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THE TANGLED NET OF MARINE FISHERY REGULATIONS

JOSEPH P. PATNER*

I. INTRODUCTION

Spend any time fishing among a group of veteran anglers, and one undoubtedly will hear the often repeated phrase of an idle fisherman, "you should have been here yesterday." Unfortunately, for both king mackerel and Spanish mackerel fishermen, yesterday, as the following account indicates, was a long time ago.¹

For inshore fishermen, the new year used to bring nothing but great fishing.

Remember the January and February Spanish mackerel runs in Lake Worth.

By the millions, the long, silver-blue and yellow-spotted macks would rush the lake to gorge on glass minnows seeking refuge in the inshore waters.

At the Blue Heron Bridge and at the Juno and Lake Worth Piers, fishermen stood elbow to elbow while boaters anchored so close to one another, you could have puddle-jumped them if you wanted.

'To land a fish you flipped the rod, so the fish came out of the water, passed all the lines and landed on the bridge . . . All those fish and fisherman—it was a fantastic sight.'

Years of plenty, at least as far as Spanish and king mackerel are concerned, are history.²

A similar scenario is intimated for the king mackerel as well.³

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1. 50 C.F.R. § 642.2 (1987) (defining coastal pelagic fish for the purpose of implementing the Fishery Management Plan developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Fishery Conservation and Management Act).

2. Fogt, *Overfishing Nets Mackerel Shortage*, Palm Beach Post, Jan. 1, 1989, at B14.

3. In the words of one fisherman: "As far as I'm concerned, this whole season has been a flop. It's even worse than last year or the year before. Normally, I'll [sic] have caught 40 king-fish by Christmas, but this year, I don't think I've caught as many as 10." *Id.* Fogt's article was included in a letter from Roy Williams, Assistant Executive Director of the Florida Marine Fisheries Commission, to Mrs. Elaine Knight, Chairwoman of the South Atlantic Fishery Management Council, to indicate fishery management failures (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

The hard facts are that a yearly average of 87,896 pounds of Spanish mackerel were caught off Palm Beach County from 1983 until 1987.⁴ The yearly average from 1951 until 1959 was 1.97 million pounds.⁵ The impact of this decline is significant, for this resource contributes to the nation's economy, food supply, health, and recreational opportunities.⁶

In 1976, the United States Congress passed the Magnuson Fishery Conservation and Management Act after determining that through overfishing and inadequate fishery management and conservation practices certain fish stocks were depleted to a point which threatened their survival.⁷ The Magnuson Act marked the beginning of a national program to conserve and manage domestic fishery resources.⁸ Pursuant to the Act, regional councils were created to regulate the domestic fisheries within their geographic region.⁹

Similarly, Florida moved to enact laws and standards to manage and preserve the state's marine fishery resources.¹⁰ In furtherance of this goal, a marine fisheries commission was created and given rule making authority regarding conservation and management of state marine fisheries resources.¹¹ The Florida and federal marine fisheries conservation acts, although created with the goals of conservation and management in mind, have given rise to the tangled net of marine fishery regulation which this paper will address.

II. REGULATION

In 1984, the Florida Marine Fisheries Commission (Commission) found the Gulf-Atlantic stock of king mackerel dangerously depleted due to excessive harvesting and instituted a state fishery management plan to bring about the renewal of this valuable resource.¹² The Com-

4. Statistical abstract provided by the Florida Marine Fisheries Commission March 6, 1989 (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

5. *Id.*

6. 16 U.S.C. § 1801(a)(1) (1988).

7. *Id.* § 1801(a)(2).

8. *Id.* § 1801(a)(6).

9. *Id.* § 1852(h)(1), (3). See Greenberg & Shapiro, *Federalism in the Fishery Conservation Zone: A New Role for the States in an Era of Federal Regulatory Reform*, 55 S. CAL. L. REV. 641, 642 (1982). Florida belongs to both the South Atlantic Council, which has authority over fisheries off the Atlantic Coast in federal waters, and the Gulf Council, which has authority over the fisheries off the Gulf coast in federal waters. 16 U.S.C. § 1852(a)(3), (5) (1988). For a definition of "federal waters" see *infra* note 97 and accompanying text.

10. FLA. STAT. § 370.025 (1983).

11. *Id.* § 370.026-.027.

12. FLA. ADMIN. CODE ANN. r. 46-12.001 to .005 (1984). For a delineation of state migratory boundaries, see *id.* r. 46-12.002(2). For a delineation of federal migratory boundaries, see 50 C.F.R. § 642.29 (1987).

mission explicitly found it to be in the best interest of both the king mackerel fishery and the residents of Florida to enact laws which were inconsistent with the federal fishery management plan.¹³ A bag limit of two king mackerel per person per trip was instituted upon all harvesters, both recreational and commercial, of the Gulf-Atlantic stock.¹⁴ Prior to this time, the federal management plan had focused on enacting separate quotas for recreational and commercial mackerel harvesters.¹⁵

In 1985, the Commission instituted a landmark program to protect, conserve, and replenish Florida's Spanish mackerel fishery.¹⁶ Initially, the use of gill nets was restricted.¹⁷ The use of gill nets in waters off Dade and Palm Beach counties was further restricted to nets that are set and retrieved exclusively by hand.¹⁸ Within a year, the Commission further restricted the use of gill nets for the harvest of Spanish mackerel, and imposed a commercial catch limit.¹⁹ The Department of Natural Resources was given the responsibility of determining when the commercial harvest quota had been reached in a particular area.²⁰ Once the predetermined quota for a particular area was reached the Spanish mackerel season was closed.²¹

For purposes of the commercial harvest quota, the total commercial harvest consisted of Spanish mackerel caught from state waters and the contiguous federal waters of the fishery conservation zone.²² The quota method proposed, by including the fishery conservation zone, attempted to eliminate prejudice in the state quota system caused by harvesters operating in federal waters. Finally, a state recreational bag limit was established whereby no recreational fisherman could keep more than four Spanish mackerel per day.²³ Once the commercial fishing season was closed, all harvesters of Spanish mackerel, whether recreational or commercial, became subject to the recreational bag limit.²⁴ The rule changes did not go unnoticed by the commercial fishermen. Profiteering harvestors, wary of any attempt to regulate the

13. FLA. ADMIN. CODE ANN. r. 46-12.001(2) (1984).

14. *Id.* r. 46-12.004.

15. See 50 C.F.R. § 642.21 (1983).

16. See FLA. ADMIN. CODE ANN. r. 46-23.001(1) (1985).

17. *Id.* r. 46-23.003(2).

