



# **FAILURES AND EXPLOITATION BIAS IN FEDERAL FISHERY MANAGEMENT PROGRAMS**

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## **RECOMMENDATIONS FOR SYSTEMIC CHANGES**

**CCA Florida Special Report  
October 2002**

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## **TABLE OF CONTENTS**

### **INTRODUCTION**

### **PART I - PRIME EXAMPLES OF FISHERY MANAGEMENT FAILURES AND EXPLOITATION BIAS IN FEDERAL FISHERIES MANAGEMENT**

A. Gag Grouper - Gulf of Mexico

B. Amberjack - South Atlantic

C. Sharks - Gulf and South Atlantic

D. Yellowfin Tuna - Gulf and South Atlantic

### **PART II - THE FEDERAL FISHERIES MANAGEMENT SYSTEM FAVORS OVER- EXPLOITATION AND COMMERCIAL INTERESTS**

A. Commercial Interests Dominate Federal Rule-making Process and Regional Fishery Councils

B. Fishery Management Councils & Financial Conflicts of Interest

C. Paid Lobbyists for Commercial Fishing Industry Appointed to Councils

D. NMFS Manipulation of Appointment Guidelines and Appointees to Influence Majority View of Councils

### **PART III - RECOMMENDATIONS FOR SYSTEMIC CHANGE**

A. Congressional Amendments to the Magnuson-Stevens Fishery Conservation Management Act

B. Changes in Council Appointment Policies by U.S. Department of Commerce / National Marine Fisheries Service

### **REFERENCES**

## **FIGURES AND APPENDICES**

[Figure 1 - Average Annual Gulf Gag Grouper Landings Before and After Federal Regulation](#)

[Figure 2 - Florida East Coast Amberjack Average Annual Landings Before and After Federal Regulation](#)

[Figure 3 - Shark Landings in the Gulf and South Atlantic](#)

[Figure 4 - Yellowfin Tuna Landings in the Gulf and South Atlantic](#)

[Appendix 1 - Gulf of Mexico Red and Gag Grouper Landings - Comparing Recreational and Commercial Landings Before and After Federal Regulation](#)

A. Commercial and Recreational Harvest of Red and Gag Grouper

B. Average Annual Landings and Average Annual Percentage Change Before and After Federal Regulation of Red and Gag Grouper

[Appendix 2 - Comparison and Percentages of Recreational and Commercial Dollars by States in the Gulf of Mexico and South Atlantic Federal Fisheries Management Councils](#)

## INTRODUCTION

*"Congress established the membership of federal fishery management councils as an experiment that may be described to a very large degree as user self-regulation . . . The [American Fisheries] Society believes that the present state of the U.S. finfisheries demonstrates that Congressional and agency faith in the altruism of the marine fisheries users of today has been tragically misplaced."*

-- American Fisheries Society, 1996 (1)

*"Public resource trustees are needed in place of user group representatives. On balance the Society believes that trusteeship requires for most people that there be a divorce from financial conflicts of interest in the stewardship of the public's resource."*

-- American Fisheries Society, 1996 (1)

*"Only in Superman Comics' Bizarro world, where reality is turned upside down, could the Service [National Marine Fisheries Service] reasonably conclude that a measure that is at least four times as likely to fail as to succeed offers a fairly high level of confidence."*

-- U.S District Court of Appeals - District of Columbia, 2000 (3)

*"Everything we stand for is undermined by decisions that reward those who resist conservation and punish those who support it."*

-- National Coalition for Marine Conservation, 1999 (2)

Over three decades, our own federal government has been converting healthy recreational fisheries into abused commercial fisheries that take too many fish, too fast. The well-documented result is that fish populations are being overfished and depleted.

Along the way, the general recreational fishing public has been constantly short-changed. Ironically, this is occurring even when recreational fishing has been shown to provide far greater economic benefits than commercial exploitation. The commercial profits of a few are given priority over the resource and the needs of the many.

This report describes a federal fishery management process which has, in consequence, acted to "reward" the commercial fishing industry for opposing, litigating and blocking conservation regulations and "punish" recreational fishers for advocating and supporting regulations.

It is a sad story and one that must be changed.

In 1976, the U. S. Congress passed the Magnuson-Stevens Fishery Conservation and Management Act which contained new standards, policies and programs for managing publicly-owned marine fisheries in offshore federal waters. The Act established a system of regional councils to develop fishery management plans. These councils were dominated by commercial interests. Most of the council members were selected by the National Marine Fisheries Service (NMFS) which until 1970 had been the Bureau of Commercial Fisheries. Although the agency's name was changed, its connections and close relationship with the commercial fishing industry has continued.

One of the predominant roles of the National Marine Fisheries Service through the 90s was to develop commercial fisheries. As a result, the NMFS and the federal fishery management councils have been systematically reducing recreational fishery landings at a much greater and faster rate than commercial fishery landings. In many cases, recreational landings were dramatically reduced through regulation while commercial industry landings remained the same or even increased, sometimes substantially.

It is a process that is actually transforming many predominantly recreational fisheries to commercial fisheries. And, it is a one-way street. We can find no examples of the reverse, of predominantly commercial fisheries being converted to recreational, even though recreational fishing is shown to provide far greater socio-economic benefits. NMFS is driving these conversions through its one-sided interpretations of the Magnuson Act, through appointments of federal fishery management council members with financial interests in commercial fishing, and through selective approval or rejection of Fishery Council management plans and regulations.

Additionally, these conversions are counter-productive to conservation objectives. Supporting arguments for NMFS' actions might be made if the recreational-landing reductions were actually helping to restore fisheries. However, that is not what is happening. Species such as sharks, amberjack, groupers and other fisheries remain overfished. Rather than resulting in any significant resource protection, the regulated reductions in recreational landings have simply allowed the commercial fishing industry to take a much greater percentage of the landings.

Part I of this CCA Florida Special Report describes and documents numerous examples of the deleterious conversions that have occurred in the South Atlantic and Gulf of Mexico fishery management regions. Part II describes the elements of the federal process and the NMFS activities which create a bias in favor of the commercial fishing interests and cause the conversions. Part III details recommendations for Congressional and agency actions to reduce financial conflicts of interest in the decision process, to allow greater involvement of states with major interests in particular fisheries to decrease federal management costs, and to provide more equity in the way restrictions are imposed on recreational fisheries.

# Part I - Prime Examples of Fishery Management Failures and Exploitation Bias In Federal Fisheries Management

## A. Gag Grouper - Gulf of Mexico

*"In Gulf Council actions on gag grouper the commercial fishers have clearly gotten the mine and the recreational fishers have clearly gotten the shaft."*

-- CCA Florida, 2002 (4)

The Gulf of Mexico Fishery Management Council's past actions toward recreational fishermen in gag grouper management have been horribly inequitable. A CCA Florida analysis of Gulf grouper landings before and after federal regulations clearly indicates that the cumulative impact of 11 years of Gulf Council gag grouper regulations have caused the annual recreational landings, after federal regulations, to be reduced by an average of 42 percent ([See Figure 1](#) and [Appendix 1a & 1b](#)). Commercial landings have not been reduced at all. In fact, after federal regulations were enacted, average annual commercial landings actually increased.

