enhanced vessels safety. The
Committee noted that the SEAMAP Subcommittee of the Technical Coordinating Committee (TCC) of the GSMFC had recommended the release of the real time data, and there were many people who had requested it.

Following discussion, the Committee recommended and Mr. Aparicio moved to table discussion of whether to release the “real time” data until after the May 2000 Council meeting and to request a report from the Coast Guard and the states of Texas and Louisiana on the effects of pulse fishing as a result of releasing or not releasing the “real time” data, including correlating the effects on incidences of turtle stranding (encounters) and safety factors. Motion carried without objection.

Mr. Aparicio continued with the committee report:

Report of the G&SAFF Shrimp Effort Workshop
Dr. Jamir presented a summary of the workshop that included results of funded projects.

He noted that these studies included:

- An analysis of the age structure of red snapper in the Gulf;
- Development of direct measures of shrimp fishing effort as a means to evaluate existing measures of effort and juvenile red snapper bycatch;
- Genetic studies of red snapper in the Gulf;
- Estimates of abundance, mortality, fecundity, and other parameters from fishery-independent data; and,
- A pilot survey of recreational fishing discards of red snapper in Texas coastal waters.

Dr. Jamir stated that the results and summaries of these research efforts as presented at the workshop were available from the G&SAFF.

Other Business
Mr. Osburn reported on the ongoing efforts by TPWD to assess the shrimp fishery off Texas and the possibility of overfishing. He noted monitoring of the bay shrimp fishery for over 10 years had resulted in a limited entry program for that fishery and that data showed that effort in the bay fishery had increased over 300 percent in 30 years. Additionally, CPUE had declined in the bay fleet even though the efficiency of operations had increased. He explained that similar phenomena had been observed by Dr. Nance and NMFS in the last assessment, noting that CPUE had declined over a 39-year period along with average size. Mr. Osburn stated that Texas was looking at ways to increase escapement and the numbers of spawners to avoid and/or ameliorate overfishing. He added that all Penaeid shrimp stocks (species) were fully utilized.
Mr. Perret quoted from two Houston newspaper articles which stated that TPWD stated that shrimp were recruitment overfished. Mr. Osburn said this was a misquote, and that shrimp were not recruitment overfished.

The Shrimp Management Committee also intended to discuss a matter dealing with the royal red shrimp fishery, but ran out of time.

Mr. Chairman, this concludes my report.

Mr. King commented that there was a potential gear conflict in the deepwater crab fishery in the area west of Tampa in 240 to 260 fathoms of water. He stated that a royal red shrimp fisherman from Alabama had told him that they had had problems with gear left in the water by a deepwater crab vessel that had left at least two strings of traps in June and July 1999. The fishermen who found the lines located the one crab trap fisherman in the area and gave him the lines. The crab trap fisherman could identify who owned these traps. The fisherman told Mr. King that there had been a “gentlemen’s agreement” between the royal red shrimpers and this crab trapper that there would not be a gear conflict as long as the traps were set outside of 300 fathoms. This shrimp fisherman had asked Mr. King if there was anything that the Council could do about this situation. Mr. King suggested that a discussion between these two user groups could be arranged for the May 2000 Council meeting.

Mr. Swingle noted that Bama Seafood had a facility in St. Petersburg and had been contacted in the port. He thought that this was the only vessel left in the area of this fishery.

Mr. King stated that the shrimper had told him about a consortium of investors from California that had leased a vessel and had been fishing the area in the Summer of 1999 when these traps were left behind.

Dr. Shipp asked if Mr. King or the fishermen feared the problem would reoccur. Mr. King responded affirmatively. He suggested having the Deepwater Crab Management Committee meet at the next Council meeting, with a representative from the shrimp industry in attendance, such as Johnny Nelson, the shrimper who had told Mr. King about this problem.

Mr. Perret asked that a representative from the crab fishery in the area also attend the meeting. Mr. Swingle responded that Council Staff could contact Bama Seafood and ask for a representative. However, Mr. Swingle felt that Bama Seafood was probably not the culprits in this case. Mr. King concurred, commenting that a vessel from Bama Seafood had been who the shrimpers gave the gear to when it was found. He stated that the shrimpers had told him that Bama Seafood was attempting to work with the shrimpers in this regard. He clarified that the area of concern was between DeSoto Canyon and a point west of Sarasota, Florida.

