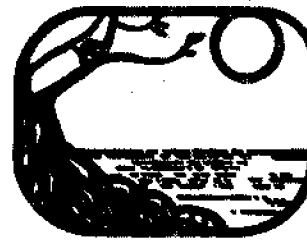


THE FISHERY ACT OF 1976

A SUMMARY

THE MANAGEMENT COUNCILS

A DESCRIPTION



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BY JOAN A. BROWDER

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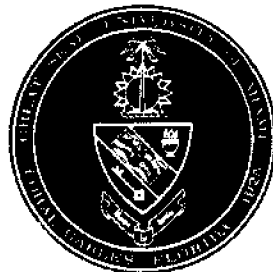
BY JOAN A. BROWDER

PREPARED FOR
THE FISHERY SYSTEMS WORKSHOPS

ON
MACKEREL AND CROAKER

SPONSORED BY
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
SOUTHEAST FISHERIES CENTER

MIAMI, FLORIDA



FISHERY ACT OF 1976 AND THE MANAGEMENT COUNCILS

Joan A. Browder¹

PREFACE

This report was prepared in response to numerous questions received by the University of Miami staff developing the background information for the fishery systems workshops on mackerel and croaker, sponsored by the National Marine Fisheries Service². Questions were in regard to the composition and responsibilities of the Fishery Management Councils. The questions were asked by fishermen, whose main concern was how they could have impact on management decisions.

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INTRODUCTION

The U.S. Fishery Conservation and Management Act of 1976 (P.L. 94-265) was designed to perpetuate our nation's fishery resources and to promote their efficient utilization. The Act includes the following:

1. Set forth "national standards" for the management of fisheries;
2. Established the 200 mile "fishery conservation zone," which extends from the boundary of state sovereignty out to a distance 200 nautical miles from the baseline from which territorial sea is measured; and declared exclusive national jurisdiction over all fishery resources in that zone, including oceanic species that move into estuaries or rivers to spawn and fishery resources of the Continental shelf. Excluded are the highly migratory tunas: skipjack, yellowfin, bigeye, and bluefin tunas and albacore.
3. Created regional fishery management councils to develop fishery management plans for each fishery in the conservation management zone of their regions; and
4. Declared that fishing by foreign vessels within the U.S. fishery conservation zone would no longer be allowed, except under an international fishery agreement and with permits specific to each fishery and conforming with a fishery management plan.

Regional Fishery Management Councils

The Regional Fishery Management Councils have the authority and funding to set up their own staffs and also to draw upon the services and facilities of the National Marine Fisheries Service and other federal agencies to organize, develop, and evaluate information relevant to the development of the management plans. These councils are required to conduct public hearings in appropriate areas to allow interested persons to be heard in the development of each management plan.

Scientific and statistical committees

Councils are required to establish and maintain an interdisciplinary scientific and statistical committee made up of biological and social

scientists. The scientific and statistical committee will assist the Council in developing and evaluating statistical, biological, economic, and social information relevant to a fishery management plan.

Advisory panels

Councils may also establish advisory panels "described as being composed of persons actually engaged in the harvest of, or knowledgeable and interested in the conservation and management of a given fishery." The panels will aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and will serve as a communication link with those who operate under the management regime. Members of the panel serve for one year but can be reappointed.

Management plans

The management plan for each fishery must include:

- A) an estimate of "optimum yield," which is essentially the biologically-derived "maximum sustainable yield," modified by the economic and social constraints of the fishery (an explanation of the concept of optimum yield is given in the Proceedings of the Symposium on the subject, available as Special Publication No. 9 from the American Fisheries Society, 5410 Grosvenor Lane, Bethesda, Md. 20014, Price: \$3.00).
- B) an estimate of the percent of optimum yield that will be harvested by the U.S. fishery.
- C) recommendations for conservation and management measures applicable to both foreign and domestic vessels.
- D) a description of the fishery, including vessels, gear, stock, recreational interests, and current foreign fishing.
- E) specification of data needs and recommendations for data reporting and collecting. Statistics submitted by any person in compliance with this requirement shall be confidential, by law.

