

SOUTHERN OFFSHORE FISHING ASSOCIATION INC.

Madeira Beach, Florida

Testimony (written) to the members of the US Senate Commerce Committee meeting in New Orleans, Louisiana, December 14, 1999 concerning the re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act.

My name is Robert Spaeth. I am the Executive Director of Southern Offshore Fishing Association, a non-profit commercial fishing industry corporation. Our headquarters are in Madeira Beach, Florida, which is the center of the US grouper fishing industry. Our members fish throughout the Gulf of Mexico, the South Atlantic and in international waters off Caribbean and South American countries. We are the non-boating citizens access to offshore fishery products.

In a few words, it is past time for Congress to halt the cumulative destruction of the US commercial fishing industry by actions and policies of the National Marine Fisheries Service.

When Congress enacted the Sustainable Fisheries Act (SFA) it did so to establish a rationale manner of maintaining not only the fisheries of the nation but maintaining those who harvest the fisheries of and for the nation. Congress did not pass SFA to give the Sustainable Fisheries Division of NMFS a license to close down as many fisheries as they possibly could in the shortest possible time frame. But close down fisheries is exactly what Dr. Gary C. Matlock seems to be all about.

Bob Jones, Executive Director of Southeastern Fisheries Association since 1964 and who supports this statement has long maintained, and I quote him, " Dr. Matlock has never seen a commercial fishery he didn't want to close, beginning with his early work in Texas on redfish & trout and continuing to this day in federal waters."

We hope and pray the information contained in the ongoing General Accounting Office (GAO) investigation will finally convince Congress to rein in an agency that has run amok. The Sustainable Fisheries section of NMFS is the epitome of what is wrong with the federal government in the eyes of the citizens who live under the NMFS regulatory process. We strongly recommend the Senate Commerce Committee hold Oversight Hearings on the SFA activities in NMFS as soon as the GAO Report is received. Create a proper forum where we can voice our concerns and present quantifiable information for the Senate Committee to study. Congress is our only hope for fairness in the management of fisheries as long as the Sustainable Fisheries division is constituted as it is at present. In this regards, we want the Committee to know this is not a criticism of Penny Dalton who has recently been brought in to run NMFS. She is a breath of fresh air in a stale house.

Ms. Dalton probably doesn't have the authority to remove someone as entrenched as Dr. Matlock under civil service rules and he certainly is not without a political power

base of his own. But members of the Committee, we shouldn't have to live under a system where the individual bias of one government employee can have such negative economic and social impacts on a particular group of fishermen. That kind of system is not democracy. It is a dictatorship and cannot be tolerated in the United States of America.

Please keep in mind when you read this statement that NMFS has about 60 lawsuits going on at present. What a waste of taxpayers money and how critical it speaks of the agency and their lack of ability to work for the benefit of all. We recommend someone create a chart on litigation before Dr. Matlock and litigation during his tenure. I think the Committee will be shocked by what they see.

Let me list 12 statements for your consideration.

- Fishery regulations are so pervasive it almost requires legal counsel to know when to fish, what kind of gear can be used and where you can fish. NMFS is forcing the Management Councils to make more and more regulations each time they meet. Never does NMFS take a break from enacting rules or repeal rules. NMFS law enforcement leaders are pushing the Councils even harder to make law enforcement for themselves easier. The law enforcement advisory committee of the Gulf Council, for instance, wants to put an electronic vessel monitoring system (VMS) on commercial longliner boats and shrimp vessels. This is akin to an ankle bracelet mandate for people on parole and it is absolutely unacceptable to the overwhelming majority of the fishing industry. NMFS even wants the boats to buy the VMS devices and pay for their maintenance. If VMS systems are required on commercial boats then they must also be required on recreational fishing boats as well.
- Cumulative impacts of all the regulations in the Gulf of Mexico and the South Atlantic regions have never been examined by anyone who is concerned with such impacts. NMFS certainly doesn't seem to care how many regulations the industry has to live under nor do they care how much they cost. A Congressionally authorized study by an blue ribbon commission of experts should be created and funded immediately. There is great concern among industry that once you get rid of boat captains and crew it will be impossible to replace them.
- The paperwork burden is horrendous. The volume of what is required to file on a timely basis with NMFS and the confusing nature of regulations makes it very difficult for traditional fishermen to understand the legalese and mumbo jumbo of CFR writing. No attempt is made by NMFS to educate the industry. Their philosophy is, "We just write the regulations we don't have to tell you all about them or explain them to you."
- Selective law enforcement is another problem with NMFS. We feel NMFS and the Coast Guard enforce recreational fishing differently than commercial fishing. NMFS certainly reports differently as seen in the Law Enforcement Report given during the

November 1999 Gulf Council Meeting in Orlando, Florida. A great deal of talk was heard about law enforcement of the commercial fishing sector but not one word on the efforts to enforce rules on recreational fishermen. Surely there must be some law violators out of the million of so recreational fishermen in the Gulf.