18. *Id.* r. 46-23.003(1).

19. See *id.* r. 46-23.003(2)-(5), 23.004 (1986).

20. See *id.* r. 46-23.004.

21. See *id.* For season dates, see FLA. ADMIN. CODE ANN. r. 46-23.004 (1986).

22. FLA. ADMIN. CODE ANN. r. 46-23.004(1)(d), (2)(d), (3)(d) (1986). For a description of the fishery conservation zone see *infra* note 97 and accompanying text.

23. FLA. ADMIN. CODE ANN. r. 46-23.005(1)-(2) (1986).

24. *Id.* r. 46-23.004(1)(c), (2)(c), (3)(c).

resource and their income, challenged the regulations. Their challenges ultimately failed.²⁵

In 1987, the federal government responded with a fishery management plan. The ensuing plan was, however, completely at odds with Florida's Spanish mackerel plan. A commercial allocation of 1.42 million pounds for the Gulf-migratory-group and 2.36 million pounds for the Atlantic-migratory-group was established.²⁶ A recreational allocation for the Gulf-migratory-group was established at 1.08 million pounds per fishing year, while the Atlantic-migratory-group limit was set at 0.74 million pounds.²⁷ The recreational harvester operating off Florida's East Coast was, therefore, allocated only about one-third of the amount of Spanish mackerel allocated to commercial fishermen working the same fishery.

In addition to the recreational quota, anglers seeking Spanish mackerel from the Gulf-migratory-group were limited to three fish per person per trip.²⁸ Furthermore, the Atlantic-migratory-group was further divided into northern and southern regions.²⁹ Members of the general public fishing in the southern region, off Florida waters, were allowed to keep only four fish per person per trip.³⁰ Incredulously, Georgia, South Carolina, and North Carolina anglers harvesting from the same stock of fish were allowed to keep ten fish per person per trip.³¹

The federal regulations seem entirely untenable in light of Florida's imposition of a bag limit of four fish on anglers in state waters to help conserve the Spanish mackerel resource.³² Neither Georgia nor the Carolinas have similar restrictions on their anglers. Persons fortunate enough to live north of Florida could harvest any number of fish from state waters, then move out to federal waters to harvest an additional ten fish. Florida anglers were restricted to four Spanish mackerel in state waters, and four Spanish mackerel in federal waters.³³

Reaction by the Commission to the federal regulations was swift. The Commission believed that a four fish bag limit should be approved throughout the migratory range, rather than off Florida only.³⁴ The Commission felt that, among other things, the differing

25. See cases cited *infra* note 108.

26. 50 C.F.R. § 642.21(c)(1)-(2) (1987).

27. *Id.* § 642.21(d)(1)-(2).

28. *Id.* § 642.28(a)(3).

29. *Id.* § 642.28(a)(4)(iii) (the boundary for this division is a line extending directly east from the border of Florida and Georgia).

30. *Id.* § 642.28(a)(4)(i).

31. *Id.* § 642.28(a)(4)(ii).

32. FLA. ADMIN. CODE ANN. r. 46-23.005(1)-(2) (1986).

33. 50 C.F.R. § 642.28(a)(4)(i) (1987); FLA. ADMIN. CODE ANN. r. 46-23.005(1)-(2) (1986).

34. 52 Fed. Reg. 25,012 (1987).

bag limits for the Atlantic-migratory-group violated the national standards of the Magnuson Act by discriminating between residents of different states.³⁵ The National Oceanic and Atmospheric Administration determined that the Gulf of Mexico and South Atlantic Fishery Management Councils correctly concluded that due to Florida's fishing opportunities and greater number of fishermen, a uniform four fish bag limit would allocate a disproportionate amount of Spanish mackerel to Florida.³⁶ The Administration further opined that geographic allocations are an integral part of fishery management, and that the differing bag limits did not discriminate against the citizens of any state.³⁷ Finally, the Administration felt that the four fish bag limit in the southern zone complemented the four fish bag limit in Florida waters.³⁸ In short, the Councils and the Administration used Florida's conservation minded regulations against its citizens by allowing the citizens of Georgia and the Carolinas, whose states have no analogous regulations, to harvest up to two and one-half times the number of mackerel per trip.³⁹

The fishing year for Atlantic-migratory-group Spanish mackerel begins on April 1 of each year.⁴⁰ At that time of the year the Spanish mackerel stocks are found far north of Florida.⁴¹ When the federal fishery management plan governing Spanish mackerel was announced, the Commission voiced concern over not only the blatant discriminatory treatment of Florida's citizens, but also that a ten fish bag limit in federal waters off states north of Florida would shorten the fishing year and not distribute it fairly.⁴² The Commission felt that distributing the catch throughout the year was an express intent of the federal fishery management plans.⁴³

35. *Id.* See *infra* note 42 and accompanying text. See also 16 U.S.C. § 1851(a)(4) (1988) (national standard four of the Magnuson Act).

36. 52 Fed. Reg. 25,012 (1987).

37. *Id.* at 25,013.

38. *Id.*

39. In March of 1987, the Florida Marine Fisheries Commission voted to establish a two fish bag limit on king mackerel for all harvesters, commercial and recreational, in all state waters. FLA. ADMIN. CODE ANN. r. 46-30.003(3) (1987). An exception was provided for harvesters with federal permits. *Id.* r. 46-30.003(1). If the federal quota for Atlantic-migratory-group king mackerel was met and all fishing was closed, both recreational and commercial, then the bag limit was to revert to zero and the harvest would be closed until the following April 1. *Id.* r. 46-30.004(3). This action brought the state Atlantic fishery regulations in line with the Gulf-Atlantic fishery regulations. See *id.* ch. 46-12 (1986).

40. 50 C.F.R. § 642.20 (1987).

41. Wickstrom, *Spanish Mackerel Mess Worsens as Florida Anglers Get Shorted*, FLA. SPORTSMAN, Nov. 1987, at 26, 27.

42. See 52 Fed. Reg. 25,012 (1987).

43. *Id.*

The fears of the Commission were born out when the National Marine Fisheries Service (Service), determined that as of September 19, 1987, the recreational allocation for Spanish mackerel had been reached.⁴⁴ Thus, on that date recreational fishing for Atlantic-migratory-group Spanish mackerel was closed for the season and would not re-open until April 1, 1988.⁴⁵ Florida's recreational fishermen, who spent the year waiting for the fall and winter Spanish mackerel run, found that the federal government had already closed federal waters to recreational fishing. Fishermen in the waters north of Florida mandated the closure of federal waters by filling the 0.74 million pound quota before any fish arrived in either Florida waters or the federal waters off Florida.⁴⁶

Unfortunately, Florida recreational fishermen were shut out by the federal government, and the commercial season remained open.⁴⁷ In federal waters, commercial fishermen were allowed to continue harvesting fish, without limit, until the commercial quota was reached. The recreational angler who wished to catch just one Spanish mackerel in federal waters for personal consumption was prevented from doing so.