Mr. Lessard stated that mud bottoms were not appropriate for crab traps since there would be very little harvest. Mr. King concurred, stating that the shrimpers and the trappers knew this and
agreed on the specified depths and areas for the different gear. Each gear worked the area that was best suited for it with very little interference from the other gear.

Mr. Williams noted that the Shrimp Amendment 10 workshop attendees had made no recommendations and asked if any conclusions regarding the necessity of bycatch reduction in the eastern Gulf had been reached. Mr. Aparicio responded that this particular aspect of the problem was not discussed at the workshops, noting that the meeting agenda centered more on shrimp effort.

Mr. Williams commented that a discussion regarding the necessity of bycatch reduction in the area needed to occur. He pointed out that the Magnuson-Stevens Act National Standard 9 required that where practicable bycatch was supposed to be minimized. He suggested that the Shrimp Management Committee or the Council needed to hold a discussion regarding this matter.

Dr. Hogarth stated that NMFS would like the Committee or Council to also discuss the use of turtle excluder devices (TEDs).

Mr. Williams asked for the direction of action for Amendment 10. Mr. Swingle responded that the last action was to defer any further action until after the workshops/scoping meetings were held. He noted that the workshop results had been reported to the Shrimp Management Committee. Mr. Williams asked that the Committee be scheduled to meet at the May 2000 Council meeting to discuss this issue. He added that he would like the Committee to discuss the Florida Marine Research Institute's (FMRI) models called Echo Path and EchoSim. He explained that these models examined pathways energy flow and relevant issues. He thought that these models and information would be available by June 2000, possibly May 2000. He argued that there was no single species that was more critical to bycatch reduction in the eastern Gulf than red snapper was in the central and western Gulf. He stated that from a strictly ecological standpoint, there was an advantage in trying to minimize bycatch that would result in more higher-order predators. He felt that the Echo Path model would be useful in this regard. He asked that the Council contact FMRI for information.

Mr. King noted that only two conservationists had indicated any need for bycatch reduction in the eastern Gulf at the Amendment 10 workshops. He pointed out that the shrimpers did not feel there was a need and were opposed to it.

- **South Atlantic Fishery Management Council Liaison Report**

  Mr. Fischer presented the South Atlantic Council liaison report (Attachment 4). The motions made at the SAFMC meeting were included in the March 2000 Council briefing book (Tab L).
Mr. Cupka referred to the third paragraph from the bottom of the report that stated that the BRD protocol was measured against wheakfish, not wreckfish. He also thanked the Council and Staff for the courtesies extended to him at the meeting.

- **Coral Reef Task Force Report**

Mr. Fischer presented the Coral Reef Task Force report (Attachment 5).

Mr. Swingle reported that the Council had no representative at the first meeting held in St. Croix, USVI.

Dr. Hogarth reported that under the President’s 2001 budget, the southeast region would receive $2 million for coral reefs, with $800,000 for assessing fishing impact and $1.2 million to examine “no-take” zones.

Mr. Fischer stated that the South Atlantic Council had requested funds from the Coral Reef Task Force for research and enforcement on the Oculina Banks, and wondered if there were any areas the Council could use to become involved in a concurrent request.

Mr. Swingle commented that the Florida Middle Grounds was a much larger and more pristine area than the Oculina Banks. He stated that the Western Pacific Council requested that the Gulf Council write a letter to the Coral Reef Task Force indicating that there should be at least one representative from the four involved councils (Tab K, No. 3).

Dr. Shipp **moved to give Staff editorial license to write a letter to the Coral Reef Task Force asking for representation for each of the four Councils that manage coral reef resources.** 
**Motion carried by consensus.**

Dr. Hogarth commented that there were also working groups associated with the Coral Reef Task Force and suggested that the Council get involved with these groups.