- Litigation is the only way the commercial fishing industry can get a fair hearing on fishery issues. Litigation is very expensive for the industry but unlimited funds are available for NMFS. We believe Dr. Matlock understands too well how to use the "presumption of correctness" doctrine. He has used this hammer in closing down commercial fisheries. He knows in most instances if he can just provide even a scant paper trail showing he tried to stay within the law, the court will rule in favor in his favor and against the industry. Even with all that power, Dr. Matlock has been taken to task by two different federal judges in the past year. I encourage the Committee to read the Judges Order in the flounder and shark litigation.
- Both the District Judge in North Carolina (flounder issue) and in Florida (shark issue) came down hard on the agency. This evidently has no impact on Dr. Matlock as he has now indicated in a sworn declaration, dated November 11, 1999, that if the court doesn't get its act together, he will declare certain sharks as endangered species and close them down and impact more fishermen.
- The role of NMFS as the research arm, review of the research arm and enforcement arm of the Department of Commerce is frightening. Our perception is NMFS sometimes makes their science meet their preconceived goal. In one court case pertaining to fish traps, Dr. William Fox, who was head of NMFS at the time, came to the Southeast Region and forced his regional staff to "**sequester**" certain science that was in NMFS possession but which did not help NMFS position in their desire to ban fish traps. This was science developed by US taxpayer dollars that was prevented from being put in the record. This scandalous conduct is part of court records in the lawsuit against the Department of Commerce by the Organized Fishermen of Florida, I believe. It is a sad day when the middle bureaucracy or "keepers of the flame" are forced to look the other way in order to accomplish a personal agenda of the agency head. I don't think the Senators know how subtle pressure can be put on an underling who is just trying to do his/her job and move forward on their chosen career path. The Senate should take a hard look at the way some NMFS officials do business.
- Outside peer review of NMFS science has been a bugaboo for years and has even resulted in the National Academy of Science being brought in on one occasion to take a look at NMFS work. Recently, our organization combined with the leadership of Southeastern Fisheries Association and the Florida Offshore Fishing Consortium to review gag grouper and red grouper science. We engaged a certified Fishery Scientist and asked him to review the science being used for grouper regulations and write a report. That was our only direction to Dr. Trevor Kenchington, of Nova Scotia, Canada, who had no ax whatsoever to grind. His review was enlightening

and pointed out some problem areas of the NMFS science being used especially as it pertained to genetics and stock size.

Dr. Kenchington was invited to a summer meeting of the Gulf Council in Key West, Florida and made his report in detail. He was subsequently invited to the recent meeting in Orlando, Florida and was almost prevented from making any comments at all because a designee for a state director didn't want to hear his presentation. As a result of all this clamor and confusion, the Gulf Council has rewritten their policy on outside science which calls for the science to be reviewed by the Stock Assessment Panel and other panels before it is presented to the Council. This will be a good policy if the dates and time available for submitting the review is not manipulated by NMFS to prevent the outside reviews from being properly considered on a timely basis.

- This brings up another point. Maybe it is time for the state directors to be a non-voting member of the Councils. A case could be made of conflicts between state and federal management because of policies and statutes. The federal fishery resources belong to all the people of the nation and should be available to them. When states are successful in prohibiting commercial harvest for distribution throughout the nation, they in effect reserve the fish for those local folks and tourists who come thereby denying a great number of citizens the opportunity to share in the resource. Redfish is the classic example. Here is a federal resource and a state resource that could produce a modest harvest in federal waters but politically it cannot be harvested in federal waters because it became a sacred fish and no state director will even consider opening federal waters to a harvest. This is a blatant violation of the M-SFCMA. That's all I will say on redfish but the way that fish was taken away from the non-boating citizens is a shame.
- Another area of our concern is NMFS does not listen to the constituents during the public hearing process. Public hearings are a sham. In the most recent grouper hearings, 90% of the citizens, both recreational and commercial testified that the grouper and red snapper are coming back and the fish are getting bigger but their comments are ignored. It seems NMFS develops a model, absolutely full of assumptions, and refuses to change or even consider changes no matter what is brought to them. Additionally, NMFS has done a horrible job of explaining or even trying to explain their models to the citizens. It's like the science is in the nether world and mortal fishermen are not permitted to see what is going on. If there is any doubt on what I am saying about the public hearing process, get the public record from the Gulf Council on the gag grouper hearings and read it. You will be amazed at how much information is ignored.
- NMFS has no programs to assist commercial fishing. Why? The commercial fishing industry has vessels that are in the federal waters every day but there is no cooperation between the industry and NMFS in this region. It's like we are the enemy and the designated target as well. We are under the gun from an agency using our tax money to destroy us. Why? NMFS has gone from turtles, to teds, to

brds, to longlines to gear to essential fish habitat etc., as a way of inflaming issues to get media exposure which generates research money which keeps the agency pumping out regulations.

All of us know NMFS has to create a demon or create fishery collapse to be in a position to impose draconian regulations on the fishermen. When will this insanity end? When will Congress step in and say, "Wait a minute, it is not now nor has it ever been our intent to destroy an important food producing segment of our national economy!!" But destroying us is exactly what NMFS is doing through the Sustainable Fisheries division.

Members of the Committee, there are many other points that need to be brought before you but I think I have brought enough for a start. Check with other industry people from Maine to Texas for similar views. The Pacific Coast might or might not have similar views and Alaska of course, has a very unique situation separate from the lower 48. They don't live under the NMFS heel like the rest of the country.

Thank you for anything you can do to help America's First Industry survive and prosper in the new millennium.

Respectfully submitted,

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Southern Offshore Fishing Association
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CC: Florida Congressional Delegation
Gulf and South Atlantic fishery organizations