The Service, in accordance with the federal management plan and an agreement to coordinate federal and state seasons, requested the Commission to close all recreational fishing in state waters for the Atlantic-migratory-group.⁴⁸ The Commission unanimously rejected closure of state waters to Spanish mackerel fishermen.⁴⁹ The Commission felt it could no longer coordinate mackerel policy and seasons with the federal government as long as that entity insisted upon a policy which engendered disparate treatment of Florida citizens.⁵⁰ The end result was that Florida recreational anglers were allowed to possess four fish per trip in all state waters.⁵¹ Anglers fishing for Gulf-migratory-group Spanish mackerel in federal waters were subject to a three fish bag limit.⁵² Finally, anglers in federal waters were prevented from taking

44. *Id.* at 35,720.

45. *See id.* at 35,720-21.

46. *See Wickstrom, supra* note 41, at 27-28.

47. *See* 52 Fed. Reg. 35,720 (1987). For an excellent discussion of the impact of the Spanish mackerel regulations upon Florida recreational anglers, *see Wickstrom, supra* note 41, at 26. For a similarly excellent discussion of king mackerel, *see Wickstrom, Federal Kingfish Farce Hits Peak for Nonsense*, FLA. SPORTSMAN, Feb. 1988, at 116.

48. Interview with Roy Williams, Assistant Executive Director of the Florida Marine Fisheries Commission, in Tallahassee, Florida (Mar. 9, 1989) [hereinafter Williams interview]. *See also* FLA. STAT. § 370.025(2)(h) (1987).

49. Williams interview, *supra* note 48.

50. *See* FLA. ADMIN. CODE ANN. ch. 46-23 (1988).

51. *Id.* r. 46-23.005(1)-(2).

52. 50 C.F.R. § 642.28(a)(3) (1987).

any Atlantic-migratory-group Spanish mackerel until April 1, 1988.⁵³ A breakdown in fishery management was becoming painfully evident.

By mid-December of 1987, the Service determined that the recreational allocation for Gulf-migratory-group king mackerel had been reached.⁵⁴ Therefore, the bag limit was reduced to zero and recreational fishermen were prohibited from possessing king mackerel harvested from federal waters.⁵⁵ Again, the situation arose of being able to buy, but not catch, a publicly-owned natural resource. Two weeks later this inequality was remedied when the federal government announced the closure of the Gulf-migratory-group of king mackerel to commercial harvest.⁵⁶ Thus, all harvesting of Gulf-migratory-group king mackerel was closed until April 1, 1988, when the same king mackerel would miraculously become members of the Atlantic stock off Florida's East coast.⁵⁷ Fishermen on Florida's West coast had to await July 1, 1988, for the opening of a new fishing season.⁵⁸ The closure of the commercial harvest in federal waters also marked the closure of adjacent state waters for all harvesters of Gulf-migratory-group king mackerel. Unlike the Spanish mackerel fishery, the state king mackerel measures mandated closure of state waters upon closure of the harvest in adjacent federal waters.⁵⁹

Shortly after the re-opening of the new fishing season in 1988, the Service announced a change in the resource allocation of both Spanish and king mackerel.⁶⁰ Despite the shorter season and per trip quotas imposed on recreational harvesters of Spanish mackerel, the federal government allocated 76% of the Atlantic-migratory-group Spanish mackerel to commercial harvesters and only 24% of the resource to the general public.⁶¹ Commercial harvesters of the Gulf-migratory-group were similarly allocated 57% of that fishery's resources.⁶² Far more egregious, however, was the federal government's proposed bag limit for the recreational fishery.

The Gulf of Mexico and South Atlantic Fishery Management Councils recommended no change in the three fish bag limit for Atlantic-

53. See 52 Fed. Reg. 35,720, 35,720-21 (1987).

54. See *id.* at 49,162-63.

55. *Id.* at 49,163.

56. *Id.* at 49,162-63.

57. *Id.* See 50 C.F.R. § 642.20 (1987). See also *id.* pt. 642, app. A fig. 2 (p. 194).

58. 50 C.F.R. § 642.20 (1987); 52 Fed. Reg. 49,162, 49,163 (1987); FLA. ADMIN. CODE ANN. r. 46-12.0045 (1986).

59. FLA. ADMIN. CODE ANN. r. 46-30.004(1)-(3) (1987). See *id.* ch. 46-23 (1986). Cf. *id.* r. 46-12.001(2) (1984) (recognizing need for inconsistency with federal fishery management plan) to *id.* r. 46-12.001(2) (1986) (chapter intended to complement the provisions of chapter 46-30).

60. See 53 Fed. Reg. 22,036, 22,037-38 (1988).

61. *Id.* at 22,037.

62. *Id.*

migratory-group king mackerel in federal waters off North Carolina, South Carolina, and Georgia.⁶³ However, they did recommend reduction of the bag limit for harvesters in federal waters contiguous to Florida from three to two fish per person per trip.⁶⁴ This time the Service was not content to merely discriminate against anglers in the Atlantic. The Councils proposed an increase in the bag limit for Gulf-migratory-group Spanish mackerel in waters contiguous to Florida's from three to four fish per person per trip.⁶⁵ Not willing to treat the Gulf stock fairly among all residents, the Service proposed an increase in the bag limit to ten fish per person per trip for the same stock of fish in the waters off Alabama, Mississippi, Louisiana, and Texas.⁶⁶ Once again, the federal government chose to discriminate against Florida's citizens.

Ten members of the Gulf of Mexico and South Atlantic Fishery Management Councils filed a minority report requesting the Secretary of Commerce to reject the proposed Gulf-migratory-group Spanish mackerel bag limits. They contended that the variable bag limits were not supported by the record, failed to manage the stock as a unit throughout its range, and were not fair and equitable as required by the Magnuson Act.⁶⁷ The Service characterized the bag limit as consistent with Florida's regulations.⁶⁸ Florida, with its conservation minded mackerel regulations, was once again being penalized for enacting tough measures.