A fishery management plan developed by a regional council can also include:

- A) requirements for permits by U.S. vessels;
- B) the designation of protective zones where fishing is prohibited or where gear types are limited;
- C) the setting of catch limits, based on area, species, size, number, weight, sex, incidental catch, or other factors;
- D) prohibitions or limits of specific types of fishing gear, vessels, or equipment;
- E) incorporation of pertinent management and conservation practices of the coastal states of the fishery area;
- F) a system of limiting access to the fishery to achieve optimum yield. In devising a system of limited access, the council must take into account:
 - a) present participation in the fishery;
 - b) historical fishing practices;
 - c) the economics of the fishery;
 - d) capability of fishing vessels engaged in the fishery to be used in other fisheries;
 - e) the cultural and social framework relevant to the fishery.

Each management plan must be approved by the Secretary of Commerce in order to be implemented. To be accepted by the Secretary each plan must conform to national standards. The National Standards require that fishery management plans:

- 1) be based upon the best scientific information available;
- 2) be nondiscriminatory between residents of different States;
- 3) be designed to achieve the optimum yield of a stock of fish on a continuing basis;
- 4) promote efficiency in harvesting techniques or strategies;
- 5) result in reasonable administration and enforcement costs;
- 6) be designed to prevent overfishing of fishery resources while achieving, on a continuous basis, the optimum yield; and

- 7) take into account the variability of fish resources, the individuality of fishermen, and the needs of consumers and the general public.

Publication and public hearings on the plan

The Secretary is required to publish each management plan in the Federal Register immediately following approval. Individuals will have at least 45 days after such publication to submit in writing; data, views, or comments on the plan. The Secretary may schedule an additional hearing on the plan, and, based on its outcome, may postpone or revise the plan.

Federal and state jurisdiction

Councils may develop plans for fisheries predominantly within State jurisdiction but such plans may not be implemented under federal authority alone, except in the fishery conservation zone. The State (or States) in whose boundaries the fishery is conducted may manage on the basis of the council plan but is not obligated to do so. The following statement from the Regional Fisheries Management Council Operations Manual of the National Marine Fisheries Service defines the conditions under which state authority can be preempted:

"When the Secretary of Commerce finds after a hearing is held that the fishing in a fishery, which is covered by a fishery management plan implemented under the Act, is engaged in predominantly within the fishery conservation zone and beyond such zone, and a State has taken some action, or omitted to take some action, the results of which will substantially and adversely affect the carrying out of such fishery management plan, the Secretary of Commerce may regulate that fishery (i.e., stocks of fish treated as a management unit, or any fishing for such stocks) within the boundaries of the State (other than internal waters). The State involved may apply to the Secretary of Commerce at any time for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which Federal regulation was assumed no longer prevail he shall promptly terminate such regulation. It is noted that the fishing in such a fishery must be predominantly located in waters outside a State's boundaries."

Enforcement

Enforcement of the Fishery Conservation and Management Act, including approved fishery management plans, is the responsibility of the Secretary of Commerce and the U.S. Coast Guard. Enforcement within the area of state jurisdiction is the prerogative of the state except in cases where state authority is preempted.

Foreign fishing

Fishing permits to foreign vessels will be made only with regard to those species for which a surplus has been declared in the fishery management plan or in a preliminary management plan. If a management plan for a given species is not yet available, the Department of Commerce will prepare a preliminary plan upon submission of a permit request by a qualified foreign vessel. The preliminary plan is superceded by the plan completed by the Council, once the latter is prepared and approved by the Secretary of Commerce. Permits, which are specific to vessel, will be granted only to vessels from countries who have signed a governing international fishery agreement (GIFA), by which the country formally recognizes total U.S. authority regarding the fishery. A foreign vessel must have a permit specific to a species in order to fish for that species in U.S. waters.

