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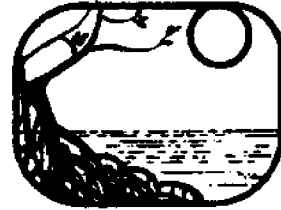
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THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

# THE REGULATORY FRAMEWORK FOR GULF OF MEXICO FISHERY MANAGEMENT

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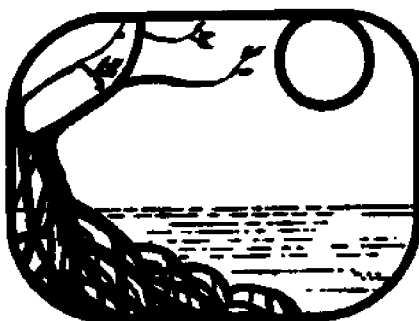
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THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976:

# THE REGULATORY FRAMEWORK FOR GULF OF MEXICO FISHERY MANAGEMENT

CRAIG R. O'CONNOR

(OCEAN AND COASTAL LAW)



University  
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Grant

SPECIAL REPORT NO. 15

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TABLE OF CONTENTS.

	Page
Introduction -----	1
Background -----	4
Regulatory Framework -----	9
1. Management Institutions	
a. Regional -----	10
b. State -----	11
2. Treaties or international agreements -----	14
3. Federal laws, regulations and policies -----	15
a. Endangered Species Act of 1973 -----	15
b. Marine Mammal Protection Act -----	17
c. Fish and Wildlife Act of 1956 -----	18
d. Anadromous Fish Conservation Act -----	20
e. Marine Protection, Research and Sanctuaries Act of 1972 -----	20
f. Coastal Zone Management Act of 1972 ---	21
g. National Environmental Policy Act -----	23
h. Outer Continental Shelf Lands Act of 1953 -----	24
4. State laws, regulations and policies -----	25
a. Alabama -----	25
b. Florida -----	27
c. Louisiana -----	29
d. Mississippi -----	30
e. Texas -----	31

	page
5. Local and other applicable laws, regulations and policies -----	33
a. Florida -----	33
b. Texas -----	34
c. Indian treaties -----	35
Constitutional Parameters -----	36
Conclusion -----	39
Footnotes -----	40
Appendix A -----	A-1
Agreement Between the Government of the United States of America and the Government of the Republic of Cuba Concerning Fisheries off the Coasts of the United States	
Appendix B -----	B-1
Gulf States Marine Fisheries Compact	

THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976:

THE REGULATORY FRAMEWORK FOR GULF OF MEXICO FISHERY

MANAGEMENT

Introduction

In April of 1976 Congress enacted the Fishery Conservation and Management Act of 1976.<sup>1/</sup> With its adoption came a new focus and scope for the management and conservation of United States marine fisheries. The new focus incorporates biological, economic, social, and ecological factors into the management of those fisheries; the new scope extends U.S. fishery jurisdiction to 200 miles from our shores.<sup>2/</sup>

The Fishery Conservation and Management Act of 1976 delegates to the Secretary of Commerce<sup>3/</sup> regulatory power over U.S. marine fisheries within that area designated as the fishery conservation zone (FCZ).<sup>4/</sup> That zone is defined in the following manner: "The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured."<sup>5/</sup>

Jurisdiction over those fisheries within the

territorial sea remains with the coastal states except where it is shown that a fishery is engaged in "predominantly" in the fishery conservation zone and a states' action vis a vis that fishery "substantially and adversely" impacts Federal management of that fishery.<sup>6/</sup>

The Act also establishes eight Regional Fishery Management Councils (Councils) which are vested with threshold management responsibility over those fisheries within their region of jurisdiction.<sup>7/</sup> The primary function of these Councils is the preparation and maintenance of Fishery Management Plans (Plans) for those fisheries for which the are responsible.<sup>8/</sup> Plans must conform to established national standards as adopted by the Fishery Conservation and Management Act. Those standards are:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different states.

(5) Conservation and management measures shall,

where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

One such Council established by the Act is the Gulf of Mexico Fishery Management Council (Gulf Council)<sup>10/</sup> composed of the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The geographic scope of that Council's jurisdiction ranges from "the seaward boundary between /the/ counties of Dade and Monroe in the State of Florida, and proceeds due East to the outward boundary of the fishery conservation zone" as established between the United States and Mexico along the border<sup>11/</sup> of Texas.

The fishery management plans promulgated by the Gulf Council, as well as by other Councils, are required to incorporate a description of the existing legal/management regime for the fisheries within their jurisdiction. This description is to include such matters as impacting federal, state and local laws and regulations as well as relevant international agreements and/or treaties and any applicable Indian fishing rights established by<sup>12/</sup> treaty or otherwise.



This paper will describe the present regulatory framework for management and conservation of the fisheries within the jurisdiction of the Gulf of Mexico Fishery Management Council. That framework will be set forth in response to the requirements of the regulations promulgated by the National Oceanographic and Atmospheric Administration and in accordance with the format established thereby.

13/

### Background

The Fishery Conservation and Management Act appears on first reading to define the division between state and Federal regulatory control over fisheries within United States waters. However, that dichotomy is not so clearly apparent when viewed in historical perspective. An understanding of the evolution of state versus Federal control over marine resources is a prerequisite to an accurate evaluation of the existing regulatory framework for fisheries management.

Initially, in addressing the question of state control over marine fisheries, the United States Supreme Court took the position that states possessed an ownership interest in fish and wildlife and could exercise control based on that interest. However, the Court began retreating from that position and in 1948 in Toomer v. Witsell held that the theory of state ownership was

merely a "fiction expressive in legal shorthand of the importance to its people that a State have the power to preserve and regulate the exploitation of an important resource."<sup>16/</sup>

In 1953, apparently in response to coastal state dissatisfaction regarding their regulatory authority over marine resources, Congress enacted the Submerged Lands Act.<sup>17/</sup> This Act granted to coastal states "title to and ownership of . . . natural resources" in the lands beneath navigable waters in the territorial sea.<sup>18/</sup> Within such waters, states were granted the "right and power to manage, administer, lease, develop, and use the said land and natural resources . . ." with the Act defining natural resources to include fish and other marine animal and plant life.<sup>19/</sup>

However, the Supreme Court in Douglas v. Sea-Coast Products, Inc. has indicated that state interest under the Submerged Lands Act is not that of ownership but rather only the power to administer and control those resources "in conformity with federal laws and Constitution."<sup>20/</sup> Coastal states may apply "reasonable, non-discriminatory conservation and environmental protection measures" within their geographical jurisdictional confines.<sup>21/</sup>

The seaward extent of state jurisdiction under the Submerged Lands Act has been held to be three nautical miles from the "baseline"<sup>22/</sup> as defined in international

23/  
law. A variance in the three-mile rule occurs along the Gulf of Mexico coasts of Florida and Texas. It has been held for those regions that the seaward extent of jurisdiction is nine nautical miles (i.e., three marine leagues).<sup>24/</sup>

However, there are two pre-Submerged Lands Act judicial exceptions to this three-mile limitation on state jurisdiction. Those exceptions address the issues of a state's right to control the activities of its citizens and the propriety of state landing laws.