The Commission had of course witnessed the disparate treatment of Florida's residents the year before.⁶⁹ Shortly after the announcement of the proposed federal plan, the Commission voted to delete the automatic closure provision for the harvest of Atlantic stock king mackerel.⁷⁰ Regardless of what the federal government now decided, a two fish bag limit was in force at all times for all harvesters in the Atlantic fishery.⁷¹ The Commission also voted to delete the automatic closure provision for Gulf-Atlantic-group king mackerel.⁷² A one fish per per-

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* See also 16 U.S.C. § 1851(a)(3)-(4) (1988).

68. 53 Fed. Reg. 22,036, 22,037 (1988). The National Marine Fisheries Service also noted that the reduction in the bag limit for Atlantic-migratory-group king mackerel in the southern area was necessitated due to Florida's high population and concomitant increased fishing effort in that area. The lower bag limit was further justified on the basis of its consistency with Florida's regulations. *Id.*

69. See *supra* notes 26-39 and accompanying text.

70. FLA. ADMIN. CODE ANN. r. 46-30.004(1)-(2) (1988).

71. See *id.* r. 46-30.002(1), .003(2).

72. *Id.* r. 46-12.0045(1)-(3) (1988).

son per day bag limit applicable to all harvesters was instituted to regulate the Gulf-Atlantic fishery where closure of the adjacent federal waters occurred prior to the end of Florida's established season.⁷³ The Commission could now refuse to close state waters to the harvest of king mackerel after being requested to do so by the Service.⁷⁴

On October 5, 1988, almost six months before the scheduled end of the fishing season, and while the Atlantic-migratory-stock of Spanish mackerel was far north of Florida, the Secretary of Commerce declared that the recreational allocation of fish had been harvested, thus the bag limit was reduced to zero.⁷⁵ For the second year in a row, Florida recreational anglers were shut out of the winter run of Atlantic Spanish mackerel. The folly of the year before had been repeated; the season was again over before it ever started for many Florida anglers. Anglers in Georgia and the Carolinas, however, had again been allowed to possess two and one half times more Spanish mackerel than Florida's citizens.⁷⁶

When the Service proposed the reduction in the bag limit for Atlantic king mackerel in waters adjacent to Florida's territorial waters, one of the justifications given was the maintenance of a year round recreational fishery.⁷⁷ On October 14, more than five months before the end of the fishing season, the federal rationale was proven a failure as the Secretary of Commerce closed the recreational fishery for Atlantic-migratory-group king mackerel.⁷⁸ Any king mackerel taken by anglers in federal waters had to be immediately returned to the sea unharmed.⁷⁹ Atlantic anglers again found themselves in the unique position of being forced to watch commercial netters harvest Spanish and king mackerel from federal waters for profit. To catch commercially and sell was legal; to catch recreationally and consume was not.⁸⁰ Recreational anglers fishing in state waters were allowed to keep four Spanish mackerel per day,⁸¹ two Atlantic group king mackerel per

73. *Id.* r. 46-12.0045(3).

74. Williams interview, *supra*, note 48. See FED. FISHERIES NEWS BULL., 89-06, Mar. 1, 1989, at 2.

75. 53 Fed. Reg. 39,097 (1988).

76. See 50 C.F.R. § 642.28(a)(4)(i)-(iii) (1987). See also Wickstrom, *supra* note 41.

77. 53 Fed. Reg. 22,036, 22,037 (1988).

78. *Id.* at 40,231.

79. *Id.*

80. Finally, on November 25, 1988, the Secretary of Commerce announced the closure of federal waters to the commercial harvest of king mackerel. 53 Fed. Reg. 47,718 (1988). On December 21, 1988, the closure of federal waters to the recreational harvest of Gulf-migratory-group king mackerel was announced. *Id.* at 51,280.

81. FLA. ADMIN. CODE ANN. r. 46-23.005(1) (1988).

day,⁸² and one Gulf-Atlantic-group king mackerel per day.⁸³ Harvesters in federal waters were not allowed to possess a single Atlantic-group Spanish or king mackerel.⁸⁴

Further complications developed on November 25, 1988, when Federal District Judge Malcolm J. Howard announced a temporary injunction on enforcing the closure of the recreational and commercial Atlantic-group king mackerel fishery.⁸⁵ The injunction barred the Secretary of Commerce from closing the season and ordered a review of the appropriateness of closure.⁸⁶ The injunction was, however, held to be an impermissible remedy and was reversed by the Fourth Circuit Court of Appeals.⁸⁷

In the midst of the confusion the Commission was putting the finishing touches on its most ambitious measures yet to protect and conserve Florida's Spanish mackerel resources. On October 1, 1988, regulations went into effect which substantially restricted the commercial fishery.⁸⁸ Daily limits on commercial harvest would apply for certain times and conditions.⁸⁹ Unlimited commercial harvest of the Spanish mackerel fishery was also restricted.⁹⁰ Furthermore, commercial harvesters would be required to reduce their daily catch if a certain threshold was reached in the regional harvest or if adjacent federal waters were closed to commercial harvest.⁹¹ The recreational bag limit continued, but was now applied to Spanish mackerel harvested from either Florida's waters or adjacent state or federal waters.⁹²

The Commission no longer even attempted to work with the Service. Instead, it was establishing its own recreational possession limits for fish caught in state waters or adjoining waters. It also, as a matter of policy, refused to follow the federal government's requests to close state waters when the fisheries in adjacent federal waters were closed.⁹³ The tangled net of marine fisheries regulation was woven.

82. *Id.* r. 46-30.003(2).

83. *Id.* r. 46-12.0045(3).

84. *See* 53 Fed. Reg. 39,097 (1988); *Id.* at 40,231.

85. *Kramer v. Verity*, No. 88-121-CIV-4A (E.D.N.C. Nov. 25, 1988).

86. *Id.*

87. *Kramer v. Mosbacher*, 878 F.2d 134, 137-38 (4th Cir. 1989).

88. *See* FLA. ADMIN. CODE ANN. ch. 46-23 (1988).

89. *See id.* r. 46-23.004(1)-(3).

90. *See id.* r. 46-23.004(1)(b)(2), (2)(b)(1), (3)(b)(1).

91. *See id.* r. 46-23.004.

92. *Id.* r. 46-23.005(1)-(2).