International fishery agreements are made by the Secretary of State in concert with the Secretary of Commerce. Each international fishery agreement will become operative only after approval by Congress. The committee with major responsibility in the House of Representatives is the Committee on Merchant Marine and Fisheries (John Murphy, Dem., NY, Chairman). In the Senate the Committee on Commerce, Science, and Transportation (Senator Warren Magnuson, Dem., WA, Chairman) and the Committee on Foreign Relations (Senator

John Sparkman, Dem., AL, Chairman) are primarily responsible.

Gulf and South Atlantic Councils

The councils that will develop management plans affecting the croaker and mackerel fisheries are the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council. The croaker will be covered under the groundfish management plan, and mackerel will be considered in the management plan for coastal pelagic species. The states represented on the Gulf Council are Florida, Alabama, Mississippi, Louisiana, and Texas. Those represented on the South Atlantic Council are Florida, Georgia, South Carolina, and North Carolina.

Council members

Each Council has as voting members:

- a) The principal state official (or his designee) with marine fishery management responsibility and expertise, as designated by the governor.
- b) The regional director of NMFS for the geographic area concerned, or his designee.
- c) Others appointed by Secretary of Commerce from a list of qualified individuals submitted by each governor. At least three names must be submitted for each vacancy. Each state must be represented by at least one council member in this category. "Qualified individual" means someone who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery resources of the particular geographic area. The Secretary of Commerce is required to attempt to maintain a reasonable balance of interests on each Council in making appointments.

The Gulf Council has 17 voting members. The South Atlantic Council has 13 voting members. William H. Stevenson, regional director of the National Marine Fisheries Service in St. Petersburg, Florida, is a voting member on both councils. Voting members of each council are listed according to their affiliations in Tables 1 and 2.

Council members serve for three years, with terms staggered so that some

TABLE 1. VOTING MEMBERS OF GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Administrator	Consumer	Processor	Commercial Fisherman	Sport Fishing Interest	Conservationist
(TX) James P. Johnson (2) Chairman of Parks and Wildlife Comm. Austin		(AL) Charles W. Kraver (2) Seafood Haven Inc. Bayou La Batre	**	(TX) John M. Green (1) Pres. E. H. Green Lumber Co., Birmingham	
(LA) James B. Angelle Director of Wildlife & Fisheries Commission New Orleans		(FL) Robert P. Jones (1)* Southeastern Fisheries Assn., Tallahassee		(AL) Thomas R. Clark (1) Sportfish guide Orange Beach	
(MS) Richard L. Leard Director of Marine Conservation Comm. Biloxi		(MS) George A. Brumfield Zapata-Raynie Corp. Moss Point		(FL) Billy J. Putnam (Charterboat-tackle-Marina) Point Marina Panama City	
(AL) John Hodnett (Hugh Swingle) Dept. Conservation & Natural Resources Montgomery & (Dolphin Island)		(TX) Robert G. Mauermann Exec. Director Texas Shrimp Assn. Brownsville	*		
(FL) Harmon W. Shields (1)(2) Exec. Dir. Dept. Natural Resources Tallahassee		(TX) John A. Mahos, C Vice President Liberty Fish & Oyster Co. Galveston			
(US) William H. Stevenson Regional Director of National Marine Fishery Service St. Petersburg		(LA) Edward W. Swindell, Jr. Wallace Menhaden Products New Orleans			
(LA) Theodore B. Ford III, VC (2) Office of Sea Grant LSU, Baton Rouge		(MS) Nicholas A. Mavar, Jr. (2) Sec. /Counsel Mavar Shrimp & Oyster Co. Biloxi			

(1) serving on the subcommittee concentrating on coastal migratory and pelagic species.

(2) serving on the subcommittee concentrating on groundfish

*Recently charterboat captains (sport fishing interests) have joined the Southeastern Fisheries Association and so may be represented by Mr. Jones.

