

Karl Lessard

August 25, 1999

Dr. William T. Hogarth
Regional Administrator
National Marine Fisheries Service
9721 Executive Center Drive North
St. Petersburg, Florida 33702

Dear Dr. Hogarth:

Please accept this letter as my minority report in disagreement with the proposed Regulatory Amendment to the Gulf of Mexico Reef Fish Fishery Management Plan to Set 1999 Gag/Black Grouper Management Measures. I feel that the proposed measures violate National Standards 1 (prevent overfishing), 2 (be based on the best available scientific information), 4 (be fair and equitable), 8 (take into account impacts on fishing communities), and 9 (minimize bycatch mortality). Furthermore, the amendment precedes and supercedes the Council's process currently under development for establishing marine reserves. The details of my contention are presented below.

National Standard (1) - prevent overfishing.

Gag reach 50 percent female maturity at 24 inches total length (TL). The recreational size limit proposal calls for a minimum size limit of only 22 inches TL during the first year and 23 inches TL in the second year. This will not provide sufficient protection for juvenile gag. Dr. Ransom Myers, in his August 1998 written comments to the Ad Hoc Finfish Stock Assessment Panel to set overfishing criteria, argued that it is impossible to collapse a stock by fishing if fishing does not occur until after reproducing. This does not hold true if fishing on juveniles is allowed. Red drum is a special situation where the stock is managed specifically to allow recreational harvest of juveniles, and is managed with a slot limit under an escapement-based policy. This approach is not used with gag. The National Marine Fisheries Service (NMFS) has stated that gag are approaching an overfished state, i.e., may become overfished within two years. Delaying the 24 inch TL minimum size limit for two years will not stop the stock from becoming overfished. Setting a minimum size limit less than 24 inches TL, even if just for two years, is a risk-prone approach that violates National Standard (1).

National Standard (2) - be based on the best available scientific information.

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When the NMFS stock assessments are the only science presented, they become the “best available science” by default. With gag, the Council has been given other alternative presentations that call into question the findings of the NMFS biologists. Specifically, Dr. Trevor Kenchington of Gadus Associates has presented, in both verbal and written format, scientific analyses by himself and other independent scientists that dispute many of the NMFS’ findings. The information presented by Dr. Kenchington has not been reviewed by the Council’s scientific panels. Until this is done, it is a mockery to suggest that the NMFS’ analyses must be accepted as the best available science.

According to information provided by Dr. Chris Koenig, Area 8 is the only location where gag spawning aggregations have actually been observed. Yet, the proposed closures to protect spawning aggregations are for Areas 5 and 9, not Area 8. The two areas have been described as locations that may be suitable for gag spawning aggregations, yet they are of two different types of habitat. Area 5 is high relief of up to 5 fathoms, and Area 9 is low relief. To ignore the one known area of gag spawning aggregations while closing two other areas with disparate habitats where gag aggregations have not been observed is clearly not based on the best available scientific information.

The Council was told that the male gag need to be protected because the proportion of males in the population dropped to as low as 2 percent within Dr. Koenig’s study area in the northern Gulf. This could result in some females being unable to spawn, or even in a loss of genetic diversity. Yet, in a June 8, 1998 memo written by Gary Fitzhugh, Alan Collins, and Ron White, the results of samples collected from December 1997 through May 1998 revealed a proportion of 10 percent males south of 28 degrees north latitude. Although the authors of the memo noted that gear type differences between the northern and southern Gulf samples could explain some of the differences, they also suggested that there could be a true north-south difference in the male ratio. The hypothesized loss of males may not be true, nor has it been shown to be true except within a limited study area.

National Standard (4) - be fair and equitable to all fishermen.

