

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

MARINE RESERVES COMMITTEE MEETING

Ocean Plaza Beach Resort, Tybee Island, GA

March 7, 2000

SUMMARY OF MINUTES

Committee Members:

Pete Moffitt, Chairman
Bill Cole
Belinda Flanigan
Dr. Russ Nelson

John Sanchez
Dr. Louis Daniel
Jodie Gay
John Dean

Council Members:

Fulton Love
Ebbie LeMaster
David Cupka
Jack Dunnigan

Lt. Commander Dave Cinalli
Susan Shipman
Dr. Bill Hogarth
Charles Stone

Council Staff:

Robert Mahood
Roger Pugliese
Dr. Kathi Kitner
Kerry O'Malley

Gregg Waugh
Dr. Vishwanie Maharaj
Kim Iverson
Cindy Chaya

Observers/Participants:

Monica Smit-Brunello
Dr. Doug Rader
Henry Ansley
Ronald Smith
Dr. John Merriner
Joel Williams
Ed Lindelof
Sam White
Diane Rielinger
Peter Bannon

Dr. Jim Weaver
Fred Kinard
Red Munden
Myron Fischer
Ken Hinman
Reed Bohne
Michelle Duval
Andy Cooper
Marianne CuPone
Nancy Thompson

A meeting of the Marine Reserves Committee of the South Atlantic Fishery Management Council convened in the Conference Center, Ocean Plaza Beach Resort, Tybee Island, Georgia, Tuesday afternoon, March 7, 2000, and was called to order at 1:40 o'clock p.m. by Chairman Peter Moffitt.

Mr. Moffitt: Welcome to the South Atlantic Council's Marine Reserves Committee meeting. If I could have your attention for **the approval of the agenda, I would entertain a motion to that effect.**

Mr. Cole: **So moved.**

Mr. Moffitt: Bill Cole, seconded by Dr. Nelson. Is there any discussion, objection? The agenda is approved. Thank you.

I'd now ask for **approval of the minutes of our November 29th, 1999 Committee meeting.**

Mr. Gay: **So moved.**

Mr. Cole: Second.

Mr. Moffitt: Jodie Gay, seconded by Bill Cole. Discussion. Objection? Then the minutes are approved.

I think that it would be appropriate -- we have some guests at the table with us that most of us know, but to help Joe, and I think there's at least one or two that maybe don't know each other, could we start around and introduce everybody that's here with Gray's Reef or NOS and with our Committee, and if we could start -- let's start down at the end here next to Becky.

Mr. Beuttler: My name is Ted Beuttler. I'm with NOAA General Counsel. I work in the same overall legal office as Monica. I'm in Silver Spring, and I work with NOS and with the Gray's Reef Sanctuary.

Ms. Shortland: Becky Shortland, Gray's Reef National Marine Sanctuary.

Mr. Lindelof: Ed Lindelof with the National Marine Sanctuaries Program from the headquarters.

Mr. Bohne: And I'm Reed Bohne with the Gray's Reef Sanctuary.

Dr. Nelson: Russell Nelson from Florida.

Mr. Sanchez: John Sanchez, Florida.

Ms. Flanigan: Belinda Flanigan, Georgia.

Mr. Dean: John Dean, South Carolina.

Ms. Shipman: I'm Susan Shipman from Georgia, not a Committee member.

Mr. Cole: Bill Cole, Fish and Wildlife Service.

Dr. Daniel: Louis Daniel, North Carolina.

Ms. O'Malley: Kerry O'Malley, Council staff.

Mr. Cupka: David Cupka, South Carolina.

Mr. Gay: Jodie Gay, North Carolina.

Mr. Moffitt: Pete Moffitt, North Carolina.

Ms. Smit-Brunello: Monica Smit-Brunello, NOAA General Counsel.

Dr. Hogarth : Bill Hogarth, National Marine Fisheries Service. Let me just say, Ted Beuttler I've known from when I was in the Southwest Region, and he and I went through probably one of the biggest wars we've ever gone through -- not with each other. It was a Pacific lumber company habitat conservation plan to protect old growth redwoods.

And it dealt with some of the top attorneys around, and Ted was one that had to defend the Region through all of this, and they kept bringing in hordes of attorneys, so we went through quite an ordeal. But we were successful in putting together probably one of the best ACPs, most conservation-minded ACPs, and protected quite a few thousand acres of old growth redwoods.

Then NOS stole him. I'm not real happy about that. He's a great attorney. And I tell you, you can work with him. He's very straightforward and up front and good to work with.