- **NMFS Billfish Advisory Panel Report**

Dr. Claverie presented the NMFS Billfish AP report. He stated that the joint meeting of the Highly Migratory Species (HMS) and Billfish APs occurred February 9, 2000, in Silver Spring, Maryland. He reported that there was a 3-fish bag limit per person under the HMS recreational tuna plan. He stated that there were 6 lawsuits filed within the 30-day time frame on the HMS plan. He remarked that the data-gathering for sharks and tunas would be occurring at the NMFS Pascagoula Laboratory in Mississippi because of some extra funding this lab had. The billfish tournament reporting was supposedly 100 percent; however, there were questions about this fact. He commented that Bob Zales holds 4 percent of the swordfish handgear permits as of January 30, 2000. There were 450 tuna longline permits. He related that the northern albacore stock was considered overfished in the Gulf, but fishermen reported that it was very rare to catch northern
albacore in the Gulf. He recalled that the Council had deferred to NMFS to establish a policy regarding the acceptance of email, and that NMFS planned to discuss this issue at the Council Chairman’s meeting. He stated that the request made regarding the impact issue between the recreational and commercial fisheries had still not been forwarded, so the request was re-issued. He reported that 18 new species of shark had been added to the Essential Fish Habitat (EFH) document by NMFS.

Mr. Basco supplemented the report. He stated that he had had discussions with three longlining entities: Steve Loga, who was associated with approximately 80 longlining Gulf vessels; Gregg Abrams, who had about 15 longlining vessels in the Gulf; and, Kim Nix, who was associated with the Asian Gulf fleets of shrimpers and longliners. He remarked that Gregg Abrams and Steve Loga would consider in lieu of a NMFS Gulf closure, a 500-fathom curve closure of the longline fishing in the Gulf. He stated that these two men felt that the Breaux plan only addressed two vessels that had Gulf home ports, and that the Breaux plan was primarily an Atlantic plan. Ms. Nix did not have a comment on the 500-fathom curve plan, but felt that there had to be a better plan to implement in lieu of the NMFS plan. He clarified that Mr. Loga did support the Breaux Bill, but also supported this other alternative should the Breaux Bill get compromised.

Dr. Hogarth stated that the HMS proposal was under critical review, and would probably undergo major adjustments, particularly in the Gulf. He reported that NMFS had been asked to perform some additional analyses by the reviewers before a decision was made.

- **NMFS HMS and ICCAT Advisory Committee Reports**

Dr. Claverie reported on the ICCAT Advisory Committee meeting held March 6, 2000. He stated that the purpose of the meeting was for the species working groups to develop recommendations as to the U.S. goals at the 2000 ICCAT meeting. He stated that the ICCAT agenda items would revolve around billfish (marlins) and bluefin tuna. He stated that the Commission would consider allocation issues, allocation criteria, and compliance at the 2000 meeting also. He reported that bigeye and northern albacore tunas were considered overfished. He advised the Council that Glenn Deloney was attempting to receive multi-lateral authority from ICCAT for any nation in ICCAT to have the right to refuse imports of fish that would be considered illegal or harvested with methods contrary to ICCAT conservation measures. He stated that the swordfish working group suggested increased observer coverage and that a close watch be made of the developing recreational fishery for swordfish in the Florida straits. They also suggested developing a method to reduce undersized billfish that were considered as part of the discarded mortality rate, adding that they wanted these discards counted under the quota. He stated that this group also suggested that the Council begin data collection for ICCAT collecting Task 1 data for dolphin fish. Dr. Claverie had responded to this request that the Council had not wanted to work with another Council on this fishery, much less ICCAT. However, ICCAT was already collecting data on wahoo and would proceed with data collection for dolphin fish.
Enforcement Reports

Lt. Fiedler presented the enforcement report of the 8th District of the U.S. Coast Guard (Attachment 6).

Mr. Fischer thanked the 8th District for their presentations on safety and drugs at the Louisiana Offshore Charterboat meeting.

LCDR Cinalli presented the enforcement report of the 7th District of the U.S. Coast Guard (Attachment 7). He referred also to a press release that was handed out to the Council (Attachment 8).