In Skiriotes v. Florida at issue before the United States Supreme Court was the validity of a Florida law prohibiting Florida residents from using certain gear in the harvesting of sponges outside the territorial waters of the state. The regulation was upheld as a valid exercise of state police power based on the right of a state to extraterritorially control its citizens so long as such control does not contravene federal law.<sup>25/</sup>

The second exception arose under Bayside Fish Co. v. Gentry, wherein the U.S. Supreme Court upheld California's right to regulate sardine processing although such regulation applied to fish caught outside the territorial waters of the state. The purpose of the regulation was found to be the prevention of the depletion in local fish supplies and a necessary regulatory measure to prevent the avoidance of local laws.<sup>26/</sup>

The Fishery Conservation and Management Act calls into question the viability of these two bases for extraterritorial state jurisdiction. By its terms, the Act would restrict state jurisdiction to state boundaries, except in the case of state registered vessels, by its prohibition against direct or indirect state regulation beyond state waters.<sup>27/</sup>

State regulation within territorial waters is not without parameters. The state is subject to federal and Constitutional limitations on its exercise of police power. In Toomer v. Witsell, supra, the U.S. Supreme Court struck down a South Carolina statute imposing a \$2500 license fee for nonresident fishermen where state resident license fees were only \$25.<sup>28/</sup> Such a discriminatory regulation was held to be violative of the privileges and immunities clause of the U.S. Constitution. The discriminatory scheme would be justifiable only upon a showing of a substantial reason for the disparity and that the regulation was responsive thereto. Toomer also struck down a South Carolina statute requiring all shrimp boats fishing within state waters to unload their catch at South Carolina ports. Such a regulation was found to be a direct burden on interstate commerce and thus violative of the commerce clause of the Constitution.<sup>29/</sup>

A further limitation on state power is the equal protection clause of the Constitution.<sup>30/</sup> In Takahashi v.

Fish and Game Commission, <sup>31/</sup> a California statute prohibiting the issuance of a commercial fishing license to persons not eligible for citizenship was struck down as a violation of equal protection guarantees. It was found that the statute was directed at resident alien Japanese and as such was held to be an impermissible classification for legislative purposes.

Finally, in Douglas v. Seacoast Products, Inc. <sup>32/</sup> the U.S. Supreme Court invalidated two Virginia statutes which limited the issuance of commercial fishing licenses to United States citizens and denied non-residents access to the Virginia portion of Chesapeake Bay for the purpose of menhaden fishing. The fishing boats of Seacoast Products, a Delaware corporation, were enrolled and licensed as United States flag ships under the Federal Enrollment and Licensing Act. <sup>33/</sup> The Court held that such enrollment and licensing implies the authority to engage in the activity for which the boats were licensed. As such they were granted the right to fish in Virginia waters just as would be Virginia residents. The regulations were struck down as being in conflict with federal law and thus in derogation of the Supremacy Clause of the Constitution. Hence, enrolled and licensed vessels must be treated <sup>34/</sup> on equal footing with state residents.

It is against this historical background that the framework for current management must be viewed. Though

there are no definitive parameters within which the state and federal government must function, it is clear that cooperative management is the keynote in the Fishery Conservation and Management Act.<sup>35/</sup> For cooperative management to be successful the existing regulatory structure must be determined. Such an approach is directed by the FCMA and the existing regulatory regime must be set forth in fishery management plans prepared by the Councils.<sup>36/</sup> The regulatory framework for the fishery management plans of the Gulf of Mexico Fishery Management Council is discussed below.

#### Regulatory Framework

National Oceanographic and Atmospheric Administration Regulation 602, Guidelines for Development of Fishery Management Plans, requires the inclusion in each plan submitted to the Secretary of Commerce by the Gulf Council a description of existing "fishery management jurisdiction, laws and policies."<sup>37/</sup> This requirement includes the following detailed descriptive elements:

- (i) Management institutions.
- (ii) Treaties or international agreements.
- (iii) Federal laws, regulations and policies.
- (iv) State laws, regulations and policies.
- (v) Local and other applicable laws, regulations, and policies.<sup>38/</sup>

These elements will be addressed in the order given.

## 1. Management Institutions

### a. Regional

Each state within the Gulf Region is a participant<sup>39/</sup> in the Gulf States Marine Fisheries Compact. Though not a regulatory body per se, the Compact serves in a quasi-regulatory capacity functioning in an advisory role for state agencies vested with fishery management responsibility.<sup>40/</sup>

The purpose of the Compact is "to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste<sup>41/</sup> of the fisheries from any cause.

The functioning body of the Compact is designated the "Gulf States Marine Fisheries Commission". The Commission is composed of three representatives from each member state: the head of the administrative agency charged with conservation of fishery resources; a member of the state legislature; and a knowledgeable and interested citizen<sup>42/</sup> to be selected by the governor.

The duties of the Commission focus on the effective utilization and conservation of the fishery resources of the Gulf Coast. The powers given the Commission are as follows:

The commission shall have power to recommend the coordination of the exercise of the police powers

of the several states within their respective jurisdiction to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states. To that end the commission shall draft and recommend to the governors and legislatures of the . . . signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of that state in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable. The commission shall have the power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking. 43/

b. State

Alabama - Pursuant to the Code of Alabama, those seafoods "existing or living in the waters of Alabama not held in private ownership" are the "property of the state to be held in trust for the people thereof." 44/

Control of marine resources is vested exclusively in the Department of Conservation and Natural Resources. 45/

Florida - The Department of Natural Resources for the State of Florida is "charged with the administration, supervision, development and conservation of the natural resources of the state." 46/ The Division of Marine Resources



of that department is vested with the duty of preserving, managing and protecting the marine, crustacean, shell and anadromous fishery resources within state waters. 47/

Further responsibilities of the Division of Marine Resources include:

. . . to regulate the operations of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classification; to conduct scientific, economic and other studies and research, and to enter into contracts for such studies, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock. 48/

The ownership of all fish, shell fish, sponges, oysters, clams and crustacea found within the Gulf of Mexico within the jurisdiction of Florida are considered the property of Florida and "may be taken and may be used by its citizens and persons not citizens" subject to the restrictions of Florida law. 49/

Louisiana - The control and supervision of all aquatic life in the state is vested in the Louisiana Wildlife and Fisheries Commission. 50/ The Department of Wildlife and Fisheries is charged with the responsibility to control and

supervise all fish and other aquatic life within the state and is directed to execute those laws "enacted for the control and supervision of progress relating to the management, protection, conservation, and replenishment of wildlife, fish and aquatic life in the state and the regulation of the shipping" of fish.<sup>51/</sup>

All fish or parts thereof, and their products, existing in state waters are owned by the state. Fish may not be taken, sold or possessed except as permitted by law, and the state's title to such fish obtains for the purposes of regulating and controlling their use and disposition even if such fish are taken according to law.<sup>52/</sup>

Mississippi - The Mississippi Marine Conservation Commission is vested with the power " to manage, control, supervise and direct any matters pertaining to all saltwater aquatic life" within state waters.<sup>53/</sup>

"All seafoods existing or living in waters within the territorial jurisdiction of the State of Mississippi not held in private ownership" are the property of the state.<sup>54/</sup>

The declared public policy of the state regarding seafood (oysters, salt-water fish, saltwater shrimp, sea turtles, crabs, diamond back terrapin, and all other species of marine or salt-water animal life)<sup>55/</sup> is directed at the "protection, propagation and conservation" thereof.<sup>56/</sup>

Texas - All marine fishery resources in state waters are in the ownership of the State of Texas. Those resources are subject to the regulatory control of the Parks and Wildlife Department. <sup>57/</sup>

## 2. Treaties or international agreements

There are three international fishery agreements which could reasonably be expected to impact upon Gulf Council management programs. Those agreements are the Governing International Fishery Agreements (GIFA) <sup>58/</sup> with the countries of Mexico, Japan and Cuba. Though the GIFAs do not focus upon specific fisheries, their existence presents a basis for those countries to request fishing permits for the fcz in the Gulf region. Any other country having such an agreement with the United States may likewise request a fishing permit for Gulf of Mexico waters.

The general tenor and composition of the GIFAs are similar. They spell out the basic guidelines within which those countries may undertake to fish within U.S. waters. Nations are allowed to fish within the fcz for only such types of fish as they are "permitted" to catch and only in designated amounts. The agreements recite recognition of U.S. control over the fcz as set forth in the Act and the agreement of such nation to comply with the terms of the FCMA vis a vis foreign fishing procedures.

Finally, in addition to the permitting procedures being agreed to, the party nations agree to cooperate in the management and conservation of fishery resources of common interest.