Dr. Weaver: Jim Weaver, National Marine Fisheries Service, Southeast Region.

Lt. Com. Cinalli: Dave Cinalli, Seventh Coast Guard District, Miami.

Mr. Moffitt: I thank each of you. It sounds like we're getting ready for the full Council but we're not. I think it's good that everybody makes sure we do know each other as we move forward.

The first item on our agenda is a report by Kerry O'Malley on the informal meetings that have been conducted throughout the South Atlantic Region. Some of us were at the meeting last night and got a glimpse of what's been going on. I think Kerry can bring us more up to date and in greater detail this afternoon.

Ms. O'Malley: Thank you. So far, we've had ten informal hearings, but that doesn't include -- I gave the presentation to the Snapper Grouper Assessment Group when they met in Savannah at

the beginning of February. I also did a radio interview down in the Keys. I forgot which town they're from, but 104.1 for anyone who lives down there. So the word is definitely getting out.

I have a request right now. I'm going to Ocracoke next Wednesday to meet with a group up there, and then a couple more in the works for clubs in Florida. And they keep coming in, they keep trickling in. So there's definitely a lot of interest out there from people.

I summed up really briefly each meeting. Since we were invited participants, we felt that it was important to kind of get across the point of the groups that we went to visit. And I have a just brief presentation that's going to go through the major points from each meeting. So ask me any questions if you have them as I go along.

I'd also like to say it's not just myself going out to these meetings. Kim Iverson has been by my side the whole time, out doing a wonderful job also as the public information officer and certainly helping me with these meetings. So I just wanted to make sure Kim got the credit for being there, too.

I broke these up by state. The first meeting was held in Georgia, with the CCA board. There were 17 people. And this is, as I said, the first one at the beginning of this process, and as we expected, there was a lot of confusion over what the Council was doing and what was going on with Gray's Reef, which it seems like every time we meet with the Georgia group, it gets a little better. It seems like the confusion is getting cleared up out there.

And, of course, at that time -- and not that there's still not -- but at that time they were still very aware, very worried about what was going on with Gray's Reef, and any part the Council may have in talking about closing Gray's Reef. So that was a big point of discussion that evening.

They were still hearing about 20 percent closure, and that's a subject that was brought up and that was worrying them a lot. And Susan and myself both explained to them that that was an old concept that the Council talked about a long time ago and no longer had that on its mind.

They definitely had a feeling that the recreational sector is underrepresented on the Council, on the Advisory Panels, and they felt that, because of that, the Advisory Panel was very pro-closure.

Joel Williams is -- is he the head of the CCA board or --- the executive director. Oh, is he back there? But he's also on the Advisory Panel. So having him there, he knew how things had worked and was very aware, and had made a comment at the meeting that even though there was a feeling that the Advisory Panel was already pro-closure, that the document that went out as the public information document was in fact less towards closure than the Advisory Panel had wanted. So I thought that was an interesting point.

And the suggestion that came -- we always try to get suggestions out of people of what they think that the Council should do, if they don't like marine reserves or if they do, but what is

their suggestion. And this is one of the most common ones we heard, and that would be building artificial reefs and closing those, and then they also said that they thought that should be closed on a rotational basis and not forever. And they were the only group that had suggested the rotating closures.

This meeting in Brunswick, Georgia was kind of what I call a hodgepodge of people. It was, I think, one of the best meetings. At least, I thought a lot of really good stuff came out of it. But it was set up by Greg Smith, who's a charter captain, and there was also someone that was from the Georgia Shrimpers Association and some marina owners, and just a variety of people.

And I felt like the end of the meeting people had come to a really good consensus and they were willing to work. They decided that, you know, these marine reserves were going to be out there for a while and they wanted to work through the Council's process, because they saw the Council's process as the best way to go about it.

Still, what I hear a lot is that there's still not enough evidence that marine reserves are going to be beneficial, and we heard that that night. Another common theme throughout these meetings is that decline in fish population has more to do with habitat degradation -- in this case, they were talking about water quality -- than it has to do with fishing pressure. We heard that a lot in Florida as well.

And, of course, again there's a lot of support for using artificial reefs. And with Georgia being limited in live bottom, this is especially important to this group, and also to gain some data to prove that marine reserves work. And as I said before, the overall feeling was this group was willing to work within the Council's process.

