

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

STATEMENT OF WILMA ANDERSON
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BEFORE THE
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE & OCEANS
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON RESOURCES

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Hearings on Small Businesses and Implementation of the
Regulatory Flexibility Act in the Context of Fishery Management

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today. My name is Wilma Anderson and I am Executive Director of the Texas Shrimp Association ("TSA") based in Aransas Pass, Texas. The membership of TSA is comprised of owners of approximately 763 shrimp trawling vessels which operate off the coast of Texas and other waters in the Gulf of Mexico, and 32 associate member shoreside facilities, i.e., unloading plants, fuel and ice docks, processing plants, suppliers, repair and maintenance services, shipyards, propulsion equipment sales and service, lenders, etc. Under the Regulatory Flexibility Act (5 U.S.C. Sec 601-611) ("RFA"), the Small Business Administration ("SBA") and the National Marine Fisheries Service ("NMFS") define a "small business" in the commercial fishing business as any firm with up to \$3 million in annual sales. Recently, in the Regulatory Review Analysis associated with Amendment 9 to the Gulf of Mexico Shrimp Management Plan, the Amendment that mandated the use of bycatch reduction devices ("BRDs"), NMFS stated that all of the 5,000 or more vessels engaged in shrimp trawling qualified as small businesses under the RFA. [\[1\]](#) Consequently, all of our members and probably the entire shrimp trawl fleet in the Gulf of Mexico are small businesses subject to the protection afforded such businesses under the RFA, as amended in 1996 by the Small Business Regulatory Enforcement and Fairness Act.

A 1989 report by Kearney/Centaur, under contract with the National Fisheries Education and Research Foundation, estimated that the Gulf shrimp industry generated direct annual impacts amounting to \$2.95 billion in sales, resulting in \$1.41 billion in income and supported 162,520 jobs. When both direct and indirect effects are taken into account, economic activities were estimated to be \$5.21 billion in sales, \$2.05 billion in income, and 189,653 jobs. The industry is especially important to small coastal communities as a source of employment, a generator of dependent support and supply business activity, and as a major

contributor to the economic base of fishing port municipalities.

Today, I would like to speak to several issues relating to (1) the affects of recent management measures on small businesses engaged in shrimp trawling, (2) the implementation of the RFA by NMFS in evaluating proposed measures, particularly BRDs in our fishery, and (3) our recommendations about improving the regulatory review process so that a fair assessment of regulatory impacts is conducted and alternatives that reduce cost are properly evaluated. The membership of TSA strongly believes that improvement in rulemaking procedures and evaluations are essential to ensure that small businesses in the shrimp fisheries are treated fairly in the fishery management process. At present, we believe that the Gulf of Mexico Fishery Management Council and NMFS are engaging in superficial, self-serving analysis under the RFA that fail to properly consider the impacts of proposed regulations on the shrimp trawl fleet.

The Gulf of Mexico Shrimp Fisheries

Marine fisheries are considered highly regulated activities. Even so, the Gulf of Mexico shrimp fisheries have been subjected to an unusually high level of regulatory control in recent years. Ironically, these regulations are not aimed primarily at conserving shrimp resources, which historically are in good health and are not considered "overfished," but are intended to protect endangered sea turtles and juvenile red snapper. In fact, unlike, for example, the heavily overfished fish stocks in New England, shrimp species are not as vulnerable to direct overfishing. Shrimp are nurtured in the coastal estuarine environment and move offshore as they continue their life cycle, which is completed within about a year. Production of shrimp is primarily a function of the quality and quantity of nursery areas in estuaries and bays along the Gulf of Mexico. Harvesting all shrimp after they become large enough to catch will not harm next year's production. If, however, juvenile shrimp are harvested before they grow to a specific size, "growth overfishing" occurs. To prevent growth overfishing, states regulate the opening and closing of the bay fishery until the shrimp reach a specific size. The "Texas 200 Mile Closure," a joint state and federal cooperative regulation is the primary management measure in the Gulf of Mexico under a Shrimp Fishery Management Plan implemented in 1981 at the request of the Texas shrimp fishery. This closure of state and federal waters from mid May to mid July protects juvenile shrimp migrating from the bays to the Gulf and allows the shrimp to grow to a larger more valuable size.