The actual impact on Gulf Council management procedures only occurs when there is a permit application filed for a managed fish stock. That application is evaluated by the Council in light of applicable management plans and available foreign allocation and a decision is rendered on the request. The Council communicates its recommendations regarding the application to the Secretary of Commerce, who, in consultation with the Secretary of State, makes a final decision regarding the application. 59/

### 3. Federal laws, regulations and policies

The list of federal laws and regulations potentially impacting Gulf Council management decisions is extensive. A brief discussion of the most significant will be presented here. The provisions treated will be those which involve fishery management from a marine biological/ecological standpoint rather than economic or social. Because the interface between various federal laws and the FCMA would vary depending on the fishery involved, only a broad overview will be provided.

#### a. Endangered Species Act of 1973 60/

Pursuant to the Endangered Species Act of 1973, the

Secretary of Commerce or the Secretary of Interior is directed to determine by regulation whether any subspecies of fish or "any other group of fish . . . of the same species or smaller taxa in common spatial arrangement that interbreed when mature"<sup>61/</sup> is an "endangered" or "threatened" species.<sup>62/</sup> An "endangered species" is one considered in danger of extinction throughout all or a significant portion of its range,<sup>63/</sup> while a "threatened species" is one which is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."<sup>64/</sup>

The factors considered in concluding that a species is "endangered" or "threatened" are:

- (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) overutilization for commercial, sporting, scientific, or educational purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) other natural or manmade factors affecting its continued existence.<sup>65/</sup>

The Secretary of Interior is required to publish in the Federal Register a list of all species determined to be threatened or endangered and promulgate such regulations as are necessary to assure the conservation of such species.

The Act makes it unlawful, regarding endangered

species, for any person subject to the jurisdiction of the United States to:

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter. 66/

b. Marine Mammal Protection Act

The stated findings and purpose of the Marine Mammal Protection Act are that "certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities," 67/ and that "they should not be permitted to diminish beyond their optimum sustainable population." 68/

Based on these conclusions, through the exercise of the commerce powers of the Constitution, Congress

vested regulatory authority over marine mammals in the Secretary of Commerce and the Secretary of Interior.<sup>69/</sup> The scope of that authority extends over water subject to the jurisdiction of the United States, i.e., the territorial sea and the fishery conservation zone established by the Fishery Conservation and Management Act of 1976.

That regulatory authority requires the promulgation, "on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission" (established by the Act)<sup>70/</sup> of "such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies"<sup>71/</sup>of the Act.

Penalties are imposed for violations of the Act and regulations promulgated pursuant thereto.<sup>72/</sup> Enforcement authority is vested in the Secretary of Commerce or the Secretary of Interior as appropriate.<sup>73/</sup>

c. Fish and Wildlife Act of 1956<sup>74/</sup>

This Act established within the Department of Interior the United States Fish and Wildlife Service thus replacing the previously existing Bureau of Sport

Fisheries and Wildlife and United States Fish and Wildlife Service.

The Fish and Wildlife Service is the principal federal agency responsible for preserving, protecting, and enhancing fish and wildlife resources and environments. Its function in this regard is both advisory and regulatory in nature.<sup>75/</sup> The Service is charged with administrative responsibility under the Endangered Species Act,<sup>76/</sup> the Marine Mammal Protection Act,<sup>77/</sup> and the Anadromous Fish Conservation Act.<sup>78/</sup> These responsibilities are shared with the National Marine Fishery Service.<sup>79/</sup>

Certain of the functions performed by the Service are enumerated in Section 742d of the Fish and Wildlife Act:

The Secretary shall conduct continuing investigations, prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress, with respect to the following matters:

- (1) The production and flow to market of fish and fishery products domestically produced, and also those produced by foreign producers which affect the domestic fisheries;
- (2) The availability and abundance and the biological requirements of the fish and wildlife resources;
- (3) The competitive economic position of the various fishery products with respect to competitive domestic and foreign-produced commodities;
- (4) The collection and dissemination of statistics on commercial and sport fishing;
- (5) The collection and dissemination of statistics on the nature and availability of wildlife, progress in acquisition of additional refuges and measures being taken to foster a coordinated program to encourage and develop wildlife values;
- (6) The improvement of production and marketing



practices in regard to commercial species and the conduct of educational and extension services relative to commercial and sport fishing, and wildlife matters;

(7) Any other matters which in the judgment of the Secretary are of public interest in connection with any phase of fish and wildlife operations. 80/

d. Anadromous Fish Conservation Act

The Anadromous Fish Conservation Act 81/ establishes a framework for state and federal (Secretary of Interior) cooperative agreements for "the purpose of conserving, developing, and enhancing within the several States 82/ the anadromous fishery resources" of the United States. that are subject to depletion or regarding which the U.S. has made an international conservation commitment..

In furtherance of the purposes of the Act the Secretary of Interior is authorized to

(1) . . . conduct such investigations, engineering and biological surveys, and research as may be desirable to carry out the program; (2) to carry out stream clearance activities; (3) to construct, install, maintain, and operate devices and structures for the improvement of feeding and spawning condition, for the protection of fishery resources, and for facilitating the free migration of the fish; (4) to construct, operate, and maintain fish hatcheries wherever necessary to accomplish the purposes of . . . /the Act/; (5) to conduct such studies and make recommendation as the Secretary determines to be appropriate regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources . . . . 83/

e. Marine Protection, Research and Sanctuaries

84/  
Act of 1972

Under this Act the Secretary of Commerce is vested with the authority to designate as marine sanctuaries those areas of ocean waters within U.S. jurisdiction and superjacent to the continental shelf of the United States which are determined to be necessary "for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic value."<sup>85/</sup> The designations are to be made after consultation with other Secretaries (e.g., Interior, State, Defense) and with the agreement of the Governor of any affected state to the extent of state water involvement.

Upon designation of a sanctuary, the Secretary of Commerce issues such regulations as are necessary to control activities in the sanctuary consistent with the purposes of the sanctuary. Those regulations may address such activities as fishing, boating, etc., and violations are proscribed and penalized under the Act.<sup>86/</sup>

f. Coastal Zone Management Act of 1972

Regulations promulgated by the National Oceanographic and Atmospheric Administration regarding the content of fishery management plans mandate that those plans "should be consistent with" state coastal zone management programs approved in accordance with the Coastal Zone Management Act of 1972.<sup>87/</sup> That Act basically provides a

framework for federal support for state programs directed at coastal zone management in accordance with standards established by the federal government. 88/

Congressional conclusions justifying enactment of the Act include findings that:

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including . . . harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations . . . . 89/

The required contents of an approved coastal zone management program are:

(1) An identification of the boundaries of the coastal zone subject to the management program.

(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(3) An inventory and designation of areas of particular concern within the coastal zone.

(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(6) A description of the organizational structure proposed to implement such management program . . . .

(7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone . . . .90/

g. National Environmental Policy Act

Pursuant to 50 CFR 602.5, Procedures for development, review, and amendment of fishery management plan, the Gulf Council is directed to comply with the requirements of the National Environmental Policy Act. <sup>91/</sup> This Act requires the preparation of a detailed "Environmental Impact Statement to accompany any major Federal actions <sup>92/</sup> which significantly affect" the environment.

Environmental Impact Statements must describe:

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. 93/

The federal agency undertaking a program makes an initial determination of whether an Environmental Impact Statement is appropriate. If the decision is that one is not required, it makes a negative declaration. If a

statement is required, it is to be prepared in consultation with other federal agencies with jurisdiction or expertise regarding any environmental impacts involved. <sup>94/</sup> These statements are subject to state, public, and judicial review. <sup>95/</sup>

h. Outer Continental Shelf Lands Act of 1953

In 1953 the Congress resolved an ongoing court dispute regarding ownership of the outer continental shelf lands between the coastal states and the Federal government. <sup>96/</sup> Congress declared the outer continental shelf to be federal land in the Outer Continental Shelf Lands Act <sup>97/</sup> of 1953. That legislation was subsequently affirmed by the U.S. Supreme Court and the federal government has since managed resource development of such lands. The rules for development are set forth by the Bureau of Land Management and USGS regulations promulgated pursuant <sup>98/</sup> to the Act.