The Georgia Saltwater Advisory Committee was just last week, and if I'm correct it's a group of citizens that pulled together to advise your DNR board on saltwater issues, and -- the division, excuse me. And this group we also talked about the difference between NOAA and NOS and the Council and NMFS, and how that separation is made. Also still talked about Gray's Reef.

Enforcement, I think, is the thing that I heard at every single meeting, concerns over enforcement. And they had heard about some problems in the Oculina Bank recently, that people are still going in there and still violating in the Oculina Bank. So they thought, you know, that's a good place to start to look if we're having problems there, how we're going to enforce reserves.

There was a question a gentleman asked about Sargassum, and he felt that, you know, if we protect Sargassum, won't that help the snapper grouper species. And he seemed to think that may be an option in lieu of marine reserves. And Susan explained to him about all the different kinds of habitat that snapper grouper need, and also not to just protect essential fish habitat but marine reserves also, you need to look at decreasing in fishing pressure as well.

These are the meetings I've had in Florida. The West Palm Beach Fishing Club, which was a very fun night for Kim and I. That was our night that there was a little bit of a crime spree, so we'll never forget this night. But the main thing I heard with this group is that, especially in South Florida, all of the productive habitat is covered with all different user groups and just plenty of people.

And so, because of that, they felt like marine reserves -- well, a lot of them really supported the idea. They felt that they may just be a band-aid approach to what is a bigger problem with overpopulation and habitat degradation and all the other problems that are going on in South Florida.

We did get suggestions from, believe it or not, a bunch of people saying if there's a problem with the snapper grouper fishery, just close it to everyone as opposed to marine reserves. Just close the fishery. And it wasn't just one person that said that. There were a lot of people that stood up and said, "I agree with that. If you need to do it, just close it."

A lot of lack of confidence in the Council and data from the Council. And, of course, the enforcement issue, which, as I said, was brought up at every single meeting.

And I think the overall feeling at that group was in favor of reserves. We did have a diver who even said that he represented some divers and had no problem keeping divers out, if that would make enforcement easier. So overall, the feeling of that group was positive, but still felt that there were bigger issues that needed to be dealt with.

The Miami Rod and Reel Club was that same week. As I said, enforcement is lacking. Hear that all the time. A lot of places I go -- this is not unique to Miami Rod and Reel -- want to know where the blame lies. A lot of the recreational fishing clubs want to hear that recreational fishing -- that the Council can prove recreational fishing is the problem. And if recreational fishing is not the problem, then why should they not be allowed to fish. And this is a comment that was made many, many times.

And there were also some favorable comments for reserves. They're pretty close down there to the Florida Keys National Marine Sanctuary and that issue, and the overall feeling of that group was not a good one over what had happened in the Key Sanctuary. So I think that that may have had a lot to do with their attitude. But didn't see that anything would work without enforcement.

This is an environmental group that is a member group of Project Reef Keeper. I went and spoke to them a couple of weeks ago, and what's going on down there right now -- and maybe Russ can answer more questions about it later. But from what I understand, there's a group around Broward County that's talking about designating a marine protected area in Broward County. It's actually two areas split up. And it's not a legal group. It's Reef Keeper and this group.

And everyone that showed up at the meeting that wasn't part of the environmental group were fishermen and came to fight that issue. So they didn't really pay much attention to me, which was actually okay. Alex Stone spoke after me from Project Reef Keeper, and they basically asked him all the questions, because that was the imminent danger in their mind, was what could happen in Broward County.

And it was the people that were living directly or working directly in front of the areas that were proposed. And I do have a handout that Alex handed out if anyone hasn't heard about it or wants more information on it.

My meetings in North Carolina. Winston-Salem Sport Fishing Club. There were about 25 people, and this is the one I did without Kim and had a tape-recorder that didn't work very well before we got our new one, so my notes are really scarce. I apologize. Without Kim taking notes, I'm lost.

But this group made it very clear that they felt that there needed to be a reduction in commercial effort. They had a suggestion, which I probably shouldn't tell everyone, but their suggestion was -- I guess after Hurricane Floyd, there was a \$19 million relief fund for the commercial fishermen in North Carolina, and they felt that that money should be used as a buy-out. So that was their suggestion. I told them I would offer the suggestion.

And also they did suggest building artificial reefs and closing them as opposed to marine reserves.

North Carolina Fisheries Association last week. This is a fun one. Some of you have heard us talk about it, but it wasn't the fishermen; it was their wives, and they were meaner than anything I've ever come across before. And I think Louis can attest to that.

Dr. Hogarth : I can definitely attest to that.