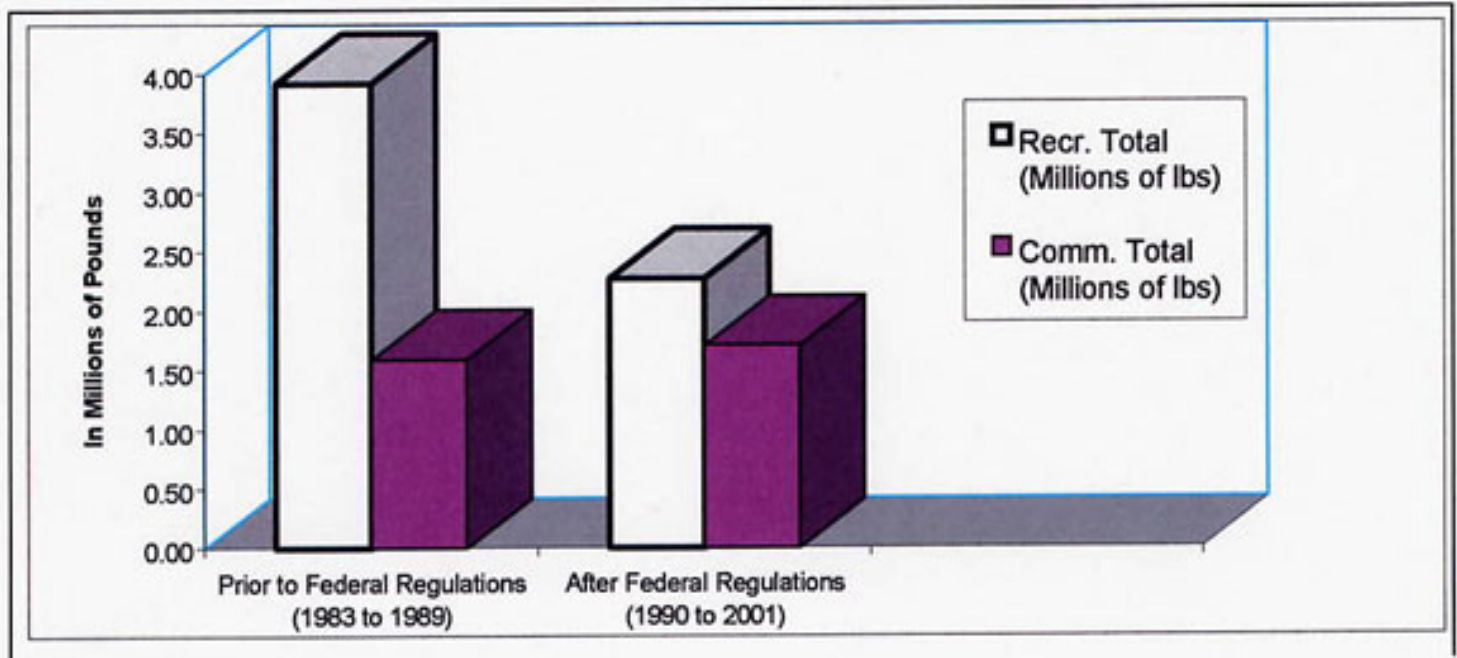
The process of adopting inequitable regulations began in 1990 when the Gulf Council approved major regulations to protect gag and red grouper including an increase in minimum size from 12 to 20 inches, a five-fish recreational bag limit, and a combined red/gag grouper quota on commercial fishers. These 1990 federal regulations caused a huge 54 percent reduction on recreational gag catch; however, there was no reduction in commercial take. The 8-inch increase in minimum size limit in particular had a very substantial impact on recreational anglers and no impact on commercial landings.

In July 1999, revised federal laws under the Sustainable Fisheries Act forced the Gulf Council to revise regulations to increase protection for Gulf gag grouper. Under the new law gags were designated as a fish stock that was approaching an overfished state. Stock assessments and other information estimated that gags would become overfished within two years. The designation required the Gulf Council to take action, within one year, to devise rules to prevent overfishing from occurring. However, the Gulf Council did not adopt any substantive measures to reduce commercial take or to protect gag spawning aggregations from excessive commercial take.

The Gulf Council instead voted for another major increase in minimum size from 20 to 24 inches on all fishers, a one-month (February 15 to March 15) commercial closure, and a 200-square-mile area closed to all fishing. Fisheries landings statistics indicated that the size limit increase would again have a major impact on recreational anglers, reducing recreational take by 30 to 36 percent; whereas, the size increase and commercial closures would reduce commercial take by only 16 percent. In addition, most of the commercial industry reduction was supposed to come from the one month closure. However, the one month closure was not likely to reduce commercial landings, primarily because grouper gather in spawning aggregations for three or more months. A prime example, the South Atlantic Council's one month commercial amberjack closure demonstrated that a one month closure is simply not long enough to prevent the commercial industry from shifting its effort to either side of the closure period, thereby eliminating the benefits of the closure. In fact, commercial amberjack landings actually increased after the closure was enacted. The very same thing occurred with the Gulf Council's one month closure, commercial red grouper take went up 13 percent and gag grouper take increased by a whopping 52 percent over the same six month period from the prior year before the

closure. Once again, the Gulf Council imposed much greater percentage reductions on recreational anglers than on commercial fishers.

**FIGURE 1 - AVERAGE ANNUAL GULF GAG GROUPER LANDINGS BEFORE AND AFTER FEDERAL REGULATIONS**



In 2002, the NMFS released a stock assessment which indicated that for the first time in many years gag grouper were not overfished. In effect, the entire recovery of gag grouper came as a result of a series of inequitable harvest restrictions on recreational fishermen only. Commercial fishers were subjected to essentially fake regulations -- quotas so high that they were never reached, a short one-month closure that was negated by increasing effort before and after the closure, and small area closures that were negated by shifts to other nearby waters. In fact, the increases in commercial gag landings after federal regulations began actually undermined and delayed the recovery and caused even greater restrictions on recreational take.

Despite the huge inequity which had already been imposed upon the recreational fishery, the Gulf Council in March 2002 adopted a "preferred option" to further reduce recreational gag landings with a major four month closure. As part of a mandatory effort to stop overfishing and restore depleted red grouper stocks in the Gulf, the Council was proposing regulations to reduce both commercial and recreational take of red grouper by 45 percent. For the commercial side, the Council proposed to prohibit longlining in waters less than 50 fathoms deep. For the recreational side, the Council selected a four month closure (August - November) on red and gag grouper as their "preferred" alternative. Recreational groups argued that there is simply no legitimate reason to impose any additional gag grouper restrictions on recreational fishermen. The damage to red grouper stocks had been caused by the fleet of commercial longline boats and the commercial industry which was taking 75 percent of the total red grouper landings.

Recreational groups and Florida's state fishery agency argued that it is completely inappropriate to close gag grouper, a major recreational fishery, to address a suggested release mortality issue in the red grouper recreational fishery which is only a minor component of the overfishing problem in red grouper. In recent years, as little as 13 percent of the red grouper landings were recreational. Furthermore, release mortality from recreational fishers is already factored into the red and gag grouper management measures and unlike commercial longlining, the overwhelming majority of recreational grouper fishing occurs in water less than 80 feet deep where release mortality is much lower than commercial longlining which occurs in deeper water.