**Some fishermen are members of the Southeastern Fisheries Association and are represented by Mr. Jones.

TABLE 2. VOTING MEMBERS OF SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Administrator	Consumer	Processor	Commercial	Sport Fishing Interests	Conservationist
(FL) Harmon W. Shields Exec. Director Dept. Natural Resources Tallahassee	(FL) George B. Gross Red Lobster Inns of America Orlando	(GA) J. Roy Duggan, VC King Shrimp Co. Brunswick	*	(SC) Benjamin T. Hardesty Vice President Shakespeare Co. (fishing rod Manuf.) Columbia	(FL) Gertrude W. Bernhard Jupiter - Tequesta
(GA) David B. Gould Superintendent Coastal Fisheries Dept. Natural Resources Brunswick	(NC) Margaret "Peggy" Stamey Raleigh	(NC) Norman B. Angel Exec. Secretary N.C. Fisheries Association New Bern		(GA) Allen F. Branch Midway	
(SC) Edwin B. Joseph, C Director Marine resources Division Charleston				(SC) Edgar C. Glenn, Jr. Beaufort	
(NC) Edward G. McCoy Director, Division of Marine Fisheries Morehead City					
(US) William H. Stevenson Regional Director National Marine Fishery Service St. Petersburg					

*Some commercial fishermen are members of the N.C. Fisheries Association and are represented by Mr. Angel.

new appointments are made each year. In order to facilitate this type of turnover, the first appointments to the councils have been made for designated one, two, and three year terms.

The councils elect a chairman and a vice-chairman, who serve for one year. The chairman of the Gulf Council is John A. Mehos of Galveston, Texas and the vice-chairman is Theodore Ford III, of Baton Rouge, Louisiana. The South Atlantic Council chairman is Edwin Joseph of Charleston, South Carolina, and the vice-chairman is J. Roy Duggans of Brunswick, Georgia.

Each council also has nonvoting members, who are designated as follows:

- 1) the regional or area director of the U.S. Fish and Wildlife Service, or his designee;
- 2) the commander of the Coast Guard district for the geographic area concerned, or his designee;
- 3) the executive director of the Marine Fisheries Commission; for the geographic area concerned, or his designee; and
- 4) one representative of the Department of State.

Scientific and statistical committee members

Members of the Scientific and Statistical Committees of the two Councils have been selected. Members of the Committee for the Gulf Council are listed in Table 3. Those serving on the South Atlantic Scientific and Statistical Committee are listed in Table 4.

Scientific Subcommittee members

Subcommittees of scientific experts on each fishery have been appointed by the Gulf Council. Members of the subcommittees for coastal migratory and pelagic fishes are listed in Table 5 and groundfish are given in Table 6.

Advisory panel members

The Gulf Council has an advisory sub-panel for each fishery of current

TABLE 3. MEMBERS OF GULF COUNCIL'S STANDING SCIENTIFIC AND STATISTICAL COMMITTEE

Standing Committee		
Mr. Gary Knight (Chairman)	Louisiana State University (marine law)	Baton Rouge, LA
Dr. James Cato (Vice Chairman)	University of Florida (fishery economics)	Gainesville, FL
Dr. Sammy Ray	Texas A & M (shallow water oceanography)	College Station, TX
Mr. Harry Shafer	Louisiana Wildlife and Fisheries Comm. (marine resource management)	New Orleans, LA
Dr. Richard Noble	Texas A & M (fisheries statistics)	College Station, TX
Dr. Edward Houde	University of Miami (population dynamics)	Miami, FL
Dr. Al Bertrand	Louisiana State University (rural sociology)	Baton Rouge, LA
Mr. Bob Ingle	Environmental Consultant (fisheries biologist)	Apalachicola, FL Apalachicola, FL

TABLE 4. GULF COUNCIL'S SCIENTIFIC SUBCOMMITTEE ON COASTAL MIGRATORY AND PELAGIC SPECIES

Mr. Dale Besumariage	Florida Department Natural Resources	Tallahassee, FL
Dr. Connie Arnold	NMFS Laboratory	Port Aransas, TX
Dr. John D. McEachren	Texas A & M	College Station, TX
Mr. E. L. Nakamura	NMFS Laboratory	Panama City, TX