Ms. O'Malley: And my favorite suggestion -- I guess there's an area off of Camp Lejeune that is closed by the military, and their suggestion was using that as a marine reserve, and had no problem giving a list of names of people they thought should go into the mining area and do some research at all.

Actually, I don't find -- and Louis, I don't recall them from our notes being too enthusiastic even about the idea of using artificial reefs and closing them. That was one of the first groups that had voiced more concern over that idea.

And, of course, overall they were not in favor of using marine reserves.

South Carolina, we just met. This was our last meeting. And that was at the Hilton Head Sport Fishing Club, and this was the biggest group. There were about 60 people. It was a really

great group. Everyone just offered a lot of suggestions, and there was a really good dialogue this night.

Again, law enforcement. But what they said is they believe that if the locals support it, then law enforcement isn't as much of an issue. And they believed that was imperative in order to make the marine reserves work. They had a suggestion -- this is another one of my favorites -- that the state and federal government get together and build artificial reefs and have satellite tracking monitoring.

And I asked them if they would volunteer for that, and they said they'd get back to me.

And a member did stand up and take a vote on how the club felt on marine reserves, and just about everyone raised their hand and said that they were in support of marine reserves in some form or manner.

And that's all that I did. I neglected David. I'm sorry. I came and talked to David's staff last week, the same day I went to Hilton Head. Members of his staff, a lot of them had seen the presentation before. And of course, George Sedberry, who's on the Advisory Panel, you know, was instrumental in helping us develop this presentation, because he was working with the outreach group.

So we had a good dialogue with their staff, and I was able to ask them questions about the artificial reefs from my own knowledge about how they felt about that and get some good dialogue going.

I'd be happy to answer any questions for anyone.

Mr. Moffitt: Any questions of Kerry? I'm sorry though, Kerry, that I wasn't able to be at Harker's Island, or wherever it was you met with my friends in the blue T-shirts. Those of you that haven't ever dealt with this crowd when they're in uniform, have really got something to look forward to.

Dr. Hogarth : It's been obvious to me for a while that there's lots of confusion among the public over marine reserves, sanctuaries, refuges, spawning season closures, all this, and I've been trying to figure out a way to get our agency and NOS together to do this, to put together sort of a white paper that describes all these, the purposes and this type of thing.

Ted Lilliston, who is Nancy's deputy and is acting now for her, he and I just talked, and we are going to undertake that immediately between the Southeast Region and NOS, and then we will run that by the Council and then up through our chain of command to get signed off.

But everywhere I go, I keep hearing, "Well, what is this? Just a land-grabbing type thing?" or this type of thing. And there's a lot of confusion over who has what authority, what are the differences in this versus that. And I think we need to try to put that together. And we will do

that starting immediately and then have it signed off by NOS and NMFS, and have sort of a white paper that we can give out to the public and explain this whole idea.

Because NMFS really believes that marine reserves and sanctuaries or whatever you call them are a good management tool if they're done properly and go through the comment period and all and get good public input. But we've got to do something to give the public some satisfaction and some confidence in the process and what they mean and what they've been used for. So we will effect that immediately.

Mr. Moffitt: Bill, thank you. I had that in my notes to discuss, and looking back at all of our minutes, we've discussed having a standard protocol and definition. And John Dean asked a very appropriate question last night, and I could have answered it, and three or four of you could have answered it all properly but differently, I think, at this time.

And until we can get everybody on the same sheet, it's going to be very difficult.

Ms. Shipman: My only comment was I would hope that that would be brought to the Council at our next meeting as well. I mean, not only does the public need some clarification, I think this body needs some clarification. We got into this with the Florida Keys National Marine Sanctuary, but we've got a lot of different new players sitting around this table that weren't involved in those discussions.

Dr. Hogarth : Just to that point, I think we do need the state input, too, because states have things they're doing with artificial reefs and this type of thing. We need to make sure that we get all that. So we plan to get the input from states and the councils, then go back.

Mr. Moffitt: So am I to understand that it will be coming back in hopefully June in a draft form, or will it be in final form? I think the Council would like to have a look at it and make some suggestions.

Dr. Hogarth : No. We have not set a schedule, but I would hope we can do it by June, because I think it's still pretty much -- and I would think the Council would get input before we would send it up to NOS and NMFS, that we would get the input here first and have everybody's input before we went up to have it signed off on.

Mr. Moffitt: Are there any questions or comments? Those of us that were here last night and saw the presentation that Kerry gave, I thought it was exceptionally good. I thought it was delivered very professionally but in an easy manner that I think portrays what the Council is trying to do, and that's learn.