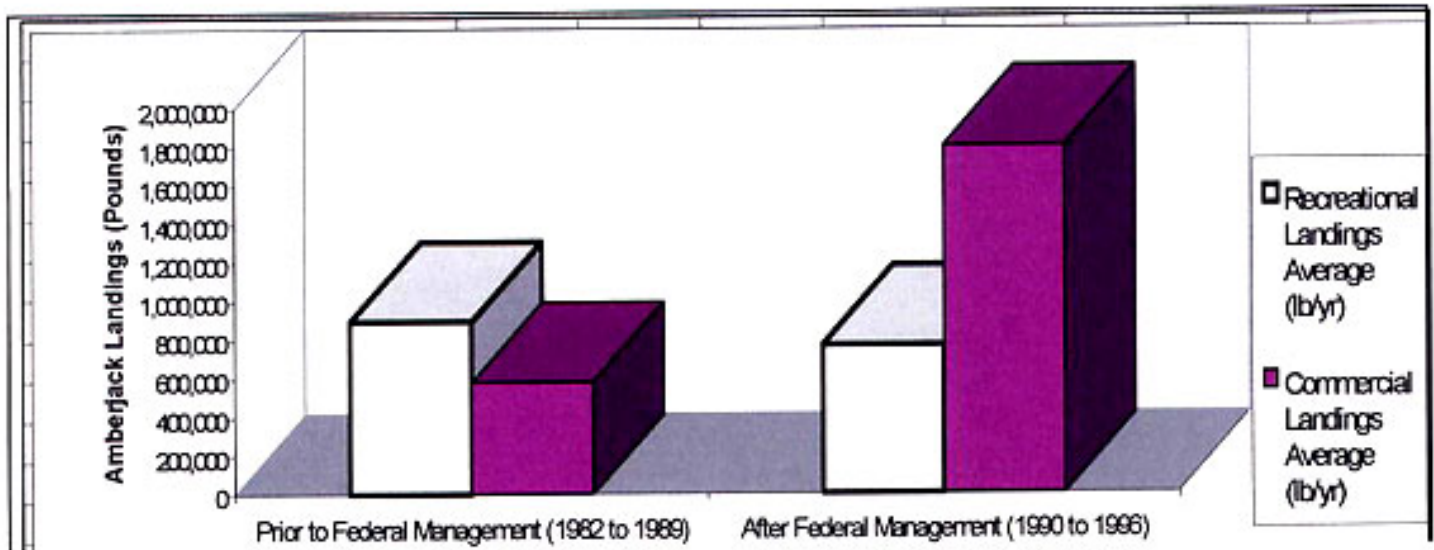
After the overwhelming bias shown by past council actions, recreational groups viewed the "preferred alternative" proposal for a four month gag closure on recreational fishing in the red grouper recovery plan as simply a punitive action against Florida's recreational fishers.

## **B. Amberjack - South Atlantic**

Until the mid-1980s, the amberjack fishery in both the Gulf and South Atlantic regions was almost entirely a recreational fishery. Prior to the early 1980s, commercial landings were less than 100,000 pounds per year. Starting about 1985, the commercial fishery began a rapid and dramatic increase. The commercial effort directed at amberjack was so intense that commercial fishermen requested and obtained a special regulation related to the 36-inch minimum size that allowed "coring" of fish. Coring refers to the removal of head and tails at sea, to retain only the "core" so that more fish (more pounds) could be carried on each trip. The amberjack "cores" were simply stacked like cordwood in fish boxes. In addition, much of this intense commercial take was directed at amberjack when the fish gathered in large spawning aggregations in March, April and May.

Recreational landings also began to increase in the mid-1980s, but that was soon followed by a sharp decline. The South Atlantic Fishery Management Council (South Atlantic Council) and NMFS began to regulate amberjack harvest in 1990. The impacts of those regulations on the recreational and commercial take were substantially different, particularly in Florida. The information shown in Figure 2 (below) was prepared by Florida Marine Fisheries Commission staff and presented to the South Atlantic Council in August 1997.<sup>(6)</sup> The information, representing Florida's east coast and Monroe County landings, clearly demonstrates the dramatic conversion of a predominantly recreational amberjack fishery to a predominantly commercial fishery.

**FIGURE 2 - FLORIDA EAST COAST AMBERJACK AVERAGE ANNUAL LANDINGS BEFORE AND AFTER FEDERAL REGULATION**



- **PRIOR TO FEDERAL REGULATION (1982 - 1989):**
  - recreational landings average 895,000 lb/yr
  - commercial landings average 582,000 lb/yr
  
- **AFTER FEDERAL REGULATION (1990 - 1996):**
  - recreational landings average 769,000 lb/yr (14% Decrease)
  - commercial landings average 1,803,000 lb/yr (310% Increase)

In 1997, the South Atlantic Council was on the verge of taking substantive action to control the intense commercial fishery directed at amberjack spawning aggregations. The Council had recognized that their previous action of closing only one of the three spawning months had failed to reduce commercial take. The one month period was simply not long enough to prevent the commercial industry from shifting its efforts to either side of the closed period, completely eliminating the benefits of the closure. In fact, commercial amberjack landings actually increased during the year the one month closure went into effect. In response, the South Atlantic Council proceeded to a final hearing with a three month spawning season closure as the preferred option. However, the Council failed to approve the three-month closure it had worked on for more than a year. Instead, just weeks before the final vote, NMFS appointed new members to the South Atlantic Council that consequently changed its composition in favor of commercial interests. The move shocked and angered Florida's anglers because NMFS removed Florida's conservation and recreational fishing representation seat and replaced it with a paid lobbyist for the commercial fishing industry. The lobbyist

represented a group of South Florida commercial fishermen who caught a substantial percentage of the commercial amberjack take, primarily during the spawning season. This newly appointed council member/commercial industry lobbyist and the NMFS regional administrator cast the deciding votes to reject the three-month spawning season closure and substitute less effective commercial controls.

The overall impact of the federal amberjack regulations allowed a once non-existent commercial fishery to continue expanding, and in some areas completely supplant the recreational fishery. In addition, the regulations did not provide critically needed protection from high-volume commercial take during the spawning aggregation period. The federal regulations simply reduced recreational take and enhanced the commercial takeover of the fishery. The once abundant South Atlantic amberjack stocks have not recovered from the impacts of the commercial fishery directed at spawning aggregations.

## C. Sharks - Gulf and South Atlantic

*"The United States coastal shark fishery has completed the transformation from a minimal recreational fishery targeting healthy stocks to an exclusive, dedicated commercial fishery sifting through the remains of a collapsed stock in less than twenty years."*

-- Florida Marine Fisheries Commission, 1999 (5)

Federal management of Atlantic and Gulf sharks presents one of the most dramatic examples of the process of converting predominantly recreational fisheries to overexploited commercial fisheries. A very blunt description of the federal actions is contained in the following excerpts of a letter from the Florida Marine Fisheries Commission [now the Florida Fish and Wildlife Conservation Commission] to NMFS.

### **Prior to 1980:**

*"The Atlantic fishery for sharks was negligible and primarily recreational. Commercial landings were valued at less than \$100,000 annually. Anglers were harvesting around 25 to 75 metric tons annually, and releasing between 50% and 75% of their shark catch. Shark stocks were healthy."*

### **1980:**

*"The Gulf of Mexico Fishery Management Council submitted a shark FMP to the NMFS in a precautionary attempt to control fishing effort and begin to collect data on the shark fishery. This plan was rejected by the NMFS as unnecessary."*

### **The mid-1980s:**

*"The NMFS actively promoted the creation of a directed commercial fishery for sharks as an underutilized species; this in spite of the lack of any formal assessment on shark stocks, and without any consideration of the already high mortality exerted on sharks taken as bycatch in commercial longline and trawl fisheries. By 1987 recreational landings were on the order of 21 metric tons (again about 75% of all sharks were released) while commercial landings soared to over 1800 metric tons. This fishery continued escalating into the late 1980s."*

**1989:**

*"Alarmed by the continued expansion of the directed shark fishery and influenced by the preliminary assessment observations of Drs. Jose Castro, George Burgess, Robert Heuter, and others the Gulf of Mexico, South Atlantic, Mid-Atlantic, and Caribbean Fishery Management Councils asked the Secretary of Commerce to have the NMFS institute immediate emergency action to cap commercial landings at current levels, prohibit finning, and begin the extensive data collection needed to institute FMP development. Following this request, and an indication that the Councils would begin active management and conservation of sharks, Congress moved sole management authority to the NMFS. No action to protect sharks was forthcoming."*

**1992:**

*"More than 3 years after receiving the Councils' request for emergency action the NMFS institutes the first, meager management measures."*