There are various other federal statutes which might have potential impact upon Gulf Council management programs. Those include:

- (1) Estuarine Areas Act; <sup>99/</sup>
- (2) Submerged Lands Act of 1953; <sup>100/</sup>
- (3) Commercial Fisheries Research and Development Act of 1964; <sup>101/</sup>
- (4) Fish Restoration and Management Projects Act; <sup>102/</sup>

- (5) State Commercial Fisheries Research and  
103/  
Development Act;
- (6) Reefs for Marine Life Conservation Act; 104/ and  
105/
- (7) Sponge Act.

4. State laws, regulations and policies

This section will describe those state laws, regulations and policies which have direct or potential impact upon Gulf Council fishery management programs. A general overview will be provided with selective discussion of the more significant provisions. It should be noted that most states have numerous laws directed at fisheries and associated activities. Not all of these provisions will be treated but categoric reference will be provided.

a. Alabama

As previously discussed, 106/  
all seafoods living or existing in the waters of the State of Alabama are subject to the exclusive control of the Department of Natural Resources of the state. The statutory provisions directed at regulation of those resources are as follows:

1) Licensing:

a) General provisions - general license fees are imposed upon persons using nets or seines and hook  
107/  
and line (for commercial fishing). Licenses are

likewise required for wholesale and retail dealers of fresh saltwater fish. As a general rule all license fees imposed upon state residents are to be doubled in amount for persons not considered bona fide residents of the State of Alabama.<sup>108/</sup> The general fees include \$1.00 for commercial hook and line fishing;<sup>109/</sup> fees on nets or seines based on the length thereof;<sup>110/</sup> \$25.00 for wholesale fresh seafood dealers;<sup>111/</sup> and \$5.00 for retail dealers of fresh seafood.<sup>112/</sup>

In addition to the general license fees noted above, there are specific licensing and tax provisions related to oyster and shrimp fisheries.

b) Oysters - a comprehensive licensing scheme is established regarding the commercial exploitation and marketing of oysters. A fee of \$1.00 is required for the taking or catching of oysters for commercial purposes<sup>113/</sup> with the vessels being used to take or transport them being licensed at the rate of \$1.00/ton vessel weight.<sup>114/</sup> Shippers of raw oysters are assessed a \$15.00/year tax;<sup>115/</sup> packers, canners and processors, \$50.00/year;<sup>116/</sup> operators of raw oyster houses \$5.00/year;<sup>117/</sup> motor vehicle transporters or raw oysters \$5.00/year;<sup>118/</sup> \$1.00/year for sale or barter of raw oysters;<sup>119/</sup> and a \$25.00/year fee for dredging oysters.<sup>120/</sup>

c) Shrimp - a similar scheme is likewise established for the shrimp fishery and related activities.

That structure includes: a tax imposed on shrimp taken for canning, drying or intrastate shipment for commercial purposes;<sup>121/</sup> a tax on shrimp taken for interstate transportation;<sup>122/</sup> a license fee of \$15.00/year for shippers of shrimp;<sup>123/</sup> and a \$5.00/annum fee for transportation of shrimp by motor vehicle.<sup>124/</sup> License fees are required also for the use of seines, trawls, and other devices to catch shrimp and for the use of boats for the taking or carrying of them.<sup>125/</sup>

2) General: Alabama has adopted a regulatory program addressing matters of general concern vis a vis fisheries in state waters. In addition to the licensing and tax requirements previously discussed, these general regulations deal with such diverse matters as mesh size for nets, seines or trawls used for taking saltwater fish;<sup>126/</sup> length of lead lines for seines and nets;<sup>127/</sup> reporting requirements for wholesale fish dealers;<sup>128/</sup> ports to be used for landing of oysters and shrimp;<sup>129/</sup> and the culling of oysters taken from public reefs.<sup>130/</sup>

b. Florida

In Florida, the Department of Natural Resources, Division of Marine Resources, is responsible for the regulation of state marine resources.<sup>131/</sup> Those regulatory responsibilities include regulation of fishermen and vessels, fishing, licensing and maintenance of statistical



132/  
records regarding catch, gear, etc.

General licensing requirements under Florida law  
apply to such diverse matters as purse seines; 133/ alien  
and non-resident commercial fishermen; 134/ resident  
wholesale seafood dealers; 135/ non-resident and alien  
wholesale seafood dealers; 136/ retail seafood dealers  
(resident and non-resident); 137/ alien seafood dealers. 138/

Regulations dealing with fishermen and their  
equipment address such matters as restrictions on the use  
of purse seines, gill nets and pound nets in state and  
non-state waters; 139/ the use of explosives, poisons,  
drugs or chemicals for purposes of fishing in state  
waters; 141/ returning unretained fish to the water; 142/  
size limitations for the taking of bluefish, pompano,  
fluke, flounder, mackerel, redfish, saltwater speckled  
trout, snook, striped bass, bonefish, black mullet and  
certain species of grouper; 143/ and geographic restrictions  
for spearfishing. 144/

In addition to these regulations of general impact,  
Florida has a series of regulatory measures directed at  
specific fisheries or the taking of designated species  
of fish or marine life. Such provisions include the  
regulation of snook; 145/ the regulation of the taking of  
marine coral; 146/ regulation of stone crab, 147/ blue  
crab, 148/ crawfish, 149/ shrimp; 150/ oysters, 151/ and  
shellfish; 152/ and regulation of the taking of sponges. 153/

c. Louisiana

The marine fishery resources of the State of Louisiana are under the management and conservation jurisdiction of the Department of Wildlife and Fisheries with enforcement authority being vested in the Louisiana Wildlife and Fisheries Commission.

General licensing requirements of the state include the following: resident <sup>155/</sup> and non-resident <sup>156/</sup> fishing licenses; commercial fishing licenses with various licenses being required for different gear types, fishing methods and vessels; <sup>157/</sup> dealer licenses for resident wholesale dealers, wholesaler agents, and resident <sup>158/</sup> retail dealers.

General regulatory provisions have been adopted which address such matters as methods of taking fish as game <sup>159/</sup> or commercial catch; <sup>160/</sup> mesh sizes for seines or nets for taking commercial saltwater fish; <sup>161/</sup> size limitations for commercial fish including such species as hardshell crabs, softshell crabs, speckled sea trout, redfish, sheepshead, buffalo fish, paddlefish and diamond back terrapin; <sup>162/</sup> fishing seasons, regulation of gear type and bag limits; <sup>163/</sup> conduct of fishing operations; <sup>164/</sup> fishing zone closures; <sup>165/</sup> and registration of fishing vessels. <sup>166/</sup>

Legislation dealing with specific fisheries

includes regulations addressed at such fisheries as  
oyster, shellfish, shrimp and crab. <sup>167/</sup>

d. Mississippi

The declared public policy of the State of Mississippi regarding fisheries is to "recognize the need for a concerted effort to work toward the protection, propagation and conservation of its seafood and aquatic life in connection with the revitalization of the seafood industry of the State." <sup>168/</sup> To that end, the Mississippi Marine Conservation Commission was established and vested with full power to "manage, control, supervise and direct any matters pertaining to all saltwater aquatic life." <sup>169/</sup> <sup>170/</sup> In exercise of this jurisdiction the Commission must provide for such matters as (1) standards of measurement, (2) fishing season regulations for shrimp, oysters, fish taken for commercial purposes and crabs, and (3) size, catching and taking regulations. <sup>171/</sup>

The licensing requirements established by statute include the following: vessel licensing fees for the taking of oysters; <sup>172/</sup> oyster canning and shipping fees; vessels used in catching or transporting fish for commercial purposes; fish canning factories; fish handlers; shrimp processors; and wholesale dealers. <sup>173/</sup>

Other general regulatory measures of relevance address such matters as regulation of oyster production

and size limitations for shrimp harvesting. <sup>174/</sup>

e. Texas

The marine fishery resources of the State of Texas are under the management and conservation jurisdiction of the Texas Parks and Wildlife Department. <sup>175/</sup> That department is charged with the responsibility of regulating "the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it. . . ." <sup>176/</sup>

The general licensing requirements of the state include:

- 1) General fishing license <sup>177/</sup> (except for persons <sup>178/</sup> below the age of 17 or older than 65);
- 2) Non-resident or alien fishing licenses; <sup>179/</sup>
- 3) Temporary (five day) saltwater sportfishing; <sup>180/</sup>
- 4) Resident commercial fisherman's license <sup>181/</sup>  
(a commercial fisherman is defined to be "a person who catches fish, oysters, or other edible aquatic products from the nontidal water of this state for pay or for the purpose of sale, barter, or exchange"); <sup>182/</sup>
- 5) Tidal water commercial fisherman's license <sup>183/</sup>  
(a tidal water commercial fisherman is defined to be "a person who catches fish, oysters, shrimp, menhaden,

or other edible aquatic products from tidal water  
(saltwater) <sup>184/</sup> of this state for pay or for the purpose  
of sale, barter, or exchange"); <sup>185/</sup>

6) Commercial fishing boat license for nontidal  
fishing <sup>186/</sup> and tidal water fishing; <sup>187/</sup>

7) Tidal water menhaden fishing boat license; <sup>188/</sup>  
<sup>189/</sup>

8) Wholesale fish dealer's license (a wholesale  
fish dealer is "a person engaged in the business of  
buying for the purpose of selling, canning, preserving,  
processing, or handling for shipment or sale fish, oysters,  
shrimp, or other commercial edible aquatic products to  
retail fish dealers, hotels, restaurants, cafes, or  
consumers"); <sup>190/</sup>

9) Wholesale truck dealer's license <sup>191/</sup> (a truck  
dealer is one who sells edible aquatic life from a  
motor vehicle); <sup>192/</sup>

10) Retail fish dealer's license; <sup>193/</sup>

11) Retail oyster dealer's license; <sup>194/</sup>

12) Retail truck dealer's license; <sup>195/</sup> and  
<sup>196/</sup>

13) Bait dealer's license.

Additional regulatory provisions addressed to  
commercial fishery activities include seine and net  
licensing provisions <sup>197/</sup> and size limitations for taking  
of redfish, channel bass, flounder, speckled sea trout,  
sheephead, pompano, mackerel and gaff-topsail. <sup>198</sup>

Finally, the licensing of alien fishing vessels

is strictly regulated:

(b) The department shall issue licenses to a vessel designated as a friendly ally or neutral on receipt of a formal suggestion transmitted to the governor by the Secretary of State of the United States.

(c) The department shall not issue a license to any boat or vessel owned in whole or in part by any alien power, or a subject or national of an alien power, or any individual who subscribes to the doctrine of international communism or who has signed a treaty of trade, friendship, and alliance or a nonaggression pact with any communist power. 199/

5. Local and other applicable laws, regulations, and policies.

a. Florida

Those counties of the State of Florida within the region of Gulf Council jurisdiction are numerous. A majority of them have regulations addressed to fishery management and regulation for fishery activities within their local control. A brief review of certain of the more relevant general provisions is provided here. This survey is by no means exhaustive; it is to serve rather as a sampling and exemplification of the large number of local regulations which may impact Gulf Council management.

1) Citrus County: spearfishing prohibited. in  
200/  
county waters; grouper of length less than 12 inches  
201/  
may not be taken.

2) Collier County: spearfishing prohibited in  
202/  
county waters;

3) Dixie County: prohibition against the use of nets 1000 yards or longer and against the setting of nets within 500 yards of another; 203/

4) Hernando County: spearfishing prohibited in county waters; restrictions are imposed on the use of nets or seines in county waters; 204/ 205/

5) Levy County: may not fish with any net with less than one and three-eighths inch mesh nor use nets longer than 100 yards in length or set closer than 500 yards to another net; 206/ 208/

6) Monroe County: use of traps prohibited except for taking or crawfish during season, provided, however, each commercial fishing boat may have one wire trap five feet long, two feet wide and two feet high; 209/

7) Pinellas County: restrictions on the use of nets or seines; 210/

8) Santa Rosa County: prohibition against the use of seines of designated mesh size; 211/

9) Taylor County: taking of fish with haul seines or drag nets prohibited; 212/

10) Walton County: minimum mesh size for seines. 213/

b. Texas

Only Galveston and Harris Counties have regulations with impact upon saltwater fishing within the Gulf Council Region. Those regulations provide as follows:

1) Galveston County: Use of trotlines is prohibited from sunset on Friday through sunset on Sunday from the Saturday of Memorial Day Weekend through sunset on Labor Day. In designated portions of Galveston Bay, strike nets, gill nets and trammel nets with no less than a one and one-half inch square mesh may be used from August 15 through May 15, except that nets are prohibited totally from sunset on Friday through sunset on Sunday from August 15 through Labor Day.<sup>214/</sup>

2) Harris County: Use of trotlines is prohibited from Saturday of Memorial Day Weekend through sunset on Labor Day and from sunset on Friday through sunset on Sunday during the remainder of the year.<sup>215/</sup>

c. Indian Treaties

There are numerous Indian tribes located within the states of the Gulf Region:

1) Alabama: Creek and Cherokee;

2) Florida: Choctaw, Cow Creek Seminole and Miccosukee Seminole;

3) Louisiana: Tunica, Choctaw, Biloxi, Coushatta, Attacapa, Chitimacha and Houma;

4) Mississippi: Choctaw; and<sup>216/</sup>

5) Texas: Alabama-Coushatta.

However, there are no existing treaties with these tribes or their descendants that would impact upon Gulf Council management.<sup>217/</sup>



## Constitutional Parameters

Historically the living resources of the sea have been viewed as the property of all, subject to dominion only upon reduction to possession and control. 218/

Simplistically, these resources have been viewed as the contents of a community cookie-jar, open to all for the taking - the owner of the jar being the people as a body politic.

Because these resources are renewable in the sense that as they are harvested they are replaced by natural processes, it was felt that they were inexhaustible. They are not, however. Just as the contents of the cookie jar, they are subject to exhaustion.

This reality has been recognized by Congress in the Fishery Conservation and Management Act. Overfishing is to be prevented with management to be focused upon the maintenance of the optimum yield for a given fishery. 219/

The Councils are given the control mechanisms to effectuate the goal of optimum yield through management plans. However, implementation of certain of those mechanisms will arguably result in restricting or qualifying previously unlimited access to the various fisheries of the United States. The Councils may

- 1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery

conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

3) establish specified limitations on the catch of fish . . . , which are necessary and appropriate for the conservation and management of the fishery;

4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of the Act; . . .

. . .

6) establish a system for limiting access to the fishery in order to achieve optimum yield . . . . 220/

In the event any of these mechanism are implemented it must be in a manner consistent with federal constitutional standards. The basic constitutional challenges to fishery management measures are (1) a denial of equal protection, (2) a denial of due process and (3) a taking without just compensation. 221/

An equal protection challenge would assert that a given regulatory measure unreasonably discriminates against a person desiring to participate in the fishery being regulated. The issue to be resolved is whether the measure is reasonable and is founded upon a basis having a substantial relationship to the object of the regulatory measure. If the regulation involved a

a suspect classification, e.g., race, or affected a  
fundamental right it would be subject to strict scrutiny 222/  
by the courts and a showing of necessity would have to  
be made rather than a showing of rational basis. 223/

A due process claim would assert that a regulatory  
measure deprived a person of liberty (right to fish) or  
property (gear) without affording due process of law.  
To withstand a due process challenge, a regulatory  
measure must serve a legitimate purpose and adopt a  
rational means for realizing that purpose. 224/

Indicative of a due process challenge is the case  
of Corsa v. Tawes. 225/ In Corsa, a Maryland statute  
prohibiting the use of purse nets for the taking of  
fish in state tidal waters was attacked on due process  
grounds by non-resident fishermen. The net economic  
effect of the statute was to eliminate the commercial  
menhaden fishery in Maryland waters. The statute was  
upheld as a justifiable conservation measure necessary  
to protect edible fish and the State's sportfishing  
industry. The objective was reasonable and the means  
chosen to realize that objective was reasonable, also.