Mr. McKinney presented the NMFS enforcement report. He reported that for calendar year 1999 the Southeast Division had the highest number of violations and investigations. He did not feel that this indicated there was massive noncompliance, but that rather it meant that the enforcement officers were giving active and thorough effort. He reported that there were 611 cases in the Gulf of Mexico. He stated that approximately 60 percent of the cases resulted from Magnuson-Stevens Act violations; 25 percent fell under the Endangered Species Act; 10 percent fell under the Lacey Act; and, 5 percent under other regulations. He remarked that over the next few years, the database would be revamped to include more detail on the cases so that the more egregious cases could be discerned from other cases. He hoped that the database could incorporate GIS, which was a geographic mapping tool that would aid the officers in examining how enforcement effort was dispersed and the results thereof. He reported that the current data indicated that the number of international and interstate crimes appeared to be rising significantly. He requested approximately 30 minutes of the Reef Fish Management Committee’s time at the May 2000 Council meeting to give a presentation of what actually occurred with the case involved in the press release mentioned by LCDR Cinalli. He stated that there had been a 20 to 25 percent violation/noncompliance ratio in the area of TEDs enforcement. He added that the Protected Resource Enforcement Teams (PRET) had worked off Texas primarily and the number of vessels in the area that operated without TEDs dramatically decreased, but the incorrect use and vandalism of the TEDs continued to be a consistent problem. He stated that the PRETs carried TED specialists with them and about 50 percent or more of the problems were repaired on-scene. He commented that so far in 2000 it appeared that noncompliance would run higher, more towards 30 to 33 percent. He stated that at the May meeting presentation, they hoped to also present information on the fish trap inspection program. He reported that a Sea Turtle Task Force was being composed to work off Texas and Louisiana. He stated that the various enforcement agencies were also going to work more closely together to make the most of the enforcement resources available.

Dr. Leard presented the Law Enforcement Advisory Panel (LEAP) report for the meeting held in Ocean Springs, Mississippi. He stated that the LEAP was developing a strategic and operations plan, which basically outlined a number of initiatives they were involved in marine law enforcement and a direction for the group. He reported that when this document was
finalized, the LEAP would present this paper to the Council for consideration. He stated that the LEAP requested that the charge for the LEAP that was written and authorized to be inserted into the Council’s Statement of Organizational Practices and Procedures (SOPPs) be inserted now. Dr. Leard commented that this charge had been authorized for insertion in 1981, but for some reason had never been. The LEAP indicated that they would like to meet more often and to meet with the Council more often also. They wanted to meet at least two more times per year, in addition to the two meetings held in conjunction with the GSMFC. It was decided that LEAP Chairman Waller would contact Major Alley regarding the discussion of a information sharing database that was being developed. It was hoped that a conference call or a presentation could be made at the October 2000 meeting. He stated that the LEAP also requested that the Council require that recreational fishermen fishing in federal waters to possess a valid saltwater recreational fishing license consistent with state law.

- **NOAA Strategic Planning Meeting Report**

Dr. Shipp presented the report of the NOAA Strategic Planning meeting. He stated that the purpose of this meeting was to bring the stakeholder groups together so that they could advise NMFS of their budget priorities for the year after next. He reported that all of the groups felt that the ecosystem management of stock complexes was the best choice for most species. He commented that many attendees were cynical and pessimistic, feeling that NMFS had not taken their previous recommendations seriously when preparing the budget. However, NMFS had responded that so much of their budget was now being earmarked by Congress for specific purposes that NMFS no longer had as much flexibility to respond to these priorities.

- **NMFS Regional Administrator’s Report**

Dr. Hogarth presented the NMFS Regional Administrator’s report. He stated that the notebook titled, “NOAA Fisheries Southeast Region” (Attachment 9) was created by NMFS to use for their presentation in Washington, D.C., on February 9-10, 2000. He reported that he had personally visited each Gulf states’ Congressional delegation to discuss activities in the Southeast Region. He stated that the Southeast Region contained the most councils (three) and commissions (two), as well as the largest recreational fishery, with Florida being first and North Carolina being third. He reported that the Southeast Region also held the largest commercial fishery in value, the shrimp fishery, and the largest in volume, the menhaden fishery. He pointed out that the Southeast Fisheries Science Center was the next to the smallest in size and budget, yet this center handled international and regional projects, as well as the largest number of fish stocks. However, with all of these facts, the Southeast Region had the smallest budget, approximating 11 percent of the total NMFS budget. He reported that in the future the Southeast Region had a “very good chance” of getting assigned more funds in the supplemental budget being written. He stated that the supplemental budget would include disaster money, approximately $4.8 million of which had been earmarked for the trap fishery due to the severe weather. He reported that the 2001 President’s Budget allocated approximately $2.7 million to the Southeast Region, with about one-half of these funds earmarked for the South Florida
Ecosystem Initiative, $100,000 earmarked for the north Atlantic loggerhead turtles, and the remaining $2 million designated for coral reef projects. He stated that a bill had been introduced to Congress for the outer continental shelf funding for conservation. He felt that the Council should support this bill. He explained that included in the bill was funding for state law enforcement. He stated that NMFS was moving from the day-to-day enforcement issues to the larger problems and cases, and wanted the states to handle the day-to-day issues. He updated the Council on the status of many of the bills and the Magnuson-Stevens Act reauthorization. He reported that there were eight pending litigations in the Southeast Region, with five cases successfully completed. He stated that a meeting would be held April 26-27, 2000, to reexamine the Report to Congress in order to make it more accurately portray the councils’ goals and objectives. He invited the Council to participate. He stated that NMFS planned to hold a workshop with the councils to examine the models used by NMFS.