**1996:**

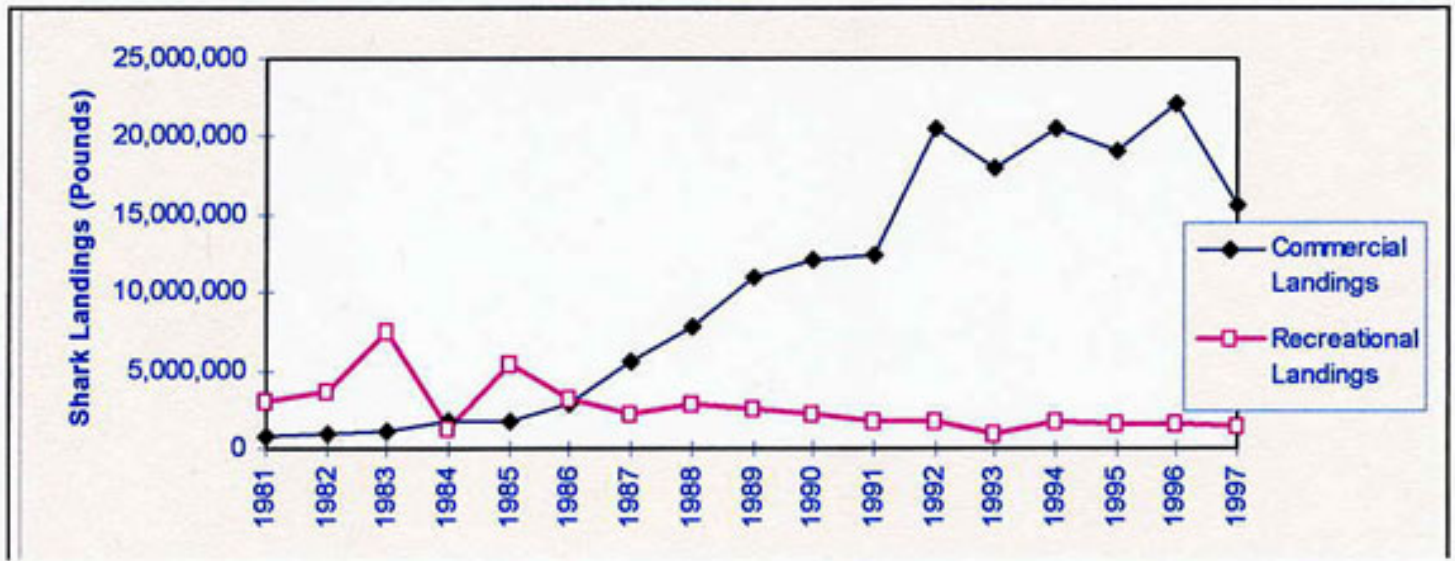
*"After 4 more years of declining stocks the tentative quotas and bag limits are put into effect. Stocks continued to decline from excessive commercial harvest."*

**1999:**

*"Acknowledging that previous management actions were not sufficient to prevent a stock collapse the NMFS proposes a 50% commercial quota reduction, new regulations on finning, and the elimination of all coastal shark retention by recreational anglers."*

*... We believe that the proposed regulatory changes do not create sufficient reductions in fishing mortality on coastal and pelagic shark stocks to manifest true recovery, and that the proposed elimination of all retention in the recreational fishery for coastal sharks is unwarranted, poor public policy, and will be inconsistent with regulations contained in the Florida Coastal Zone Management Plan. Placed within the historical context of recent Atlantic shark management, this proposed action appears, for lack of a better term, absurd." (5)*

**FIGURE 3 - SHARK LANDINGS IN THE GULF AND SOUTH ATLANTIC (7)**



In 1997, when NMFS finally decided to implement substantial regulations to control the commercial take of sharks, it was met with major objections and lawsuits from the commercial fishing industry. NMFS' attempts to substantially reduce the 5.65 million pound quota on large coastal sharks and establish a 3.87 million pound quota on small coastal sharks was challenged in court by a group of commercial vessel owners, wholesale seafood dealers and commercial industry organizations. In 1998, the judge on the case ruled that NMFS must reconsider the economic impacts and other potential regulatory alternatives and also ruled that the 1997 quotas were to remain in place pending a further court order.

A 1999 NMFS decision for a "preferred option" proposal to completely prohibit all recreational take of large coastal and small coastal sharks, while allowing the commercial industry to continue taking millions of pounds per year, was met with strong public outrage. Although NMFS eventually dropped the prohibition on recreational take after public hearings, they, instead, adopted a substantial new recreational restriction allowing only one shark per boat, per day. Concurrently, the 1999 NMFS' attempts to reduce commercial take and quotas were again blocked by a commercial industry's lawsuit. In July 1999, a judge issued an injunction prohibiting NMFS from implementing the new regulations. Although the new commercial regulations were stopped by the industry's lawsuit, the major, new recreational restrictions were implemented by NMFS.

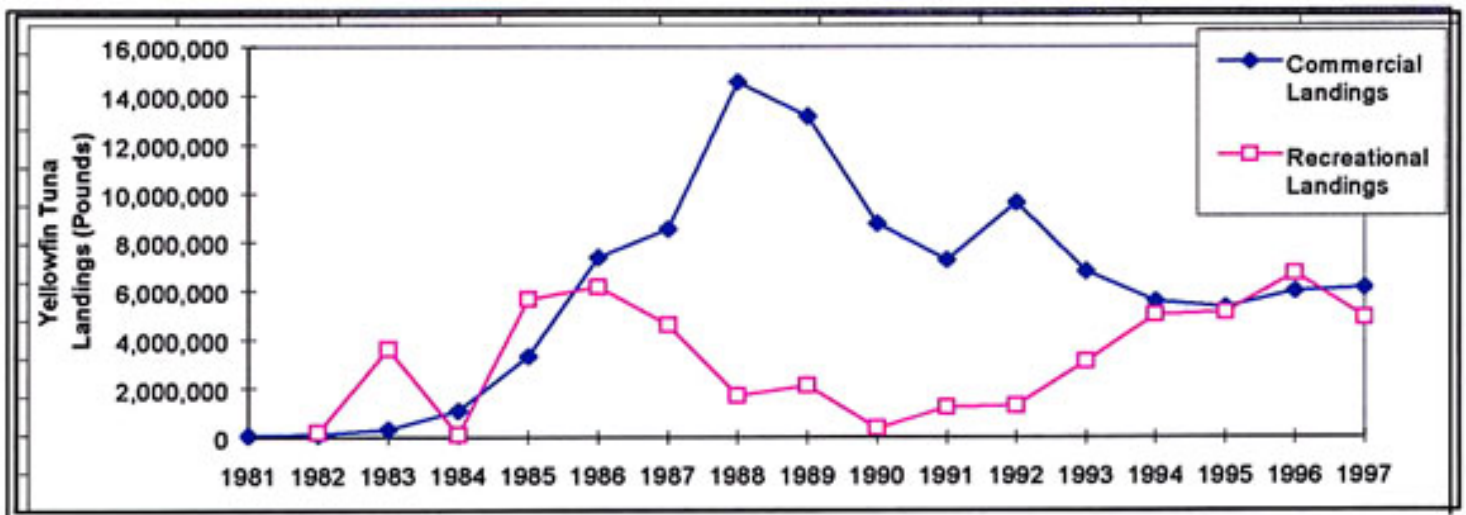
Sharks remain depleted and commercial overfishing continues.

## D. Yellowfin Tuna - Gulf and South Atlantic

Changes in federal yellowfin tuna regulations provide another prime example of NMFS bias in favor of commercial interests. In 1980, commercial landings of yellowfin tuna in the Gulf of Mexico were less than 25,000 pounds. Then, in the mid-1980s, commercial longline fleets began to target yellowfin. By 1988, Gulf of Mexico commercial landings had skyrocketed to nearly 14 million pounds. Commercial landings then dropped dramatically to an average of less than 5 million pounds per year by the late 1990s. (8)

Recreational landings of yellowfin tuna in the Gulf of Mexico have always been small, averaging less than 200,000 pounds per year. In the South Atlantic region, recreational landings have averaged about 5 million pounds per year since 1985. Figure 4 shows the combined Gulf and South Atlantic commercial and recreational yellowfin landings.