A taking claim would assert that a regulatory  
scheme resulted in a taking of the property (right to  
fish) of a fisherman for a public purpose without just  
compensation. 226/ To sustain such a claim there must be a  
showing made that a fisherman has a property interest  
to take. Since the living resources of the sea are a

common property resource, such a claim would be tenuous. 227/

### Conclusion

The preceding materials provide an overview of the regulatory framework for the Gulf of Mexico Fishery Management Council for implementation of fishery management plans. The framework is extensive and involved. A complementary interface among the various existing regulatory measures, international, federal, state and local, is necessary for the effective management and conservation of our fishery resources. The Fishery Conservation and Management Act of 1976 provides for such a coordination by its tenor and word. That mandate must be followed.

### Footnotes

- 1/ Pub. L. No. 94-265, 90 Stat. 331 (1976)(codified at 16 U.S.C. 1801-1882 (West Supp. 1977)(hereinafter cited as FCMA).
- 2/ Previously, United States fishery jurisdiction extended to 12 miles from the baseline used for measurement of the territorial sea. Act of May 20, 1964, Pub. L. No. 88-308, 78 Stat. 194, as amended by Act of Oct. 27, 1970, Pub. L. No. 91-514, 84 Stat. 1296 (codified at 16 U.S.C. 1081-86 (1970)(repealed 1976).
- 3/ See generally FCMA, supra note 1.
- 4/ FCMA Sect. 101.
- 5/ Id.
- 6/ Id. Sect. 302(b).
- 7/ Id. Sect. 302.
- 8/ Id. Sect. 302(h).
- 9/ Id. Sect. 301.
- 10/ Id. Sect. 302(a)(5).
- 11/ 50 C.F.R. 601.12(c).
- 12/ 50 C.F.R. 602.3(7).
- 13/ Id.
- 14/ E.g. Martin v Waddell, 41 U.S.(16 Pet.367 (1842); Manchester v. Massachusetts, 139 U.S. 240 (1891); Geer v. Connecticut, 161 U.S. 519 (1896).
- 15/ See Missouri v. Holland, 252 U.S. 416 (1920).
- 16/ 334 U.S. 385, 402 (1947).
- 17/ 43 U.S.C. 1301 et seq. (1953).
- 18/ Id. Sect. 1311(a).
- 19/ Id. Sect. 1301(e).
- 20/ \_\_\_ U.S. \_\_\_, \_\_\_, 97 S.Ct. 1740, 1751 (1977).
- 21/ Id. at 1748.

- 22/ United States v. California, 381 U.S. 139 (1965).
- 23/ Id.
- 24/ United States v. Florida, 420 U.S. 531 (1975); United States v. Louisiana, 382 U.S. 288 (1965).
- 25/ 313 U.S. 69 (1941).
- 26/ 297 U.S. 422 (1936).
- 27/ FCMA Sect. 306.
- 28/ Supra note 16.
- 29/ Id.
- 30/ U.S. CONST. amend. XIV.
- 31/ 334 U.S. 410 (1947)
- 32/ Supra note 20.
- 33/ Id.
- 34/ Id.
- 35/ O'Connor, The Fishery Conservation and Management Act of 1976: The Need for State and Federal Cooperation, Sea Grant Special Report No. 13, May, 1978.
- 36/ 50 C.F.R. 602.3.
- 37/ 50 C.F.R. 602.3(7).
- 38/ Id.
- 39/ See Appendix B.
- 40/ Id.
- 41/ Gulf States Marine Fisheries Compact Art. I, supra note 39.
- 42/ Supra note 39, Art. III.
- 43/ Supra note 39, Art. IV.
- 44/ ALA. CODE tit. 9, Sect. 9-12-20.
- 45/ Id.
- 46/ FLA. STAT. ANN. Sect. 370.013 (West).

- 47/ Supra note 46 at Sect. 370.02(2)(a).
- 48/ Id.
- 49/ Supra note 46 at Sect. 370.03(1).
- 50/ LA. CONST. art. IX. Sect. 7.
- 51/ LA. REV. STAT. ANN. Sect. 602 B.
- 52/ Id. Sect. 312.
- 53/ MISS. CODE ANN Sect. 49-15-11 (1976 Supp.).
- 54/ MISS. CODE ANN. Sect. 49-15-5.
- 55/ Id. Sect. 49-15-1.
- 56/ Id.
- 57/ TEX. PARKS & WILD. CODE ANN. tit. 1, Sect. 1.011 (Vernon).
- 58/ FCMA Sect. 201. Relevant provisions of the GIFA with Cuba are set forth at Appendix A for purposes of illustration.
- 59/ FCMA Sect. 204.
- 60/ 16 U.S.C. Sect. 1531 (1973).
- 61/ Id. Sect. 1532 (11).
- 62/ Id. Sect. 1533 (a)(1).
- 63/ Id. Sect. 1532 (4).
- 64/ Id. Sect. 1532 (15).
- 65/ Id. Section 1533 (a)(1).
- 66/ Id. Sect. 1538 (a)(1).
- 67/ 16 U.S.C. Sect. 1361.
- 68/ Id. Sect. 1361 (2).
- 69/ Id. Sect. 1361 (5).
- 70/ Id. Sect. 1401.
- 71/ Id. Sect. 1371 (3)(a).
- 72/ Id. Sect. 1375.

- 73/ Id. Sect. 1377.
- 74/ 16 U.S.C. Sect. 741 (1956).
- 75/ Id. Sect. 742f.
- 76/ See 50 U.S.C. Sect. 17.1 et seq.
- 77/ See 50 U.S.C. Sect. 18.1 et seq.
- 78/ See 50 U.S.C. Sect. 401.1 et seq.
- 79/ Supra notes 76 through 78.
- 80/ Supra note 74 at Sect. 742d.
- 81/ 16 U.S.C. Sect. 757a (1970) et seq.
- 82/ Id. Sect. 757a(a).
- 83/ Id. Sect. 757b.
- 84/ 16 U.S.C. Sect. 1431 et seq.
- 85/ Id. Sect. 1432 (a).
- 86/ Id. Sect. 1432 (f), Sect. 1433.
- 87/ 16 U.S.C. 1451 (1972); 50 C.F.R. 602.3 (6)(111).
- 88/ 16 U.S.C. 1454 (a).
- 89/ 16 U.S.C. 1451.
- 90/ 16 U.S.C. 1454 (b).
- 91/ 42 U.S.C. Sect. 4321 et seq (1975 Supp).
- 92/ 42 U.S.C. Sect. 4332 (c) (1970).
- 93/ Id.
- 94/ Id.
- 95/ 40 C.F.R. 1500..
- 96/ See e.g., United States v. Maine, 420 U.S. 515 (1975); United States v. Louisiana, 394 U.S. 1 (1969); United States v. Louisiana, 394 U.S. 11 (1969); United States v. California, 381 U.S. 139 (1965); United States v. Louisiana et al, 363 U.S. 1 (1960); United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 699 (1950); United States v. California, 332 U.S. 19 (1947).



- 97/ 43 U.S.C. 1331 (1953).
- 98/ 43 C.F.R. Part 3300 (1976).
- 99/ 16 U.S.C. 1221 et seq (1968).
- 100/ 43 U.S.C. 1301 et seq (1953). See discussion at note 17 supra.
- 101/ 16 U.S.C. 779 et seq (1964).
- 102/ 16 U.S.C. 777 et seq (1950).
- 103/ 16 U.S.C. 778 et seq (1964).
- 104/ 16 U.S.C. 1220 et seq.
- 105/ 16 U.S.C. 781 et seq (1914).
- 106/ ALA. CODE tit, 9, Sect. 9-12-20.
- 107/ Id. Sect. 9-12-113.
- 108/ Id. Sect. 9-12-80.
- 109/ Id. Sect. 9-12-113.
- 110/ Id.
- 111/ Id. Sect. 9-12-114.
- 112/ Id.
- 113/ Id. Sect. 9-12-82.
- 114/ Id. Sect. 9-12-84.
- 115/ Id. Sect. 9-12-86.
- 116/ Id. Sect. 9-12-88.
- 117/ Id. Sect. 9-12-89.
- 118/ Id. Sect. 9-12-90.
- 119/ Id. Sect. 9-12-91.
- 120/ Id. Sect. 9-12-87.
- 121/ Id. Sect. 9-12-51.
- 122/ Id. Sect. 9-12-52.