TABLE 5. GULF COUNCIL'S SCIENTIFIC SUBCOMMITTEE ON GROUND FISH

Mr. Shelby Drummond	NMFS	Pascagoula, MS
Mr. Elmer Guthers	NMFS	Pascagoula, MS
Mr. C. E. Bryan	Texas Park and Wildlife	Rockport, TX
Ms. Harriet Perry	Gulf Coast Research Lab	Ocean Springs, MS

TABLE 6. MEMBERS OF THE SCIENTIFIC AND STATISTICAL
COMMITTEE OF THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Mr. Dale Beaumariage	Florida Department of Natural Resources	Tallahassee, FL.
Dr. James Cato	University of Florida Sea Grant	Gainesville, FL.
Dr. A. F. Chestnut (Chairman)	Inst. of Marine Sciences	Moorehead City, NC.
Dr. Thomas A. Clingan	Prof. of Law, Univ. of Miami (former negotiator of Law of the Sea)	Miami, FL.
Dr. Peter Eldridge (Vice Chairman)	SC Marine Resources Institute	Charleston, SC.
Dr. Donald W. Hayne	NC State University	Raleigh, NC.
Dr. Harold L. Mix	University of Georgia	Athens, GA.
Dr. Kenneth J. Roberts	Sea Grant National Headquarters	Washington, D.C.
Mr. Richard H. Stroud	Exec. Vice President, Sport Fishing Inst.	Washington, D.C.

interest. Members of the advisory panel for coastal migratory and pelagic species are given in Table 7. Members of the advisory panel for groundfish are in Table 8. Members of the advisory panel of the South Atlantic Council are listed in Table 9.

Executive directors

An executive director is appointed by each council. The names and addresses of executive directors of the Gulf and South Atlantic councils are as follows:

Mr. Wayne E. Swingle
Gulf of Mexico Fishery Management Council
Suite 881
5401 W. Kennedy Blvd.
Tampa, Fla. 33609
Phone: 813-228-2815 (FTS 826-2815)

Mr. Ernest D. Premetz
South Atlantic Fishery Management Council
Southpark Bldg.
No. 1 Southpark Circle
Charleston, S.C. 29407
Phone: 803-571-4366

Council meetings

The councils generally meet once a month. The meeting of the South Atlantic council is normally on the 4th Tuesday-Thursday of the month. The meeting of the Gulf council is usually on the 1st Wednesday-Friday of the month. Notice of meetings must be published in the Federal Register. They may also be announced in local papers in the area in which the meeting is held. The councils make an effort to hold meetings in different locations of their region. Meetings are open to the public.

The Caribbean Fishery Management Council may also be involved in developing management plans for the king mackerel fishery. The executive

TABLE 7. GULF COUNCIL'S ADVISORY PANEL ON COASTAL MIGRATORY
AND PELAGIC SPECIES

Mr. Leon Kenney	Pinnelas Seafood Processor	St. Petersburg, FL
Cap. Roland Walker	charterboat captain	Orange Beach, AL
Mr. David McKeithrum	Pres, Salt Water Sportsman's Assoc.	Mobile, AL
Mr. C. W. Wade	sportsfisherman-biologist Alabama Dept. of Conservation and Natural Resources	Dauphin Island, AL
Mr. Bobby O'Barr	sportsfisherman and attorney	Biloxi, MS
Dr. Wilson Couch	sportsfisherman	Baradis, LA
Capt. B. O. Niquet	charterboat captain	Lynn Haven, FL
Mr. Marvin D. Burnett	marina operator and boat dealer	Houston, TX
Mr. Raymond Muchowich	retired partyboat operator	Freeport, TX
Mr. John W. Blackwell	sportfisherman	Beaumont, TX
Mr. Jimmy Pace	processor	Brownsville, TX
Mr. Gene Raffield	processor	Port St. Joe, FL
Mr. Harland Franklin	sports writer	Tallahassee, FL
Mr. Charles Carter	commercial fisherman	Key West, FL