**FIGURE 4 - YELLOWFIN TUNA LANDINGS IN THE GULF AND SOUTH ATLANTIC**



The huge increase in Gulf commercial landings, from almost zero to 14 million pounds followed by a precipitous decline, should have created concern by federal fishery managers over commercial longline take. However, NMFS did nothing to control commercial take when the commercial landings soared to 14 million pounds. Yet when recreational landings began to increase in the mid-1990s, NMFS stepped in to control recreational take. In 1999, NMFS took action to put new restraints on recreational take but none on commercial take. NMFS justification for placing a three-fish daily bag limit on recreational anglers was, "This retention limit is designed to prevent excessive landings in the recreational fishery and maximize fishing opportunities." (8)

There are still no commercial quotas, no commercial bag limits, no commercial trip limits - no federal regulations whatsoever - which limit the total daily, monthly or annual commercial take of yellowfin tuna.

## Part II - The Federal Fisheries Management System Favors Over-Exploitation and Commercial Interests

*"Congress established the membership of federal fishery management councils as an experiment that may be described to a very large degree as user self-regulation . . . The Society believes that the present state of the U.S. finfisheries demonstrates that Congressional and agency faith in the altruism of the marine fisheries users of today has been tragically misplaced."*

*-- American Fisheries Society, 1997 (1)*

### A. Commercial Interests Dominate Federal Rule Making Process and Regional Fishery Councils

The Secretary of the U. S. Department of Commerce and NMFS make all the final decisions and appoint all individuals serving on the federal fishery management councils. With regard to the Council appointments, federal law requires that:

*"The Secretary, in making appointments . . . shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council."*

*-- Magnuson Act (9)*

Appointees to the Councils are placed by NMFS into three general fishing interest categories, "commercial," "recreational," or "other." The "other" sector is made up of individuals with expertise in biological, economic or social sciences. In 1999, NMFS summarized the composition of all of the Fishery Management Councils over the past three years as follows:

*"In 1996, 49 percent of the appointed members represented the commercial fishing sector, 29 percent represented the recreational fishing sector, and 22 percent represented the 'other' sector. In 1997, 52 percent of the appointed members represented the commercial fishing sector, 28 percent represented the recreational fishing sector, and 20 percent represented the 'other' sector. In 1998, the [Regional Fishery Management Council (RFMC)] appointments resulted in 52*

*percent of the appointed members representing the commercial fishing sector, 30 percent representing the recreational fishing sector, and 18 percent representing the 'other' sector." (10)*

This commercial fishing industry domination on the federal regional fishery management councils, coupled with inaction by NMFS, has led to fisheries mismanagement, fishery stock collapses and economic disasters. The best, or worst, example is in the northeast U.S. where the New England Fishery Management Council membership is dominated by commercial fishermen and commercial industry lobbyists. For years the New England Council and NMFS ignored the obvious signs of serious overfishing and continually delayed restrictions on the commercial take of cod and haddock. The Council's inaction and commercial overfishing eventually destroyed fisheries that had existed for four centuries and resulted in the largest fisheries collapse and fisheries disaster in U.S. history.

NMFS' 1998 and 1999 reports to Congress on apportionment of council memberships contained the following statements and recommendation regarding the New England Council:

*"During 1997, the Secretary [of the Department of Commerce], in delivering the first annual report to Congress on the status of fisheries of the United States, declared 13 New England region stocks as being overfished: Atlantic sea scallops, Atlantic salmon, American lobster, Gulf of Maine cod, American plaice, witch flounder, windowpane flounder, Gulf of Maine winter flounder, Southern New England winter flounder, Southern Georges Bank silver hake, red hake, monkfish, and Atlantic halibut. Two additional stocks in the region also were declared to be approaching an overfished condition: white hake and Gulf of Maine silver hake. In April 1998, dogfish was added to the list of overfished species." (10)*

*"As a result of stronger fishery management mandates, such as those contained in the Sustainable Fisheries Act, the RFMCs [Regional Fishery Management Councils] will be stepping up efforts to bring about much stronger management measures for New England's fishery resources. Therefore, the current ratio of eight commercial, two recreational, and one "other" fishing sector representatives on the NEFMC [New England Fishery Management Council] should be modified to increase the number of members with strong conservation backgrounds." (11) (12)*

However, NMFS did absolutely nothing in 1998 to change the 8:2:1 ratio of the New England Council. In fact, in their 1999 report, NMFS publicly expressed their intent to continue commercial domination on the New England Council membership stating, "The current ratio of eight commercial, two recreational and one 'other' sector members should be maintained." (11)

The federal councils' hearing process also places the average citizen and recreational fishermen at a great disadvantage. Although the councils often hold information-gathering public hearings at night in their region, these hearings are not the final decision making hearings with all the council members attending. Those hearings are held on weekdays between the hours of 8 a.m. and 5 p.m. There is a strong and direct financial incentive for commercial fishermen, wholesale seafood dealers and other commercial industry representatives to go to the council meetings and argue their position. Traveling to these final hearings, lobbying council

members and arguing against new commercial restrictions has become a part of their normal business activities. On the other hand, recreational fishermen have other day jobs and would have to take vacation or other leave time to attend weekday, daytime hearings.

Additionally, in the Washington federal agency and Congressional arena, commercial industry lobbyists greatly outnumber their counterparts in the recreational fishing community. A CCA analysis of 1999 Congressional federal lobbyist registration reports indicated that there were 27 entities registered to lobby for commercial fishing industry interests. Whereas, there were only five for saltwater recreational fishing interests.

The huge imbalance and dominance of commercial fishery lobbyists at the Congressional level has had a strong impact on federal fishery laws, as well as attempts to restructure the fishery management council system and control financial conflicts. When conservation and recreational fishing groups attempt to change the federal laws to achieve greater resource conservation and to eliminate financial conflicts of interest, the commercial industry lobbyists are there in greater numbers to oppose their efforts. In any legislative process, it is much easier to block legislation than it is to pass it.

## **B. Fishery Management Councils & Financial Conflicts of Interest**

*"Public resource trustees are needed in place of user group representatives. On balance the Society believes that trusteeship requires for most people that there be a divorce from financial conflicts of interest in the stewardship of the public's resource."*

-- American Fisheries Society, 1996 (1)

*"The 1986 amendments to the Magnuson Fishery Conservation and Management Act (MFCMA) created an exemption for members of the Fisheries Management Councils (Councils) from 18 U. S. C. § 208, the basic government-wide conflict of interest law which prohibits Government officers and employees from taking official action on matters in which they have a financial interest . . . A council member will be able to vote in many situations where the member would derive a significant financial gain from the matter."*

-- U.S. Office of Government Ethics, September 8, 1997 (13)

Financial conflicts of interest on the federal fishery management councils have completely undermined the council system. Individuals with direct financial interests in the taking of various fish should not be making the resource protection and management decisions. Recreational fishing groups are not the only groups who object to such financial conflicts of interest.