- 123/ Id. Sect. 9-12-86.  
124/ Id. Sect. 9-12-90.  
125/ Id. Sect. 9-12-92; Sect. 9-12-93.  
126/ Id. Sect. 9-12-110.  
127/ Id. Sect. 9-12-111.  
128/ Id. Sect. 9-12-115.  
129/ Id. Sect. 9-12-28.  
130/ Id. Sect. 9-12-33.  
131/ Supra note 47.  
132/ FLA. STAT. ANN. Sect. 370.02(2).  
133/ Id. Sect. 370.06.  
134/ Id.  
135/ Id. Sect. 370.07(2)(a).  
136/ Id. Sect. 370.07 (2)(b), (c).  
137/ Id. Sect. 370.07 (2)(d), (e).  
138/ Id. Sect. 370.07(2)(f).  
139/ Id. Sect. 370.08(3).  
140/ Id. Sect. 370.08(5).  
141/ Id. Sect. 370.08(10).  
142/ Id. Sect. 370.08(4).  
143/ Id. Sect. 370.11(2).  
144/ Id. Sect. 370.172.  
145/ Id. Sect. 370.111.  
146/ Id. Sect. 370.114.  
147/ Id. Sect. 370.13.  
148/ Id. Sect. 370.135.  
149/ Id. Sect. 370.14.

- 150/ Id. Sect. 370.15.
- 151/ Id. Sect. 370.16.
- 152/ Id.
- 153/ Id. Sect. 370.17.
- 154/ Supra notes 50 and 51.
- 155/ IA. REV. STAT. ANN. Sect. 334.
- 156/ Id. Section 333, 643.
- 157/ Id. Sect 337.
- 158/ Id. Sect. 340, 341 and 342.
- 159/ Id. Sect. 320A.
- 160/ Id. Sect. 320B.
- 161/ Id. Sect. 322.
- 162/ Id. Sect. 326.
- 163/ Id. Sect. 317, 322, and 325.
- 164/ Id. Sect. 328.
- 165/ Id. Sect. 317.
- 166/ Id. Sect. 338.
- 167/ Id. Sect. 421 et seq., 491 et seq.
- 168/ Seafood is defined as "all oysters, saltwater fish, saltwater shrimp, diamond back terrapin, sea turtle, crabs and all other species of marine or saltwater life existing or living in the waters within the territorial jurisdiction of the State of Mississippi." MISS, CODE ANN, Sect. 49-15-3.
- 169/ MISS. CODE ANN. Sect. 49-15-1.
- 170/ Id. Section 49-15-11 (1976 Supp.).
- 171/ Id. Sect. 49-15-15 (1976 Supp.).
- 172/ Id. Sect. 49-15-29 (1976 Supp.).
- 173/ Id.

- 174/ Id. Sect. 49-15-37 (1976 Supp.).
- 175/ Supra note 57.
- 176/ TEX. PARKS & WILD. CODE ANN. tit. 1, Sect. 1.011(1)  
(Vernon).
- 177/ Id. tit. 5, Sect. 46.004.
- 178/ Id. Sect. 46.002.
- 179/ Id. Sect. 46.004(b).
- 180/ Id. Sect. 46.0051(a).
- 181/ Id. Sect. 47.002(b).
- 182/ Id. Sect. 47.001(1).
- 183/ Id. Sect. 47.003.
- 184/ Id. Sect. 47.001(7).
- 185/ Id. Sect. 47.001(2).
- 186/ Id. Sect. 47.005.
- 187/ Id. Sect. 47.007.
- 188/ Id. Sect. 47.008.
- 189/ Id. Sect. 47.009.
- 190/ Id. Sect. 47.001(3).
- 191/ Id. Sect. 47.010.
- 192/ A Guide to Texas Commercial Fishing Regulations, page 2,  
(September 1977).
- 193/ TEX. PARKS & WILD. CODE ANN. tit. 5, Sect. 47.011  
(Vernon).
- 194/ Id. Sect. 47.012.
- 195/ Id. Sect. 47.013.
- 196/ Id. Sect. 47.014.
- 197/ Id. Sect. 47.015.
- 198/ Id. Sect. 47.034.
- 199/ Id. Sect. 66.302.

- 200/ CITRUS COUNTY, FLA. ch. 63-1220, SPECIAL ACTS 1963.
- 201/ Id. ch 63-1218.
- 202/ COLLIER COUNTY, FLA. ch. 30665, SPECIAL ACTS 1955.
- 203/ DIXIE COUNTY, FLA. ch. 77-541, SPECIAL ACTS 1976.
- 204/ HERNANDO COUNTY, FLA. ch. 65-1622, SPECIAL ACTS 1965.
- 205/ Id. ch. 69-1027, SPECIAL ACTS 1969.
- 206/ LEE COUNTY, FLA. ch. 23951, SPECIAL ACTS 1947.
- 207/ LEVY COUNTY, FLA. ch. 21355, SPECIAL ACTS 1941.
- 208/ Id. ch. 77-595, SPECIAL ACTS 1976.
- 209/ MONROE COUNTY, FLA. ch. 29299, SPECIAL ACTS 1953.
- 210/ PINELLAS COUNTY, FLA. ch. 29432, SPECIAL ACTS 1953.
- 211/ SANTA ROSA COUNTY, FLA. ch. 7584, SPECIAL ACTS 1917.
- 212/ TAYLOR COUNTY, FLA. ch. 6311, SPECIAL ACTS 1911.
- 213/ WALTON COUNTY, FLA. ch. 7613, SPECIAL ACTS 1917.
- 214/ Supra note 192 at page 6.
- 215/ Id.
- 216/ See KAPFLER, INDIAN TREATIES (1973).
- 217/ See F. COHEN, HANDBOOK OF FEDERAL INDIAN TREATIES (1973 ed.).
- 218/ Tlingit and Haida Indians of Alaska v. United States, 389 F.2d 778, 182 Ct. Cl. 130 (1968).
- 219/ FCMA Sect. 301(a)(1).
- 220/ FCMA Sect. 303(b).
- 221/ See Legal Dimensions of Entry Fishery Management, 17 WM. & MARY L. REV. 757 (1976); The Constitutionality of a Program Restricting the Number of Commercial Fishermen in the Coastal Waters of the United States, 34 LA. L REV. 801 (1974).

- 222/ See Hunter v. Erickson, 393 U.S. 385 (1969); See Williams v. Rhodes, 393 U.S. 23 (1968).
- 223/ Where suspect criteria or fundamental rights are involved, the regulation must not only meet the traditional test of reasonableness, but it must also be shown to be necessary to promote a compelling state interest. Shapiro v. Thompson, 394 U.S. 613 (1969).
- 224/ Corsa v. Tawes, 149 F. Supp. 771 (D. Md. 1957), aff'd, 355 U.S. 37 (1957).
225. Id.
- 226/ U.S. CONST. amend. XIV.
- 227/ Supra note 221.



Appendix A

Agreement

Between the Government of the United States of America  
and the Government of the Republic of Cuba  
Concerning Fisheries off the Coasts of  
the United States



AGREEMENT  
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE REPUBLIC OF CUBA  
CONCERNING FISHERIES OFF THE COASTS OF  
THE UNITED STATES

The Government of the United States of America and  
the Government of the Republic of Cuba

Considering their common concern for the rational  
management, conservation and optimum utilization of fish  
stocks off the coasts of the United States;

Acknowledging the fishery management authority of  
the United States as set forth in the Fishery Conservation  
and Management Act, and as expressed in this Agreement;

Having regard for the discussions of the Third  
United Nations Conference on the Law of the Sea regarding a  
coastal state rights and obligation over fisheries off its  
coasts; and

Desirous of establishing reasonable terms and conditions  
pertaining to fisheries of mutual concern over which the  
United States exercises fishery management authority;

Have agreed as follows:

Article I

The purpose of this Agreement is to ensure  
effective conservation, optimum utilization and rational  
management of the fisheries of mutual interest off the  
coasts of the United States and to establish a common  
understanding of the principles and procedures under which  
fishing may be conducted by vessels of the Republic of  
Cuba for the living resources over which the United  
States exercises fishery management authority as provided  
by United States law.