TABLE 8. GULF COUNCIL'S ADVISORY PANEL ON GROUND FISH

Mr. John E. Christianson (Chairman)	Quaker Oats Co. (industrial processor)	Pascagoula, MS
Mr. Hilliard A. Le Bretton (Vice Chairman)	recreational fisherman	New Orleans, LA
Mr. Fred K. Williams	Williams Seafood & Poultry (food fish distributor)	Birmingham, AL
Mr. Joe Moore	Joe's Seafood Co., Inc. (food fish processor)	Bayou La Batre, LA
Mr. Grady Seaman	food fisherman*	Bayou La Batre, LA
Mr. John S. Mavar	industrial fisherman	Ocean Springs, MS
Mr. David J. Summersgill	Summersgill Interprises (minced fish processor)	Golden Meadow, LA
Mr. Jimmie B. Martin	industrial fisherman	Pascagoula, MS
Mr. Newton Verrett	industrial fisherman	Moss Point, LA
Mr. Edward M. Holder	recreational fisherman	Grover, TX
Ms. Karen Smith	Northwest Fla. Fisherman's Assoc. (commercial fisherman)	Pensacola, FL

TABLE 9. ATLANTIC COUNCIL'S ADVISORY PANEL

Blue Fulford	Executive Director Organization of Florida Fishermen	Bradenton, FL
Clyde Kitchel	Indian River Seafood Co.	Sebastian, FL
Laurence Jacobs	Georgia Fishermen's Cooperative	Valona, GA
James W. Morgan	Fisherman and packer	Midway, GA
Madison Howell	Commercial fisherman packer, shrimp fishery	Mount Pleasant, SC
Wally L. Shaffer, Jr.	commercial fisherman	Isle of Palms, SC
William E. Smith	trawler owner, operator, packer, shipper, Luther Smith & Sons Seafood	Atlantic, NC
Ron Tillet	Chief Wanchese Packing Co.	Wanchese, NC
Jesse L. Webb	Pfluger Taxidermy	Hallandale, FL
William R. Dewers	Le Fills Oak Hill Fishing Camp	Oakhill, FL
Dean J. Poucher	outdoor writer and and sportsfisherman	Bluffton, SC
Dr. Frank Carlton	President, National Coalition for Marine Conservation and sports fishermen	Savannah, GA
Robert Simpson	outdoor writer and President of North Carolina Salt Water Fishing Club.	Moorehead City, NC

director is Mr. Omar Munoz-Roure, P.O. Box 1001, Hato Rey, Puerto Rico 00919. Figure 1 is a decision making diagram showing where you can have input to the decision-making process.

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FIGURE 1.

Figure 1. Diagram of pathways by which people involved in the fisheries can affect the decision-making process regarding fishery management plans and governing international fishery agreements.

- 1) Have your governor recommend you to the Secretary of Commerce for a seat on your regional council or suggest someone else with whom you communicate well.
- 2) Suggest to the Secretary of Commerce who she should appoint from your governor's recommendations.
- 3) Have your regional council appoint you to their advisory panel, or suggest someone else with whom you communicate well.
- 4) Go to monthly regional council meetings, which are open to the public and announced in advance in the Federal Register. Council meetings may also be announced in the local newspapers of the location of the meeting.
- 5) Attend public hearings, which must be held by the regional council for each fishery management plan and must be announced by the council in the Federal Register.
- 6) Attend the public hearings on completed and approved fishery management plans. Such hearings will be held at the discretion of the Secretary of Commerce and announced in the Federal Register.
- 7) Send your comments to the Secretary of Commerce regarding a fishery management plan within 45 days after it is published in the Federal Register.
- 8) Write or call your Congressman or members of the designated (on diagram) Senate and House committees concerning Governing international Fishery Agreements that potentially could involve your fishery.