93. Williams interview, *supra* note 48.

III. "COMPREHENSIVE" FEDERAL REGULATION

A. *The Magnuson Act*

Prior to 1976, fishery management was left primarily to the states.⁹⁴ The Magnuson Act represented the first federal attempt at comprehensive management of marine fisheries.⁹⁵ Although primarily a reaction to foreign fishing off the United States, the Act provided for the development and enforcement of plans for fishery conservation and management.⁹⁶ It established a zone contiguous to the territorial sea of the United States over which the United States was to exercise exclusive fishery management authority.⁹⁷ Regional fishery management councils were established to prepare fishery management plans for the fisheries within their regions.⁹⁸ Although the Magnuson Act vests broad authority in the regional councils, any fishery management plan prepared must be consistent with the national standards set out in the Act.⁹⁹

The Magnuson Act now requires the Secretary of Commerce to ensure, to the extent practicable, a fair apportionment of recreational

94. Comment, *Alaska v. F/V Baranof: State Regulation Beyond the Territorial Sea After the Magnuson Act*, 13 B.C. ENVTL. AFF. L. REV. 281, 281 (1986).

95. *Id.*

96. Comment, *The Unique Federalism of the Regional Councils Under the Fishery Conservation and Management Act of 1976*, 9 B.C. ENVTL. AFF. L. REV. 163, 169 (1980).

97. See 16 U.S.C. § 1811-1812 (1982). The zone was to be known as the fishery conservation zone; its inner boundary was coterminous with the seaward boundary of each of the coastal states, its outer boundary was a line following the baseline from which the territorial sea is measured in such a manner that each point on it was precisely two hundred nautical miles from the baseline. *Id.* § 1811. The fishery conservation zone has since become the exclusive economic zone. *Id.* § 1811 (1988). Although the boundary of the exclusive economic zone is very similar to that of its predecessor, the United States has modified its claim of authority over resources in the zone. See 16 U.S.C. §§ 1811-12 (1988); Proclamation No. 5030, 48 Fed. Reg. 10,605 (1983).

98. 16 U.S.C. § 1852 (1988). Florida belongs to both the South Atlantic and Gulf Councils. *Id.* § 1852 (a)(3), (5). The South Atlantic Council contains thirteen voting members, eight of whom are selected by the Secretary of Commerce. The Gulf Council consists of seventeen members, eleven of whom are chosen by the Secretary. *Id.* The remaining voting members of each council consist of the principal state official with marine regulation responsibility from each member state, and the regional director of the National Marine Fisheries Service for the geographic area concerned. *Id.* § 1852(b)(1)(A)-(B). Florida, with by far the most coastline and fishermen of any other state on either council, has only three representatives on each of the two councils on which it has membership. *Governor Wants More Florida Appointees on Federal Councils*, FLA. SPORTSMAN, Dec. 1988, at 60 (letter from Florida Governor, Bob Martinez, to the Secretary of Commerce); Williams interview, *supra* note 48.

99. 16 U.S.C. § 1853 (a)(1)(C) (1988). See generally *id.* § 1853 (a)-(e) (governing contents of fishery management plans). For a delineation of the national standards of the Magnuson Act, see 16 U.S.C. § 1851(a)(1)-(7) (1988).

and commercial interests on the councils.¹⁰⁰ Perhaps to coincide with this addition, a voting member must now disclose any financial interest in any fishery over which the council concerned has jurisdiction.¹⁰¹ The Act further commands that it not be construed as either extending or diminishing the jurisdiction or authority of a state over the waters adjacent to the state.¹⁰² A significant exception, particularly in light of the preceding events and the forth-coming analysis, is highlighted by the Secretary of Commerce's power to assume responsibility for the regulation of a fishery, pursuant to the applicable fishery management plan and regulations promulgated to implement it.¹⁰³

B. Concurrent State Regulation

1. The Florida Marine Fisheries Commission

In 1983, the Commission was created as a subdivision of the Department of Natural Resources.¹⁰⁴ The Commission has rulemaking authority over marine life; rules adopted by it must have as their paramount concern the continued vitality of the state marine fisheries resources.¹⁰⁵ Management decisions made by the Commission have to be fair and equitable to all persons of the state.¹⁰⁶ Furthermore, Florida's fishery management plans must be developed with consideration of state, federal, and interstate plans because "[i]nconsistencies [among plans] should be avoided unless it is determined that it is in the best interest of the fisheries or residents of this state to be inconsistent."¹⁰⁷

100. See 16 U.S.C. § 1852(b)(2)(A) (1988).

101. *Id.* § 1852(k)(1)-(2).

102. *Id.* § 1856(a)(1)-(2). In general, a state may not regulate, either directly or indirectly, a fishing vessel operating outside state boundaries, unless the vessel is registered by the state. *Id.* § 1856(a)(3). Thus, the Act does provide for the extraterritorial regulation of state-registered fishing vessels.

103. 16 U.S.C. § 1856(b)(1)(A)-(B) (1988). Where the Secretary of Commerce finds that: the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the exclusive economic zone and beyond such zone; and [] any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

id., the Secretary must assume responsibility for the regulation of the fishery. *Id.*

104. FLA. STAT. § 370.026(1) (1983). The Marine Fisheries Commission is composed of seven members who are appointed by the Governor. When making appointments to the Commission, the Governor must consider whether financial interests may affect an individual. No one interest is allowed to dominate the Commission. *Id.* § 370.026(1) (1987).

105. FLA. STAT. §§ 370.025(2)(a), .027(1) (1987).

106. *Id.* § 370.025(2)(g).

107. *Id.* § 370.025(h).

In practice, the Commission *has* adopted a conservative management approach.¹⁰⁸

2. Preemption

After the passage of the Magnuson Act, a significant issue arose regarding the validity of state fisheries regulation.¹⁰⁹ Although the Act calls for exclusive federal management in the exclusive economic zone,¹¹⁰ it now appears to be well settled that a state can regulate the fishing activities of its citizens beyond its seaward boundary if there is no conflict with a federal regulation.¹¹¹ Florida's new Spanish mackerel regulations prohibit the possession of more than four fish per day in state waters, regardless of origin. Federal regulations allow for the possession of four Spanish mackerel *per trip* from federal waters.¹¹² Under federal law, an individual could harvest the maximum allowable catch of Spanish mackerel, return to port, and travel back out to federal waters and lawfully harvest another limit. Under Florida law, however, the fisherman would be in violation of state law upon returning to Florida.¹¹³ Thus, the situation encountered is not a lack of

108. See *Southeastern Fisheries Ass'n. v. Department of Natural Resources*, 8 FLA. ADMIN. L. REP. 4272, 4282-84 (1986). *Southeastern Fisheries Ass'n* involved a challenge to the Florida Marine Fisheries Commission's proposed Spanish mackerel regulations, see FLA. ADMIN. CODE ANN. r. 46-23.001 to .006 (1986), by commercial fishing interests. The hearing officer found that the Commission had the authority to establish seasons and bag limits, prohibit the use of specific harvesting equipment and close certain areas to harvesting where it was necessary for the continued vitality of the resource. *Southeastern Fisheries Ass'n*, 8 FLA. ADMIN. L. REP. at 4282. The hearing officer's decision clearly approved of the conservative stance taken by the Commission in regulating the Spanish mackerel fishery. See *id.* at 4282-85.