Dr. Shipp asked if MARFIN funds would be available in 2001 for competition. Dr. Hogarth responded that these funds should be available.

- State Directors’ Reports

Mr. Minton presented the Alabama State Director’s report. He stated that a bill had been introduced to the Alabama Legislature that would take the current regulations on placement of artificial reefs and make them law. A major change that would result would be the penalties, which would increase from the $0-500 regulatory fine up to $5,000, $10,000, and 1 year in jail for first, second, and third offenses. He reported that the Oyster Management Station Bill had been introduced that would create a check-in/check-out station, modeled after stations in Mississippi, to gain more control over the harvest of oysters and the disposition after they were removed from the reef.

Ms. Foote presented the Louisiana State Director’s report. She reported that the first trial electronic trip ticket submission program was being instituted within the next two months. She stated that the Louisiana Legislature was currently considering the revenue enhancement license fee increase. She added that if this package passes, it would increase the number of people who would have to purchase licenses.

Mr. Simpson presented the GSMFC Director’s report. He stated that the Strategic Law Enforcement Plan was an important current project. He added that GSMFC requested that the Council again consider the Deepwater Crab FMP.

Mr. Simpson presented the Mississippi State Director’s report. He reported that the Commission on Marine Resources had approved the red snapper recreational size limit increase to 16 inches, the king mackerel increase from 20 to 24 inches, and the 3,000 pound trip limit. He reported that the MDMR, in cooperation with the Gulf Coast Research Laboratory in Mississippi State University, would initiate an intensive shrimp monitoring program for shrimp in state waters, as well as design a BRD evaluation study in Mississippi state waters in Spring 2000. He
explained that the study would be for vessels fishing for shrimp in Mississippi inshore and territorial sea waters. He reported that the low coastal rainfall and low rivers had produced high salinity conditions. The oyster harvest was excellent, with 280,000 sacks harvested to date; however, with the warming water temperatures and high salinities, the oyster drills or conchs had arrived and could cause high mortality. He reported that the trip ticket program had begun in the oyster fishery, and this program was planned to be implemented in other fisheries later in 2000.

Mr. Frugé presented the U.S. Fish and Wildlife Service report (Attachment 10).

Mr. Brown reviewed the “Fisheries Funding History - Southeast Region” handout (Attachment 11). He reported that the Southeast Region had suffered a $154,000 decreased in funding for 2000. He stated that the Southeast Region had a large number of freshwater and saltwater anglers, as well as the largest number of wildlife refuges that provided very important habitat for wildlife populations.

- **Other Business**

NOTE: At this point, there was no quorum present.

Dr. Leard reviewed Dr. Hogarth’s letter to Dr. Shipp regarding the SSC’s comments on the red snapper stock assessment (Tab K, No. 1).

Dr. Hogarth stated that many of the concerns raised in this letter would be addressed at the half-day workshop during the May 2000 Council meeting. He added that after the workshop, the model would then go outside NMFS for peer review.

Dr. Leard reviewed Dr. Hogarth’s letter providing the Council with NMFS’ revised BRD protocol (Tab K, No. 2). He stated that the Council might want to comment and might want the SSC to comment also. He noted that the SSC would meet again in early May before the next Council meeting.

Dr. Hogarth stated that the revised protocol would be more realistic and the burden of proof would be on NMFS.

THERE BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 11:35 A.M.

[Signature]

APPROVED

19 May 00

DATE

95