Article II

As used in this Agreement, the term

1. "living resources over which the United States  
exercises fishery management authority" means all fish  
within the fishery conservation zone of the United States  
except highly migratory species, all anadromous species  
of fish that spawn in the fresh or estuarine waters of  
the United States and migrate to ocean waters throughout

their migratory range, and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

a. the catching, taking or harvesting of fish;

b. the attempted catching, taking or harvesting of fish;

c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish; or

d. any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity conducted by a scientific research vessel;

6. "fishing vessel" means any vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used for

a. fishing; or

b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation,

supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and

8. "marine mammals" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

### Article III

1. The Government of the United States is willing to allow access for fishing vessels of the Republic of Cuba to harvest in accordance with terms and conditions to be established in permits issued under Article VII, an allocation of that portion of the allowable catch for a specific fishery that will not be harvested by United States fishing vessels.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks:

- a. the total allowable catch for each fishery on the basis of the best available scientific evidence, including information from relevant international organizations, taking into account the interdependence of stocks, internationally accepted criteria, and all other relevant factors;
- b. the harvesting capacity of United States fishing vessels in respect of each fishery;
- c. the portion of the total allowable catch for a specific fishery that, on an annual basis, will not be harvested by United States fishing vessels; and
- d. the allocation of such portion that can be made available to qualifying fishing vessels of the Republic of Cuba.

3. In implementation of paragraph 2.d. of this Article, the Government of the United States shall determine each year the measures necessary to prevent overfishing

while achieving, on a continuing basis, the optimum yield from each fishery. Such measures may include, inter alia:

- a. designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;
- c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel or the total fleet may engage in fishing in a designated area within the fishery conservation zone or for a specified fishery;
- d. requirements as to the types of gear that may, or may not, be employed; and
- e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Government of the Republic of Cuba of the determinations and measures provided for by this Article on a timely basis.

#### Article IV

In determining the portion of the surplus that may be made available to vessels of the Republic of Cuba and other countries, the Government of the United States will promote the objective of optimum utilization, taking into account, inter alia, traditional fishing, if any, contributions to fishery research and the identification of stocks, previous cooperation in enforcement and with respect to conservation and management of fishery resources of mutual concern, and the need to minimize economic dislocation in cases where vessels of the Republic of Cuba have habitually

fished for the living resources over which the United States now exercises fishery management authority.

#### Article V

The Government of the United States shall take all necessary measures to implement this Agreement, including the issuance of permits in accordance with Articles III and VIII and Annex I of this Agreement.

#### Article VI

The Government of the Republic of Cuba shall take all necessary measures to ensure:

1. that vessels of the Republic of Cuba refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to the Agreement;
2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and
3. that the total allocation referred to in Article III, Paragraph 2. d. of this agreement is not exceeded for any fishery.

#### Article VII

The Government of the Republic of Cuba may submit an application to the Government of the United States for a permit for each vessel of the Republic of Cuba that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with Annex I to this Agreement, which shall constitute an integral part hereof. The Government of the United States may require the payment of reasonable fees for such permits.

#### Article VIII

The Government of the Republic of Cuba shall ensure that vessels of Cuba refrain from harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

## Article IX

The Government of the Republic of Cuba shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of Cuba is prominently displayed in the wheelhouse of such vessel;
2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each such vessel according to a program for implementation which takes into account factors commonly recognized by both Parties;
3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the equivalent rank of ship's officer while aboard such vessel, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;
4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States arising out of the conduct of fishing activities under this Agreement; and
5. all necessary measures are taken ensure the prompt and adequate compensation of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of the Republic of Cuba, as determined by applicable United States procedures.

## Article X

1. The Government of the Republic of Cuba shall take such measures as may be necessary to ensure that each vessel of Cuba authorized to fish pursuant to this Agreement, and any other vessel of Cuba that engages in fishing for living resources subject to the fishery management authority of the United States, shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement official of the United States, and shall cooperate in such enforcement action as may be undertaken pursuant to the law of the United States.

2. In cases of seizure and arrest of a vessel of

the Republic of Cuba by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of the Republic of Cuba of the facts and the action taken.

#### Article XI

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of Cuba or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

2. In cases of an enforcement action undertaken by authorities of the Government of the United States, vessels of Cuba and their crews shall be promptly released upon the posting of reasonable bond or any other security as may be determined by the court.

3. The representatives of the Government of the United States will recommend to the court in any case arising out of fishing activities under this Agreement that the penalty for violation of fishery regulations not include imprisonment or any other form of corporal punishment.

#### Article XII

1. The Governments of the United States and Cuba undertake to cooperate, according to their capabilities, in the conduct of scientific research related to living resources of mutual interest. The component agencies of the two Governments shall enter into such arrangements as may be necessary to facilitate such cooperation, including the exchange of information and scientists, and regularly scheduled meetings between scientists to prepare research plans and review progress. . . .

#### Article XIII

The Government of the United States and the Government of the Republic of Cuba shall carry out periodic bilateral consultations regarding implementation of this Agreement, . . .

#### Article XIV

The Government of the United States undertakes to authorize vessels of the Republic of Cuba allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws for the purpose of purchasing bait, supplies, or outfits, or effecting

repairs, or for such other purposes as may be authorized.

#### Article XV

Should the Government of the United States indicate to the Government of the Republic of Cuba that nationals and vessels of the United States wish to engage in fishing in the zone established by Decree Law 2 of February 24, 1977 of Cuba, the Government of the Republic of Cuba will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

#### Article XVI

Nothing contained in the present Agreement shall affect or prejudice in any manner the positions of either Government with respect to the extent of internal waters, of the territorial sea, of the high seas, or of coastal state jurisdiction or authority for any purpose other than the conservation and management of fisheries as set forth in this Agreement.

#### Article XVII

1. This Agreement shall enter into force on a date to be mutually agreed by an exchange of notes, following the completion of the internal procedures of both Parties and shall remain in force for a five-year period, unless terminated sooner by either Party after giving notification of such termination one year in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.



## ANNEX I

### Application and Permit Procedures

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of Cuba to engage in fishing for living resources over which the United States exercises fishery management authority:

1. The Government of the Republic of Cuba may submit an application to the Government of the United States for each vessel of Cuba that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify:

- a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;
- b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;
- c. a specification of each fishery in which each vessel wishes to fish;
- d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;
- e. the ocean area in which, and the season or period during which, such fishing would be conducted; and
- f. such other relevant information as may be requested.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions related to fishery management and conservation may be needed, and what fee will be required. The Government of the United States shall inform the Government of the Republic of Cuba of such determinations.

4. The Government of the Republic of Cuba shall thereupon notify the Government of the United States of

its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. In the event the Government of the Republic of Cuba notifies the Government of the United States of its objection to specific conditions and restrictions, the two Governments may consult with respect thereto and the Government of the Republic of Cuba may thereupon submit a revised application.

6. Upon acceptance of the conditions and restrictions by the Government of the Republic of Cuba and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each vessel of Cuba which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

APPENDIX B

GULF STATES MARINE FISHERIES COMPACT

## GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

### Article I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

### Article II

This compact shall become operative immediately as to those state ratifying it whenever any two or more of the states of Florida, Alabama, Texas, Louisiana and Mississippi have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

### Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains, or if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the

governor. This commission shall be a body corporate with the powers and duties set forth herein.

#### Article IV

The duty of said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states. To that end the commission shall draft and recommend to the governors and legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the governor of each state its recommendations relative to enactments to be presented to the legislature of that state in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto, and when two or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

#### Article V

The commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry out the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

## Article VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

## Article VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

## Article VIII

When any state other than those named specifically in Article II of this Compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such state in the action of the commission shall be limited to such species of fish.

. . . .

## Article XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given the other states party hereto by the secretary of state of the compacting state so renouncing upon passage of the act.