Closing a fishery to only commercial fishermen and establishing no-fishing areas where participants are overwhelmingly commercial is a violation of this standard. In addition, the proposal to prohibit all fishing in the closed areas under the reef fish framework procedure needlessly and unfairly restricts fishermen, whether commercial or recreational, who are using gear and methods that fish higher up in the water column for migratory and pelagic species. Furthermore, the Council was arbitrary and capricious in the request to close the commercial grouper fishery for one month in the Gulf of Mexico in order to protect the gag population. Each time there are two simultaneous acts, the closure and the size increase, neither impact on the stock can be measured. The action was said to be necessary

because the SPR percentage was raised to reach the target of MSY, and it would move grouper into being overfished when based on the last stock assessment.

From 1994 through 1997, the gag catch in numbers of fish averaged 114,470 fish for the commercial sector vs. 438,159 fish for the recreational sector (personal communication from Roy Crabtree). This shows that the recreational sector is producing a fishing mortality that is four times greater than the commercial sector. More importantly, they are fishing on pre-spawning fish. These factors point out that closures on the commercial sector will primary impact the sector that already is catching fewer fish and will not produce the desired results.

National Standard (8) - considers the economic impact on fishing communities.

The regulatory amendment does not adequately address community impacts. The assumed distribution of gag in the Gulf is based on the locations of catches reported by fishermen. This may reflect the center of fishing activity rather than biological distribution. Fishing locations are a result of distance from port and other operational considerations and may not represent the true center of abundance. Consequently, resulting socioeconomic impacts could be out of proportion to any biological benefits. The full plan amendment that the Council has initiated work on to implement a comprehensive grouper management will require a Regulatory Impact Review and socioeconomic impact evaluation. It would be more appropriate to address the gag issues through the comprehensive grouper full plan amendment rather than through the regulatory amendment.

National Standard (9) - requires the Council to minimize bycatch and/or minimize the mortality of bycatch that cannot be avoided.

This is emphasized in a memo from Gary Matlock to Andrew Kemmerer dated December 1998 - Subject Comments on Public Hearing Draft Generic Sustainable Fisheries Act Amendment (Draft SFA Amendment) Prepared by the Gulf of Mexico Fishery Management Council (Council). On page 3 of that memo under Bycatch Provisions of FMPs - 1. Sections 7.1 and 7.3 it reads:

“The draft SFA amendment states that ‘...with the exception of the shrimp fishery, there is very little bycatch taken, considering that fish sold and kept for personal use...are not bycatch and that most other organisms are released alive.’ (p. 13) Just because an organism is released alive does not mean that it is not bycatch. All fish released alive are considered bycatch, except for fish released alive under the recreational catch and release program. A “recreational catch and release program” is one in which retention of a particular species is prohibited. ***As a result, the Council’s conclusion that there is very little bycatch in Gulf fisheries needs to be reconsidered.***”

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On page 4 of the memo, the first paragraph reads as follows:

“In addition, the text states that regulatory discards of gag and red grouper are high – more than 80 percent of recreational catches in the reef fish hook-and-line fishery for each species. Yet, the Council only mentions on page 25 that, in the future, it will consider alternatives for minimizing bycatch and/or bycatch mortality of red grouper. The amendment should state what the Council plans to do about bycatch of gag and why.”

The “future” referenced in the above memo is here.

This regulatory amendment precedes and supercedes, the Council’s process that is currently under development looking at establishing marine reserves as a fishery management tool. From August 9, 1999 to August 24, 1999, the Council has established 10 facilitated workshops to gain input on establishing marine reserves in the Gulf. The Council has hired a facilitator to conduct these workshops in order to eliminate perceptions of preconceived usages of marine reserves. The Council has also tentatively identified the possible need for 10 additional workshops prior to consideration of marine reserves in its management programs. This regulatory amendment is completely inconsistent with these proposed actions and the Council’s intention to develop a more holistic approach to consider the use of marine reserves.

For the reasons cited above, I respectfully request that the Gag/Black Grouper Regulatory Amendment be returned to the Council for further consideration.

Sincerely yours,

Karl Lessard

KL:PH

c: Gulf Council
Staff