109. See D. CHRISTIE, *FLORIDA COASTAL LAW AND POLICY: CASES AND READINGS* 219-20 (1985).

110. 16 U.S.C. § 1811(a) (1988).

111. *Anderson Seafoods, Inc. v. Graham*, 529 F.Supp. 512, 513-514 (N.D. Fla. 1982) (Congress, in enacting the Magnuson Act, did not intend to completely preempt state regulation in the fishery conservation zone, rather, it intended to limit application of state regulation in that zone to vessels registered under the laws of the state). See also *Livingston v. Davis*, 465 So. 2d 507, 508-09 (Fla. 1985) (state may exercise regulatory power over vessels registered under state law which are operating outside of territorial waters unless conflicting federal regulations exist or are implemented); *State v. Raffield*, 515 So. 2d 283, 284-85 (Fla. 1st DCA 1987) (enactment of the Magnuson Act was not meant to preempt the extraterritorial regulatory power of the state). Florida's seaward boundary extends three miles from its coastline. *Anderson Seafoods, Inc.*, 529 F.Supp. at 514.

112. Compare 50 C.F.R. § 642.28(a)(3)-(4)(i) (1987) (establishing a per trip three fish limit on Gulf migratory group and a per trip four fish limit on Atlantic-migratory-group, southern area, Spanish mackerel) with FLA. ADMIN. CODE ANN. r. 46-23.005(2) (1988) (limiting possession of Spanish mackerel while in, on or around waters of the State of Florida to four fish per day, regardless of the area of harvest).

113. FLA. ADMIN. CODE ANN. r. 46-23.005(2) (1988). In some instances a return trip to federal waters may not be necessary to violate Florida law. See 50 C.F.R. § 642.28(a)(4)(ii) (1980)

pertinent federal law, but the existence of inconsistent federal law.¹¹⁴

Florida's recently enacted Spanish mackerel regulations may be invalid under the Magnuson Act.¹¹⁵ The Act specifically commands that a state may not regulate outside its boundaries "unless the vessel [to be regulated] is registered under the law of that State."¹¹⁶ Management provisions that are more conservation minded should not be preempted by federal law.¹¹⁷ Legal precedent exists to support the proposition that extraterritorial state fishery regulations should be upheld when they promote the goals of the Magnuson Act.¹¹⁸ State laws which are reasonably calculated to bring about the protection and enhancement of marine fisheries should never be preempted by the Magnuson Act merely because the state regulatory body adopts a stronger conservation ethic than the federal government.

C. Discrimination

Although the Magnuson Act mandates that fishery management plans not discriminate between residents of different states, the federal councils have enacted rules which explicitly violate the national standards pertaining to discrimination in fishery management.¹¹⁹

(Atlantic-migratory-group, northern area, ten fish per trip limit). One who harvested the legal limit of Spanish mackerel from Florida waters and then harvested any Spanish mackerel from federal waters would likewise be in violation of Florida law on their return to state waters. See FLA. ADMIN. CODE ANN. r. 46-23.005(1)-(2) (1988).

114. Cf. *State v. Millington*, 377 So. 2d 685 (Fla. 1979) (court determined that state could regulate the harvest of marine resources outside its territorial boundaries).

115. See *Living's*, 465 So. 2d at 508-09 (state's regulation of extraterritorial waters will survive only in the absence of conflicting federal regulation); *State v. Sterling*, 448 A.2d 785, 787 (R.I. 1982) (state can regulate harvesting of a species by its citizens which occurs beyond its boundaries provided it serves a legitimate state interest and no federal regulations regarding the species apply).

116. 16 U.S.C. § 1856(a)(3) (1988).

117. *Id.* § 1801(b)(1) (congressional purpose in enacting chapter was to conserve and manage United States' fishery resources).

118. See *State v. Painter*, 695 P.2d 241 (Alaska Ct. App.), cert. denied, 474 U.S. 990 (1985). In *Painter* the defendant was charged with harvesting tanner crabs from federal waters in violation of Alaska law. The trial court found that state and federal regulation of the tanner crab fishery were substantially the same and thus were not conflicting. The defendant's argument that because the state's sanctions for violation were criminal while those of the federal scheme were mainly civil militated in favor of finding preemption were not relied on by either the trial or appellate courts. *Id.* at 242-43. The appellate court stated that "[p]reemption is not triggered by the mere promulgation of federal regulations pertaining to the same fishery." *Id.* at 243.

119. 16 U.S.C. § 1851 (a)(4) (1988). The Councils have enacted and proposed rules which: (1) allow the possession of ten Spanish mackerel per trip in the Atlantic off the Carolinas and Georgia while only four from off Florida, 50 C.F.R. § 642.28(a)(4) (1987), (2) provide for a bag limit of three king mackerel off the Carolinas and Georgia while only two off Florida's East coast, and (3) allow for the possession of ten Spanish mackerel off Alabama, Mississippi, Louisiana and Texas, yet only four off Florida's West Coast, 53 Fed. Reg. 22,036, 22,037 (1988).

While several representatives on the federal councils have decried these results as discriminatory,¹²⁰ the councils believe that they are equitable.¹²¹ In support of their belief the councils cite Florida's high population and increased fishing effort as reasons why the citizens of northern states should be allowed to possess a greater amount of the fishery resource.¹²² This rationale might be reasonable and correct if the Magnuson Act mandated no discrimination in allocation among states. A state with fewer fishermen could then be allowed to keep more fish per person to approximate the harvest of a state with a greater number of anglers. The fallacy in the councils' rationale is that the Magnuson Act prohibits discrimination among the *citizens* of different states.¹²³ The federal councils have attempted to equalize the total allowable catch for each state and are thereby violating the Magnuson Act by failing to treat citizens of different states similarly.