The biggest environmental threat to the Gulf of Mexico shrimp species and its fisheries is not overfishing but habitat protection. For many years, TSA has been in the forefront of efforts to protect the quality of shrimp nursery areas from pollution and uncontrolled development and, more recently, from viruses spread by farm raised shrimp. The entire industry has also been greatly concerned about the growing "dead zone" at the mouth of the Mississippi River, where tremendous volumes of pollutants drain into the Gulf of Mexico and rob vast areas of oxygen. This "dead zone" is no longer teeming with marine life as it did in the mid 1980's. For these reasons, we strongly supported the original intent of the Essential Fish Habitat provisions in the Sustainable Fisheries Act, enacted in 1996. But, in recent months, we have become concerned, that we have possibly supported a monster that is now exceeding its original intent.

At present, we understand that the marine ecosystem in the Gulf of Mexico, meaning the populations of birds, marine mammals, reptiles, and fish, is considered by most scientists to be in relatively good health, with some exceptions. We want to note for the Committee that the population of endangered Kemp's ridley sea turtles is continuing to improve and nesting at Rancho Nuevo is on an increase. Nesting declined until 1985 when only 702 nests were counted. The number of nests began to increase in 1986 (749 nets), 1990 (992), 1997 (2,219) and 1998 (3,482). The 1998 number of nests at Rancho Nuevo is far above what was expected based on the 1986 to 1997 trend. A lot of credit goes to the Congressional Appropriation

Committees that designated funding to Rancho Nuevo for the expanded protection of the Kemp's ridley primary nesting beach. The shrimp industry is required to use turtle excluder devices ("TEDs") at all time and in all places in the Gulf of Mexico. For the last several years, the Coast Guard has reported very high rates of compliance with Endangered species Act regulations by the shrimp fleet, although occasional violations occur. TSA periodically agrees to pay rewards for information leading to prosecution of any individual within or outside the shrimp fishery of egregious sea turtle violations, and we will continue to do so.

Another issue of concern has been the bycatch of juvenile red snapper caught inadvertently during shrimp trawling. Of necessity, the mesh size of our trawls must be small enough to capture shrimp that are 4 inch minimum length. The shrimp are naturally interspersed on the bottom with other fishes and marine life, much of which is larger than our net's mesh size. While sea turtles are relatively large and large fish can be excluded with TEDs, other fish, being small, are harvested as incidental bycatch. Our fleet cannot simply move to areas where bycatch rates are low, as the factory trawler fleet in the Pacific Northwest is able to do. Most (98%) of this bycatch is fish such as croaker and longspine porgy, which have essentially the same one year life cycle as shrimp and are of little commercial or recreational interest, but are utilized as a food source by predatory fish, sea turtles, marine mammals and seabirds. However, we have seen no evidence that this bycatch is causing a serious adverse environmental impact, but it does create a negative perception of our fishing practices. Yet we must point out that the Magnuson-Stevens Act does not regulate perceptions, it regulates real fishery management problems only on the basis of reasonable scientific information and theory. Regulations must have a clear rational basis before they are enacted. Furthermore, Congress did not ban bycatch but authorized regulatory measures to minimize bycatch, "to the extent practicable."^[2]

The problem of bycatch of juvenile red snapper, a longer-lived fish of importance which comprises about one-half of one percent of our inadvertently bycatch, is the present focus of rulemaking in our fishery. Originally, although bycatch of red snapper has been well known, NMFS decided in 1984 that red snapper management would benefit only from a size limit on red snapper in the directed fisheries, not bycatch restrictions, because juvenile red snapper have a very high rate of natural mortality.^[3] In April of last year, however, NMFS mandated the use of BRDs to protect age 0 and age 1 juvenile red snapper because the red snapper fish stock dropped in abundance after very heavy exploitation in the 1980s, primarily due to the rapidly growing recreational sector of the directed fishery. NMFS also allowed the annual allowable directed catch to double during the 1990s to 9.12 million pounds. NMFS has failed to reduce the quota, even though the recreational sector continues to overfish their quota on a regular basis and all scientists agreed the quota should be reduced to no more than 6 million pounds a year. We sued the agency because we believe approval of BRDs and the failure to constrain the directed fisheries, particularly the recreational sector, violated the Magnuson-Stevens Act, the RFA and the Administrative Procedure Act. The case is pending before a Federal Court in Florida.