The American Fisheries Society (AFS), whose membership includes 7,000 fishery scientists and fishery managers throughout the world, also opposes financial conflicts of interest on fishery councils. In 1996, AFS provided written testimony to Congress for their consideration in amending and re-authorizing the Magnuson Act. AFS stated:

*"Congress established the membership of federal fishery management councils as an experiment that may be described to a very large degree as user self-regulation. The Commerce Department has thoroughly emphasized this by formally selecting people as Council members to represent specific user interests. Can people who clearly represent specific economic interests perform adequately as trustees of the public's resource that they use? The Society believes that on balance the answer is no.*

*Marine fisheries are complex and considerable knowledge and expertise is required to understand them, their problems and the solutions to their problems. Certainly, people who participate in fisheries in various ways have considerable knowledge about at least part of the fisheries and obtaining this knowledge by appointing them to the fishery management planning bodies, the Councils, is a means to do so. Of course, this assumes that the knowledge will come into play in [an] unbiased fashion for the public good, ie. the policies laid out by Congress in the Magnuson Act, and will not serve strictly the special interest of the individual nor the interest group that the individual was chosen to represent. In theory, this seems like a good practice. After all shouldn't the dependent individuals and businesses be interested in their long term survival? And does not fishing have a strong parent-to-child history that would ensure this long term perspective? Unfortunately, from the record of overfishing it seems to the Society that the answer to these questions is no.*

*Furthermore, this approach also assumes that if the experiment were to go awry then the responsible agency could and would provide the leadership necessary to prevent or overcome the problem. Unfortunately, this has not happened.*

*The Society believes that the present state of the U.S. finfisheries demonstrates that Congressional and agency faith in the altruism of the marine fisheries users of today has been tragically misplaced. The Magnuson Act proscribes overfishing, yet it has occurred with alarming frequency. The history of the depletion of king mackerel and the delay in implementing adequate recovery regulations is a clear case in point that was documented in the previously-mentioned NOAA report. Public resource trustees are needed in place of user group representatives. On balance, the Society believes that trusteeship requires for most people that there be a divorce from financial conflicts of interest in the stewardship of the public's resource." (1)*

In August 1999, CCA Florida contacted each of the eight federal fishery management councils and requested copies of the financial disclosure statements, filed pursuant to 16 U.S.C. 1852J, for each of the Council

members. Analysis of these financial disclosure statements verifies that 62 percent of the Council members had a direct financial interest in one or more of the fisheries regulated by the Council - 79 percent of the financial interests are commercial fishery interests and 21 percent are recreational fishery interests.

An ongoing review of council members during 2002 reveals a similar trend. Analysis of financial disclosure statements reveals that 54 percent of council members have financial conflicts of interest in one or more of the fisheries regulated by the individual council, 67 percent of the members with financial interests are commercial fishery interests and 33 percent are recreational fishery interests. Information for 2002 council members has not been provided by three of the councils to date, so results of the 2002 review are still incomplete.

Individual council members with commercial conflicts have interest in a wide range of areas from commercial fishing as a direct occupation, ownership of seafood restaurants, wholesale and retail fish sales, commercial vessel management and representation, ownership of commercial fishing vessels and operation, and representation of commercial fishing advocacy groups.

Individual council members with recreational conflicts of interest range from charter boat operation and ownership and fishing lure manufacturing.

## **C. Paid Lobbyists for Commercial Fishing Industry Appointed to Councils**

*"It is improper and unethical to put paid lobbyists for industry, or any special interest group, on a board which regulates the taking of publicly-owned natural resources. Individuals who represent clients with direct financial interests should not be making the regulations."*

-- Florida State Senator Jack Latvala (R-Palm Harbor), 1998

*"The appointment of lobbyists to the councils in effect forces taxpayers to pay them to push the industry's agenda."*

-- Editorial, *Tampa Tribune*, February 14, 1998

There is no more obvious or direct financial conflict of interest than that of a lobbyist paid to represent the financial and other interests of a particular client or industry. However, NMFS regularly appoints paid lobbyists to serve on the fishery management councils and develop fishery regulations. This NMFS practice was thrust into the public spotlight in Florida in 1997 when NMFS appointed a paid lobbyist for the commercial fishing industry to the South Atlantic Council.

Despite the fact that there are more than 2 million saltwater recreational fishermen in Florida, more than all the other three South Atlantic Council states combined, and more than any other state in the nation, NMFS decided

to remove the only Florida conservation/recreational fishing representative on the Council and appoint a full-time employee and paid lobbyist for a commercial fishing organization.

The NMFS appointment ignited the conservation and recreational fishing interests in Florida, who called for the "immediate withdrawal of the commercial lobbyist's appointment and the reprimanding, or firing, of the federal officials responsible for making such an irresponsible and improper decision (14)." NMFS did nothing to change their decision.

As previously noted in the [Prime Examples - South Atlantic Amberjack](#) section of this report, this NMFS decision had a major impact on the structure and balance of the South Atlantic Council. The new lobbyist/council member represented a group of commercial fishermen who caught a substantial percentage of the commercial amberjack landings, taken primarily during the spawning aggregation season. When the amberjack regulations came up for Council action, a representative for CCA Florida formally objected to the participation and vote of the commercial industry lobbyist/council member on the basis of direct financial conflicts of interest. NMFS representatives were prepared for the objection and presented a letter from the NOAA General Counsel which contained the following statement:

*". . . the preamble to the proposed rule contains our preliminary interpretation that the financial interests of members of an association are not ascribed to the association. Under that interpretation, a representative of an association would not be disqualified from voting on a Council decision that has a significant and predictable effect on the financial interests of the association members." (15)*

The new lobbyist council member and the NMFS representative cast the deciding votes to delete the three-month commercial closure during the spawning season and substitute less effective commercial controls.

The NMFS appointment and the "gutting" of the amberjack conservation measures led Florida's saltwater anglers to address the issue in the Florida Legislature, where Florida State Senator Jack Latvala (R-Palm Harbor) and State Representative R. Z. Safley (R-Clearwater) filed state legislation to prohibit the Governor of Florida from nominating any lobbyist for appointment to the Council. Their reasoning was that if lobbyists cannot be nominated, then NMFS cannot appoint them. The legislation (Senate Bill 152) states in part:

*"The Governor is prohibited from nominating for appointment to any one of the federal fisheries management councils established under 16 U.S.C. s. 1801, et seq, as amended, the name of any person who is, or who has been at any time during the 24 months preceding such nomination, a lobbyist for any entity of any kind whatsoever whose interests are or could be affected by actions or decisions of such fisheries management councils."*

-- Section 14.23(4)(a) - Florida Statutes

SB 152 passed unanimously in both the Florida Senate and House on the final day of the 1998 Legislative Session.

Florida's legislative action to require some ethical considerations on council appointments has had no apparent

impact on NMFS which has continued to appoint and reappoint commercial fishing industry lobbyists from other states. In 1999, the New England Council's membership included 3 paid lobbyists for commercial interests.

In addition to the ethical and financial conflict problems, the appointment of lobbyists also raises serious problems regarding the use of federal taxpayer dollars. Council members get a daily salary plus all of their travel expenses paid by the federal government. Thus, by appointing commercial lobbyists, NMFS is using federal taxpayer dollars to subsidize the federal lobbying activities of commercial fishing industry groups. In the previously noted South Atlantic Council amberjack incident, the commercial industry lobbyist/council member received \$2,973.40 from the federal government for all travel expenses and daily salary for the meeting in which the proposed three-month commercial (spawning season) closure was defeated.

## **D. NMFS Manipulation of Appointment Guidelines and Appointees to Influence Majority View of Councils**

The NMFS reason and justification for appointing greater percentages of commercial representatives to the Councils is described in the following excerpt from their 1999 Report to Congress:

*"The greater proportion of commercial representatives stems largely from representation on the New England and North Pacific Councils; commercial fishing dominates the fisheries in those areas." (11)*

NMFS uses the "commercial fishing dominance" standard in the New England region to justify a Council with eight commercial, two recreational and two "other" representatives. However, in the Councils of the Southeastern United States -- the South Atlantic Council and the Gulf of Mexico Council -- where the recreational fisheries are much greater in economic value than the commercial fisheries NMFS does not apply the same "dominance" standard. Instead, NMFS uses a completely different standard.