D. Recreational Versus Commercial

The federal councils have placed both quotas and bag limits on all mackerel fishermen.¹²⁴ The Commission has placed quotas on commercial fishermen and bag limits on recreational fishermen.¹²⁵ Furthermore, the councils have been prone to closing the recreational season for mackerel before the commercial season is closed.¹²⁶ This practice is wrong. An individual should never be prohibited from catching a natural resource to consume while the commercial sale of the same resource is legal. In certain areas the councils have designated up to 76% of the mackerel to commercial fishermen.¹²⁷ Allocating three-fourths of a fishery resource to commercial fisherman may actually violate the Magnuson Act. Similarly, closing the season to the general public, but not the commercial fisherman, may also violate the Act.¹²⁸

The Commission contends that its regulations discriminate against neither recreational nor commercial fishermen.¹²⁹ To the Commis-

120. See 52 Fed. Reg. 25,012, 25,013 (1987); 53 Fed. Reg. 22,036, 22,037 (1988).

121. See 52 Fed. Reg. 25,012, 25,013 (1987); 53 Fed. Reg. 22,036, 22,037 (1988).

122. 53 Fed. Reg. 22,036, 22,037 (1988).

123. 16 U.S.C. § 1851(a)(4) (1988).

124. See 52 Fed. Reg. 25,012 (1987); 53 Fed. Reg. 22,036 (1988).

125. See FLA. ADMIN. CODE ANN. ch. 46-23 (1988).

126. See 52 Fed. Reg. 35,720 (1987); 53 Fed. Reg. 39,097 (1988).

127. See 53 Fed. Reg. 22,036, 22,037 (1988).

128. National standard four of the Magnuson Act requires all fishery management plans to be structured so that no individual or corporation may acquire an excessive share or privilege. 16 U.S.C. § 1851(a)(4) (1988).

129. Williams interview, *supra* note 48.

sion's credit, at no time under their regulations may a commercial fisherman keep a mackerel to sell, yet a recreational angler not keep one to consume. Upon fulfillment of commercial quotas, harvesters may operate only under recreational bag limits.¹³⁰

Despite stringent regulation of commercial fishermen and their early opposition, many commercial harvesters are beginning to support the Commission.¹³¹ Although any mackerel regulation will cause commercial fishermen to lose money in the short run, the Commission has convinced many of the commercial harvesters that it is trying to improve fishing for everyone.¹³² In fact, Roy Williams, Executive Assistant Director of the Florida Marine Fisheries Commission, believes that the controversy is not between recreational and commercial fishermen but between the proponents of a small versus a large fishery.¹³³ The Commission enacted rules to respond to several Southeast Florida fish houses which were harvesting mackerel in very large quantities, thus fulfilling the commercial quota in a very short time.¹³⁴ These rules, which limit the harvest and suspend large scale harvesting until later in the year, should actually benefit the majority of the commercial fishing industry.¹³⁵

E. Lack of Faith in Federal Management

On October 11, 1988, the Service announced the impending closure of the Atlantic-migratory-group king mackerel recreational fishery.¹³⁶ On November 18, 1988, the Service announced the impending closure of the commercial fishery as well.¹³⁷ In response to the closure notification and anticipated closure, commercial and recreational king mackerel fishermen from North Carolina and the State of North Car-

130. See FLA. ADMIN. CODE ANN. r. 46-23.002(7) (1988).

131. See *supra* note 108.

132. Williams interview, *supra* note 48.

133. *Id.*

134. *Id.*

135. *Id.* See FLA. ADMIN. CODE ANN. r. 46-23.004 (1988). Letters to the Commission from various commercial interests also indicate a general support of regulations that would serve to extend the commercial season. See Letter from Lewis E. Hudgins, Secretary-Treasurer of Hudgins Fish Company, to Roy Williams, Assistant Director of Florida Marine Fisheries Commission (Feb. 20, 1989); Letter from Charles W. Sembler II, Senior Vice President of Sembler and Sembler Incorporated, to Roy Williams, Assistant Director of Florida Marine Fisheries Commission (Feb. 21, 1989); Letter from Burton Silnutzer, of Burton Silnutzer Incorporated, to Roy Williams, Assistant Director of Florida Marine Fisheries Commission (Feb. 22, 1989) (supporting recommendations designed to extend commercial harvesting season while maintaining quota) (copy of letters on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

136. See *Kramer v. Verity*, No. 88-121-CIV-4A at 4 (E.D.N.C. Nov. 25, 1988).

137. See *id.*

olina, as *parens patriae*, brought suit in federal court seeking declaratory and injunctive relief on November 10, 1988.¹³⁸ The plaintiffs sought a preliminary and permanent injunction preventing the Service from closing the king mackerel fishery, and sought to have the quota for king mackerel raised.¹³⁹

The plaintiffs alleged that the Service had not adequately established, as required by the applicable fishery management plan, that the Atlantic-group king mackerel had been overfished and that the established quotas discriminated against residents of North Carolina.¹⁴⁰ Although the Service is generally accorded wide discretion in implementing the requirements of the Magnuson Act, the district court preliminarily enjoined the closure of the Atlantic-migratory-group king mackerel fishery.¹⁴¹ The court recognized that evidence existed which arguably supported the determination that the Atlantic fishery had been overfished, but it was "not convinced that the council's determination of overfishing was made according to the *best* scientific evidence available."¹⁴² Finally, the court recognized that the existing quotas might constitute discrimination in violation of the Magnuson Act.¹⁴³ Thus, the fishery remained open.

On February 23, 1989, the Fourth Circuit Court of Appeals granted a stay of the district court's ruling preventing the closure of the king mackerel fishery.¹⁴⁴ The federal commercial and recreational seasons for Atlantic king mackerel were finally closed.¹⁴⁵ Furthermore, Florida was asked to close its state waters as well.¹⁴⁶ Florida, no longer subject to automatic closure provisions, refused to comply.¹⁴⁷

The declared policy of the Commission was to cooperate with the Service. The Florida legislature had directed the Commission to cooperate with federal fishery management plans unless the Commission determined the best interests of Florida's citizens or resources demanded inconsistency.¹⁴⁸ The Commission determined that federal dis-

138. *Id.* at 4-5.

139. *Id.* at 5.

140. *Id.* at 6-7.

141. *Id.* at 17. *See* Maine v. Kreps, 563 F.2d 1052, 1055 (1st Cir. 1977) (Secretary of Commerce has substantial discretion in selecting appropriate quota for a given fishery, reviewing court is not to substitute its own judgment as to values and priorities but may only decide whether discretion was exercised rationally and consistently in light of congressional standards).

142. Kramer v. Verity, No. 88-121-CIV-4A at 7 (E.D.N.C. Nov. 25 1988) (emphasis added).

143. *Id.* at 9-10.

144. Order on motion for stay pending appeal, Kramer v. Mosbacher, 878 F.2d 134 (4th Cir. 1989) (No. 88-2995). *See also* FED. FISHERIES NEWS BULL., 89-06, Mar. 1, 1989, at 2.