Impact of Fishery Management Measures on the Shrimp Fleet

Beginning in 1992, our fleet began to use TEDs during all shrimp trawling operations. We estimate that, by doing so, we lose about 15 percent of our catch. Last year we were required to use BRDs, which is nothing more than another hole in our nets and have experienced shrimp loss of at least 9 to 20 percent, depending on the trawling locations and conditions. These two regulations have caused significant reductions in our annual gross income, which were not fully explored during the rulemaking process that led to their adoption. Moreover, we have grave doubts about the quality of the economic data used by NMFS in its recent BRDs

rulemaking.

In May, 1996, the Gulf Council and NMFS published the draft Initial Regulatory Flexibility Analysis concerning the impact of the BRD regulations on the shrimp industry, the analysis suggested that the profit margin for shrimp vessels was approximately 51 percent. We were shocked by these figures and, after discussing these issues with the Council and agency personnel, concluded that they were grossly in error. In addition, we believed, we had no option but to implement a valid study of the current economic condition of our fleet, particularly because the relevant documents suggested that the cost of employing BRDs would be a significant impact, but a cost that could be absorbed by most vessels, by portraying a 51 percent return on investment.

We made arrangements with Texas A&M University, Sea Grant Extension Service, to review 12 years of detailed accounting records of our member vessels. Attached is a Preliminary Report of the ongoing project by Michael Haby, Fishery Economist, which demonstrates that shrimp trawling is economically more marginal small business than NMFS has been willing to acknowledge. He concluded, based on what we believe is a much more thorough and up-to-date economic analysis, that pretax net income as a percentage of gross revenues for a shrimp trawl operation is 4 percent, not 51 percent as the Council and NMFS originally claimed. As anyone can see, a loss of gross income because of reduced catches of shrimp caused by TEDs or by BRDs will severely harm the bottom line in our small businesses.

Our industry is under great strain. Earlier this year, Professor Wade Griffin prepared a report to NMFS entitled "Shrimp Bycatch Reduction Impacts on the Harvesting and Consumer Sectors in the Gulf of Mexico." In that report, Professor Griffin, after concluding that during the 1987-1992 (pre-TED years), a typical shrimp company lost an average of \$3,875, made the following statement:

Since the early 1980s, the Texas shrimp-harvesting sector has been experiencing a price-cost squeeze. Texas ex-vessel shrimp prices have remained low and stable due to increase (sic) shrimp imports. Shrimp operating costs have been increasing due to the imposition of shrimp regulatory policies such as TEDs and new Coast Guard safety standards. Consequently, the Texas shrimp-harvesting sector, which was economically viable up to the early 80s, has ceased to be economically viable.

In order for us to absorb the costly regulations, we have minimized operating costs by dropping hull and liability insurance coverage and cut-back on vessel repairs and maintenance. To upgrade the fleet with new or replacement vessels requires substantial investment and debt obligation.

During the BRDs rulemaking process, we attempted to bring the inconsistency between the Council and NMFS Regulatory Analyses and our own knowledgeable economic data to the attention of the agency. In the Final Regulatory Flexibility Analysis, dated December 12, 1997, NMFS admitted that their calculation of the average pretax profit margin should have been 19 percent, not 51 percent. But the agency did not change its conclusions about the number of vessels expected to go out of business because of the regulation. Information that we submitted comparable to the Haby results set forth above was not considered at all, because NMFS decided "it was not available when the Council finalized Amendment 9" in November, 1996. In short, we were ignored in the regulatory review process when we presented significant, important economic information about the health of our business.