In a July 31, 1997 letter to CCA Florida, where NMFS tries to explain their reasons for removing all Florida recreational representation from the South Atlantic Council, NMFS states that federal law requires appointments to be "fair and balanced" with somewhat equal numbers of commercial and recreational representatives. NMFS stated, "The appointment decisions reflect the best efforts to bring sector balance to the Council." The fact that Florida has more saltwater anglers than any other state in the entire nation, and that the economic value of Florida's saltwater recreational fishery is at least 10 times greater than Florida's commercial fishery did not influence their 1997 decision to remove recreational representation and put commercial representatives in both of Florida's South Atlantic Council seats.

NMFS uses the "dominance" standard in regions where there are large commercial fisheries but changes to a "fair and balanced" standard when recreational fisheries dominate in the region. This NMFS "double standard" insures that the commercial fishing industry will never have less votes than recreational fishers on any Council. This is true even in regions where the economic value of the recreational fisheries are many times greater than the commercial fisheries.

It should be noted that there has been one exception to this pattern of appointment bias. It occurred in the Gulf of Mexico Fishery Council in 2001 and 2002, where for the first time in its 30 year history, the Council had more "recreational" representatives than "commercial" representatives. However, it did not occur because NMFS modified appointment practices, it occurred because the Governor's nominations from several Gulf states did not allow NMFS an opportunity to appoint commercial representatives.

NMFS clearly did not want Council representation as it was and publicly stated such in their 2002 written recommendations on apportionment of membership on the Councils. With regard to the Gulf Council, NMFS stated:

*"Current membership appears to include members with knowledge and experience for most fisheries that will be involved in upcoming management actions.*

*However, sector representation is not in balance this year with seven recreational fishing sector members, three commercial fishing sector members, and one 'other' sector member. Of the three vacancies next year, it is recommended that three be appointed from the commercial fishing sector to bring the Council into balance."*

(17)

One of the three vacancies was Florida's only recreational representative. NMFS intended to continue its "double standard" policy even when their concept of "fair and balanced" meant removing all recreational representation from Florida, the state with the most anglers and highest economic value for saltwater recreational fishing in the entire U.S.

The 2002 NMFS appointment process was closely monitored and lobbied by various state Governors, state fishery agencies, and commercial and recreational fishing interest groups. Ultimately, NMFS decided to reappoint the two "recreational" members from Florida and Louisiana.

There is also bias against recreational and conservation interests in the way NMFS classifies council representatives as "commercial," "recreational" or "other." NMFS classifies charter boat captains as "recreational" even though these individuals may have commercial fishing licenses as well and fish commercially at times when they do not have recreational business. Thus, these individuals are classified as recreational; however, their votes on many issues mirror that of commercial representatives.

Additionally, NMFS uses the allocation of "at-large" seats on the Councils to influence the majority view to the advantage of commercial interests. They allocate additional "at-large" seats to commercially-oriented states like Mississippi and Alabama so that commercial interests can have greater representation. The economic and demographic characteristics of the Gulf of Mexico and South Atlantic Council states show there are absolutely no economic or demographic reasons for Mississippi and Alabama, together, to have greater representation on the Gulf Council than either Florida or Texas ([See Appendix 2](#)). Florida has 47 percent of the coastline on the Gulf of Mexico; Texas has 23 percent; Mississippi and Alabama together have 6 percent. Florida has 24 percent of the commercial fisheries value; Texas has 26 percent; Mississippi and Alabama together have 11 percent. Florida has 58 percent of the recreational fisheries value; Texas has 28 percent; Mississippi and Alabama together have 7 percent.

Despite the lower numbers in every economic and demographic characteristic, NMFS has allocated more

Council seats to Mississippi and Alabama together than to either Florida or Texas individually. Florida has only 25 percent of the Council membership; Texas has 19 percent; and Mississippi and Alabama together have 38 percent.

The inequity and the commercial bias impact of this representation is very apparent in the Gulf Council's management of gag grouper ([See Part I - Prime Examples, Gulf Gag Grouper](#)). There is no dispute that gag grouper is overwhelmingly a Florida fishery. Since 1990, Florida gag grouper fishery landings have accounted for 97 percent of the recreational landings and 94 percent of the commercial landings in the Gulf of Mexico. In 1999, three of the four Florida Gulf Council members, including the Florida Fish and Wildlife Conservation Commission representative, strongly supported a three-month commercial closure during the gag grouper spawning-aggregation period. However, their votes were completely negated and the closure was rejected because of opposing votes by all six Mississippi and Alabama members -- whose states do not even have a gag grouper fishery off their coasts.

## **Part III - RECOMMENDATIONS For Systemic Change**

### **A. CONGRESSIONAL AMENDMENTS TO THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT**

- **RECOMMENDATION #1 - REDUCE FINANCIAL CONFLICTS OF INTEREST ON FEDERAL FISHERY MANAGEMENT COUNCILS**

**Amend Magnuson Act to prohibit the appointment of paid lobbyists for commercial, recreational or other special interest groups whose interests are or could be affected by the actions or decisions of the fisheries management council.**

**DISCUSSION:** Financial conflicts of interest on the federal fishery councils are undermining the council system. As stated by the American Fisheries Society, "Public resource trustees are needed in place of user group representatives."

There is no more obvious or direct financial conflict of interest than the interests of a lobbyist paid to represent the financial and other interests of a particular client or industry. However, the National Marine Fisheries Service (NMFS) regularly appoints paid lobbyists to serve on the fishery management councils and develop fishery regulations. With rare exceptions, these appointed lobbyists represent commercial industry groups. Also, there are confirmed instances of council members being hired to represent a commercial industry group after appointment to the council. (16) In addition to the ethical and financial conflict problems, the appointment of lobbyists also raises serious problems regarding the use of federal taxpayer dollars. Council members get a daily salary plus all of their travel expenses paid by the federal government. Thus, by appointing lobbyists, NMFS is using federal taxpayer dollars to subsidize the federal lobbying activities of those special interest groups.

This public policy issue has already been strongly addressed by the State of Florida. In 1998, after NMFS appointed a commercial industry lobbyist to a Florida seat on the South Atlantic Council, the Florida Legislature passed a law (Sec. 14.23(4)(a) F.S.) which prohibits the Governor from nominating a special interest lobbyist for a council appointment. Advocates for the law reasoned that if lobbyists cannot be nominated, then NMFS cannot appoint them. The Florida law received final approval by a unanimous vote in both the House and the Senate.

- **RECOMMENDATION #2 - ALLOW STATES TO HAVE MORE AUTHORITY IN DEVELOPING FEDERAL MANAGEMENT PLANS FOR FISHERIES THAT OCCUR PREDOMINANTLY OFF OF THAT STATE**

**Amend the Magnuson Act to allow state fish and wildlife agencies a voluntary option to petition for the development of a joint state and federal fishery management plan as a Secretarial Amendment when 70 percent or more of a fishery in a region is taken off of and landed in that state. When the plan is approved, the regulations would apply only to state and federal waters off of that state.**

**DISCUSSION:** The continuing fisheries mismanagement at the federal level is in contrast to increasingly effective and successful management at the state level, particularly in the southeastern U.S. Thus, one solution would be to allow more of the responsibility for managing federal fisheries to be transferred to the states in situations where a large majority of a fishery take occurs off of that state. State fish and wildlife commissions who wish to take a more active role in managing those fisheries which predominantly occur in and adjacent to their state waters would have an option to petition for the development of a fishery management plan amendment done as a Secretarial Amendment. The state would work cooperatively with the NMFS to develop the key management objectives and regulations. Such plans would be required to meet conservation and other requirements of the Magnuson-Stevens Fishery Conservation and Management Act just like the federal council plans. When the plans receive NMFS approval then these plans would replace federal fishery management council plans in the federal waters off of that state.

The state option process could also be used to greatly reduce public confusion and enforcement conflicts caused by differing state and federal regulations. At one time there were three different sets of fishery regulations for king mackerel off of Florida; one for state waters, one for Atlantic Coast federal waters and one for Gulf Coast federal waters. There is currently one size and bag limit for black grouper on the north side of U.S. Highway 1 in the Florida Keys and a different size and bag limit south of U.S. Highway 1.