145. FED. FISHERIES NEWS BULL., 89-06, Mar. 1, 1989, at 2.

146. *Id.*

147. Williams interview, *supra* note 48.

148. FLA. STAT. § 370.025(2)(h) (1987).

crimination against Florida's citizens militated in favor of inconsistency; thus, it refused to close state waters to mackerel fishermen upon closure of adjoining federal waters. It remains to be seen, however, whether the Service can force Florida to close its waters. A provision of the Magnuson Act does provide for a federal takeover of state measures when those measures, or the omission of such measures, threatens a migratory stock of fish.¹⁴⁹ The provision apparently has never been used, and is probably best reserved for use against those states which have failed to enact any conservation measures. In many ways Florida has taken the lead in mackerel regulation; therefore, it would be inappropriate for the federal government to usurp control of Florida waters.

IV. CONCLUSION

When I was younger, I fished with my grandfather from the local inlet jetty for schools of fish gathered off the beach. Invariably, I would attempt to mimic my grandfather's prowess by casting a line in next to his. My grandfather would comment that too many hooks in one place would scare the fish. In much the same way, varying regulations emanating from two different regulatory bodies have proven ineffective.

Florida's attempt to prevent several large fish houses from netting most of the commercial allotment of mackerel has not succeeded. As the mackerel migrate southward they are funneled into dense packs at the narrowing of the continental shelf off Fort Pierce.¹⁵⁰ It is a simple task for the larger harvesters to net most of the commercial quota within a matter of weeks.¹⁵¹ Thus, the schools are prevented from reaching South Florida.¹⁵² This activity is undesirable because it creates a "glut" production period which forces most of the mackerel to be used as frozen fish rather than higher quality fresh fish. Difficult

149. 16 U.S.C. § 1856(b)(1)-(2) (1988).

150. Letter from Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission, to Mrs. Elaine Knight, Chairwoman of the South Atlantic Fishery Management Council (Feb. 16, 1989) (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

151. *See id.* *See also* Letter from Charles W. Sembler II, Senior Vice President of Sembler and Sembler Incorporated, to Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission (Feb. 21, 1989) (indicating that hundreds of thousands of pounds of mackerel can be harvested in a short period of time) (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

152. Letter from Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission, to Mrs. Elaine Knight, Chairwoman of the South Atlantic Fishery Management Council (Feb. 16, 1989) (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

times are also forced upon the small boat operator who depends upon many days of fishing rather than a few large catches, to say nothing of the South Florida recreational fisherman.¹⁵³ The problem may be easily remedied by merely delaying the large scale harvest in federal waters until later in the year as Florida has done in its waters.¹⁵⁴ The schools would then be able to migrate past the bottleneck created by the continental shelf.¹⁵⁵ The Commission has urged the Service to adopt Florida's rules but at present no action has been taken.¹⁵⁶

What are the solutions to the tangled net of marine fishery regulations? The Commission has become a conservation minded organization credited with planning and foresight. The Service should either fully coordinate policy with the Commission or allow it to assert extraterritorial jurisdiction over Florida citizens when its measures are stricter than prevailing federal laws. Further, the Service should bring its regulations in line with the national standards of the Magnuson Act by ending disparate treatment of Florida citizens and adopting uniform bag limits for each stock of fish. Finally, an equitable apportionment of representatives on the federal fishery councils might further alleviate the discriminatory policies enacted to manage mackerel stocks.¹⁵⁷

It is foolish to place both a recreational quota and a bag limit on anglers. A better methodology would limit the commercial harvest in such a way that recreational fishermen could possess fish year round. If a stock is not healthy enough for recreational possession, then all commercial harvest should cease. The Commission has utilized that approach and it eliminates the unacceptable notion of legally keeping fish to sell but not to eat.

153. Letter from Lewis E. Hudgins, Secretary-Treasurer of Hudgins Fish Company, to Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission (Feb. 20, 1989) (shortened production period creates difficulties for small operator); Letter from Charles W. Sembler II, Senior Vice President of Sembler and Sembler Incorporated, to Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission (Feb. 21, 1989) (company's 88 years experience in fishing business has shown it that mass-harvest of fish results in lower quality fish and decreased consumer demand) (copy of letters on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

154. Letter from Roy Williams, Assistant Executive Director of Florida Marine Fisheries Commission, to Mrs. Elaine Knight, Chairwoman of the South Atlantic Fishery Management Council (Feb. 16, 1989) (copy on file at *J. Land Use & Envtl. L.*, Florida State University, Tallahassee, Florida).

155. *Id.*

156. *Id.*

157. See *Governor Wants More Florida Appointees on Federal Councils*, *FLA. SPORTSMAN*, Dec. 1988, at 60 (letter from Florida Governor, Bob Martinez, to the Secretary of Commerce requesting additional representation of Florida on the federal councils).

A bill was recently introduced in the Florida legislature which would increase the Commission membership from seven to nine members.¹⁵⁸ Further, the bill would require two members of the Commission to derive at least 50% of their income from the commercial fishing industry.¹⁵⁹ The avowed purpose of the bill is to combat a growing concern that a single interest has dominated the Commission.¹⁶⁰ Apparently, the interest referred to is that of conservation minded individuals. Unfortunately, changing the Commission in such a manner might bring it in line with the federal councils to which Florida belongs. The Gulf of Mexico and South Atlantic Fishery Management Councils' pandering to the interests of the commercial fishing industry is evidenced by the unfair allocation of resources between commercial and private interests. Individuals should not be placed in a position to enact regulations on a resource which directly affects their personal income. The current Commission does not support the bill. The Commission feels the change would slow the already lethargic process of protecting the state's marine resources.¹⁶¹ The federal government, already conscious of financial conflicts on the councils, should take the next step and exclude persons with an economic interest in the regulated fishery.¹⁶²

The Magnuson Act mandates conservation. Florida's Act mandates the same. Drastic legislation need not be implemented, the regulatory framework exists for the mutual goals of the state and federal government to coincide. The National Marine Fisheries Service and the Florida Marine Fisheries Commission need only work to complement each other and fulfill these goals to help untangle the regulatory net of marine fishery regulations.

158. Fla. HB 761, § 1 (1989) (proposed amendment to FLA. STAT. § 370.026).

159. *Id.*

160. Staff of Fla. H.R. Comm. on Natural Resources, HB 761 (1989) Staff Analysis 1 (Feb. 8, 1989) (on file with committee). Fortunately, the bill did not pass. See FLA. STAT. § 370.026 (1989).

161. Williams interview, *supra* note 48.

162. See *supra* text accompanying note 101.