In contrast, the agency added new economic analyses to the record of the rulemaking on the economic benefits of BRDs in early 1998, stating that this was new economic information that was not previously available to the Council. Here again, we were shocked, particularly because the agency [\[4\]](#) and the Council's

Statistical Committee, had concluded that no net economic benefits resulted to the Nation if BRDs were adopted. In approving BRDs, the Council and NMFS claimed that costs and benefits were essentially equal. This conclusion was based on the benefits of individual transferable quotas, which Congress had banned in 1996 for further study.

As you can see, Mr. Chairman, our experience with the agency's economic analyses with regard to the BRD regulations has been extremely disappointing and costly to the shrimp industry. The Magnuson-Stevens Act requires that measures be adopted to minimize bycatch, but only to the extent they are practicable. What is practicable involves a cost and benefit analysis, according to NMFS and Chairman Don Young's statements on this issue in the Congressional Record. Thus, economic analysis is extremely important in the Magnuson-Stevens Act and the RFA and, if not properly conducted or considered, Congressional intent will not be satisfied. In our current economic situation, the BRD regulations are causing even greater economic difficulty than claimed by the agency, even though the agency stated and the shrimp fishery advised that many shrimp operations will go out of business because of the BRD regulations.

The Importance of the Regulatory Flexibility Act

Congress amended the RFA in 1996 to allow judicial review of regulations to ensure compliance with the review and analysis requirements required by that law as an additional protection for small businesses. As you have heard, at least two courts have been very critical of NMFS' implementation of this statute. We have been working with SBA to develop additional approaches for ensuring improved consideration of the impacts of fishery management regulations on our industry. In particular, we would like this Subcommittee to be aware that SBA plays a special role in evaluating small business issues in regulations issued by EPA and OSHA. We would like to see SBA play a similar role in the fishery management process, particularly after our experience with the BRD regulations. We feel we must have an advocate for our concerns when regulations are reviewed internally in the government, particularly where NMFS is under great pressure from other interest groups and where NMFS is reviewing technology they developed.

We also believe the Subcommittee should review the manner in which NMFS uses emergency regulations. We have been subjected to emergency regulations in situations where the only real reason is for the convenience of the agency. For example, last year NMFS decided to undertake an unannounced study of the efficacy of BRDs and mandated new recordkeeping and observer rules on an emergency basis, without advance notice, opportunity for comment, or a delayed effective date to allow us to come into compliance. The difficulty was that we did not have sufficient Coast Guard required life saving equipment and liability insurance to accommodate an observer, plus the expense of buying additional life saving equipment and increased liability insurance. NMFS never said that such a program was needed during the 6-7 years they studied the BRD issue. In the end, the agency did not enforce the rule and sufficient volunteers that could accommodate an observer came forward to complete the study. We should not have to sue to require the agency to follow normal rulemaking, a fundamental requirement of constitution due process.

Conclusion

Over the last ten years, the shrimp fleet in the Gulf of Mexico has experienced very difficult economic times. We have been subjected to extremely expensive regulatory requirements, decreasing gross revenue and increasing operating costs. We have learned to live with the TEDs, at great cost to us. Now we must use BRDs, which we believe do not achieve the goals set for them, at great cost, and without creating net benefits to the Nation. Shrimp have but a one year life cycle, if not harvested within that time frame, the resource and revenue is non-recoverable creating a loss to the Nation. We ask that this Subcommittee give

consideration to legislation that will improve the way in which economic data is collected and used by the Councils and NMFS and that negative economic impacts be mitigated when fishery management regulations are put into effect.

Thank you for your attention.

[1] NMFS also concluded that the requirement to use BRDs would result in a reduction of annual gross revenues of more than 5 percent for these small businesses. TSA believes that this is a substantial underestimate of the cost of BRDs, even though 5 percent is a very large number of \$2.95 billion in sales.

[2] This Subcommittee's 1995 Amendments to the Magnuson-Stevens Act called for practical measures to reduce bycatch "to the maximum extent practicable." However, this version was not enacted into law.

[3] 49 Fed. Reg. 39548, 39550 (Nov. 24, 1984). In other words, juvenile red snapper die naturally in large numbers, even if not caught as bycatch.

[4] "Managing the Nation's Bycatch: Priorities, Programs, and Actions for the National Marine Fisheries Service," Feb. 1998

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