In addition, the state option process can help reduce the Council composition bias against states like Florida. The examination of various economic and demographic facts in [Appendix 2](#) clearly demonstrates that Florida would have far greater membership representation on both the Gulf and South Atlantic Councils if membership was based on economic value of recreational and commercial fisheries, population, and miles of shoreline.

The Gulf Council's past actions on Gulf of Mexico gag and red grouper have been driven by Council member votes from states other than Florida, even though 98 percent of all the Gulf gag and red grouper is taken off of and landed in Florida. If Florida had other options for developing federal management plans for fisheries predominantly off of its coast which would supplant Council plans, then the Council members may be willing

to accept more of Florida's recommendations.

In either case, an option allowing states to have more authority in developing management plans on predominantly state fisheries would help to overcome current bias in Council membership against certain states.

## **B. CHANGES IN COUNCIL APPOINTMENT POLICIES BY U.S. DEPARTMENT OF COMMERCE / NATIONAL MARINE FISHERIES SERVICE**

- **RECOMMENDATION #1 - U.S. Department of Commerce/NMFS must eliminate the "double standard" that is used in determining the membership composition of federal councils.**

**DISCUSSION:** The U.S. Department of Commerce/NMFS uses two different policies in making appointments that effect the composition of fishery councils. The net effect of this "double standard" is to maximize commercial representation on the councils.

The NMFS has stated in their Reports to Congress that the reasons and justifications for appointing far greater numbers of commercial representatives to the New England and North Pacific Councils are that "commercial fishing dominates the fisheries" in those areas. Thus, the NMFS "dominance" standard is used to justify a New England Council with eight commercial, two recreational and one "other" representative. However, in the fishery councils of the Southeastern United States -- South Atlantic and the Gulf of Mexico -- where the recreational fisheries clearly dominate the commercial fisheries in economic value, NMFS does not use the same "dominance" standard.

In the 1997 letter to CCA Florida, where NMFS tries to explain their reasons for removing all Florida recreational representation from the South Atlantic Council, NMFS stated that federal law requires appointments to be "fair and balanced" with somewhat equal numbers of commercial and recreational representatives. NMFS stated, "The appointment decisions reflect the best efforts to bring sector balance to the Council."

The fact that Florida has more saltwater anglers than any other state in the entire nation and that the economic value of Florida's saltwater recreational fishery is at least 10 times greater than Florida's commercial fishery did not influence their decision to remove recreational representation and put commercial representatives in both of Florida's appointed seats.

NMFS uses the dominance standard in regions where there are large commercial fisheries but changes to the "fair and balanced" standard when recreational fisheries dominate the region. This NMFS "double standard" insures maximum representation for the commercial fishing industry on the Councils. This is true even in regions where the economic value of the recreational fisheries are many times greater than the commercial fisheries.

**Appendix I - CCA FLORIDA 5/10/02**

**GULF OF MEXICO RED AND GAG GROUPER LANDINGS**

**COMPARING RECREATIONAL AND COMMERCIAL LANDINGS BEFORE AND AFTER FEDERAL REGULATION**

**APPENDIX A – Commercial and recreational harvest (pounds gutted weight) for red and gag grouper in thousands of pounds. (1), (2), (3), (4)**

	Red Grouper		Gag Grouper	
	Commercial	Recreational	Commercial	Recreational
1983	Not Available	2,244	1,767	5,947
1984		4,046	1,727	3,791
1985		2,434	1,887	5,069
1986	6,474	2,336	1,578	4,048
1987	6,898	1,351	1,439	2,479
1988	4,894	2,622	1,139	3,329
1989	7,592	2,479	1,620	2,781
<b>FEDERAL REGULATION BEGINS IN 1990</b>				
1990	4,844	1,334	1,768	1,421
1991	5,135	1,832	1,507	2,104
1992	4,255	2,984	1,571	1,782
1993	6,399	2,285	1,769	2,136
1994	4,940	2,088	1,537	1,691
1995	4,770	2,265	1,538	2,151
1996	4,473	981	1,469	1,667
1997	4,884	655	1,499	2,544
1998	3,971	766	2,405	3,220
1999	5,996	1,174	1,975	3,041
2000	5,848	1,636	1,757	3,242

**APPENDIX B – Average Annual Landings and Average Annual Percentage Change Before and After Federal Regulations of Red and Gag Grouper**

	RED GROUPER		GAG GROUPER	
	Commercial	Recreational	Commercial	Recreational
Before – Average Annual 1986 - 1989	6,464	2,197	1,444	3,159
After - Average Annual 1990 - 2000	5,046	1,636	1,709	2,273
<b>Average Annual % Change</b>	<b>- 22%</b>	<b>- 26%</b>	<b>+18%</b>	<b>- 28%</b>
<hr/>				
Before - Average Annual 1983 - 1989	Not Available	2,502	1,594	3,920
After - Average Annual 1990 - 2000		1,636	1,709	2,273
<b>Average Annual % Change</b>		<b>- 34%</b>	<b>+7%</b>	<b>- 42%</b>

**Information Sources:**

1. Red & Gag Grouper gutted weight landings – commercial and recreational 1986 – 2000. Gulf of Mexico Federal Fisheries Management Council - Draft Reef Fish Amendment 18.
2. Red Grouper recreational landings 1983 – 1985. Schrippa, Legault and Ortiz, 1999, "Red Grouper Fishery of the Gulf of Mexico – Assessment 3.0."
3. Gag Grouper Recreational and Commercial landings 1983-1985.Schrippa and Legault, 1997. "Status of Gag Stocks of the Gulf of Mexico: Assessment 2.0."
4. 1983 – 1985 Grouper whole weight divided by 1.048 to convert to gutted weight.

**Appendix 2**

**Comparison of Recreational and Commercial Dollars by States in the Gulf of Mexico Federal Fisheries Management Councils**

State	Population	Coastline Statute Miles	\$\\$ from Saltwater Recreational Fisheries	\$\\$ from Commercial Fisheries	Gulf of Mexico Fed Fisheries Mgmt. Council Members
			1996	1996*	
Texas	18,418,300	367	\$1,989,532,703	\$181,597,589	3
Louisiana	4,315,000	397	\$395,016,185	\$270,800,782	3
Mississippi	2,669,000	44	\$293,416,053	\$35,022,604	3
Alabama	4,219,000	53	\$241,696,206	\$38,341,730	3
Florida Total	13,953,000	1350	\$4,106,397,320	\$229,798,871	
FL West Coast		770		\$163,718,334	4

**Comparison of Recreational and Commercial Dollars by States in the South Atlantic Federal Fisheries Management Councils**

State	Population	Coastline Statute Miles	\$\\$ from Saltwater Recreational Fisheries	\$\\$ from Commercial Fisheries	South Atlantic Fed Fisheries Mgmt. Council Members
			1996	1996*	
Florida Total	13,953,000	1350	\$4,106,397,320	\$229,798,871	
FL East Coast		580		\$66,080,537	3
Georgia	7,055,000	100	\$116,690,535	\$21,573,396	3
South Carolina	3,664,000	187	\$296,237,249	\$24,232,069	3
North Carolina	7,070,000	301	\$1,285,277,129	\$102,735,681	3

\* 1996 Commercial Landings are preliminary and subject to change.

*Saltwater Recreational Dollars are based on the report, "Economic Impact of Saltwater Sport Fishing in 1996" by the American Sportfishing Association*

*Commercial Fisheries Dollars are the Commercial Landings as reported by the National Marine Fisheries Service, Fisheries Statistics and Economics Division.*

*State coastlines (in statute miles) from NOAA / U.S. Department of Commerce.*

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[\*Return to top of page\*](#)

[\*Return to CCA Florida Home\*](#)