This might be a good time to give the staff some input as to how we think those could be done differently or in any form, if we feel that way. But I thought it was exceptionally well done, and I certainly wouldn't make any suggestions myself, other than to keep going as much as we can with it.

Mr. Cole: Mr. Chairman, I've given Kerry my handwritten notes, but the only real strong comment that I have is that in the public document, we continue to refer -- I think it's on Page 12 -- to the concept of closed areas. And I think in reading back through the minutes that we just approved a while back, Dr. Nelson and I tried to get us away from the use of the words "closed areas," and substitute for that a concept, just briefly, I think, in referring to the minutes, where we had dedicated management areas.

And other than that, I think this is a very excellent document. Kerry, as you said, presented it in a very relaxed, nonconfrontational way and did an excellent job with it. But my only suggestion would be let's do a substitution for that concept of closed areas on Page 12.

Mr. Moffitt: Bill, so noted.

Are there any other comments or suggestions on this document? Kerry, have you had any comments directly to this from people in addition to your verbal comments at a meeting? Have you had any people that looked at this and taken any exception or had any questions that they didn't think we were addressing?

Ms. O'Malley: No.

Mr. Dean: Some things that I've seen that I'd like to just talk about, and we can do that after the session. Your comments in the minutes relative to the relationship between us and NOS and National Marine Fisheries Service and Bill's comment relative to the wording is exactly the point that I think that we are on very, very delicate ground.

And that's why this definition of terms, so we're all using the same term and it means is the same thing, is so critical as we go forward. Because we are going to be tarred with the brush one way or another.

Mr. Moffitt: John, thank you. I do think the terminology must be clear, because most of you have heard me say before that a void of information or confusion will always fill up negatively. And when we give them proper information, it doesn't mean it will always fill up positively. But I think when there are gaps in it, it's surely going to do that and then there's confusion.

The other area that I think we'll get into later this afternoon is the proper protocol, because I think the general public, if they're not confused now, they're going to be over so many different agencies doing different things, or doing the same thing and they can't tell the difference. So I think that's where we need to have clarification.

And I think it was pretty clear when I worked with Tortugas 2000 who was doing what and what the protocol would be from that point out. I don't see that clarity at this point.

We have on the agenda -- and I think we've pretty well covered it -- discussions of the future informal meetings.

Mr. Waugh: One question with respect to this is -- we have several additional informal meetings scheduled, but also we have carried over funds from last year to conduct the scoping meetings, and those funds have to be spent by the end of June. So we're looking to phase into the scoping process and hold those meetings some time between now and the end of June.

And we were just wondering if there was any guidance from the Committee whether we should go with more informal meetings or finish up the informal meetings that we have scheduled now, and then move into holding scoping meetings.

Mr. Moffitt: Gregg, thank you.

I would note to you on the agenda with the report on the Coral Reef Initiative by Roger, Roger is not feeling well at all. Belinda's taking him to the doctor, I think, today. So unless there's someone else prepared -- I don't think there is, Gregg -- to do that, we will probably hold that till a later date.

Dr. Nelson: To Gregg's point, Pete, if we need to spend those funds by June, were you anticipating waiting until the June meeting for us to suggest sites for those, or is that not something that we should be doing at this meeting?

Mr. Waugh: Yes. We would need guidance at this meeting, because if we wait until June, obviously that's going to be too late. So what we were looking for here was some guidance on when we should switch from these informal meetings to scoping, and then we can work with individual Council members to get ideas of where they might want to hold those.

Ms. Flanigan: What's your time frame on the informal meetings that have already been set up?

Mr. Moffitt: Kerry, the question was, what's the schedule of informal meetings and how long will they continue?

Ms. O'Malley: Currently, I have one that's scheduled for a definite date. That's the one in Ocracoke next week. I'm working with two groups in Florida to set up dates in April. And then David and I have been talking about doing one with the South Carolina Aquarium and South Carolina Department of Natural Resources. So that's five that are already -- I mean, we're committed to, but there aren't necessarily dates for.

These could go on forever. I mean, I'm sure there's going -- the more people hear about them, the more people ask. That's my opinion, anyway.

Mr. Sanchez: Where in Florida? You don't need to be exact, but --

Ms. O'Malley: Both in South Florida. I'll tell you, it's the Tropical Fish Club of South Florida and --

Mr. Sanchez: Tropical Anglers?

Ms. O'Malley: Yes, that one. And then the second one is the North Dade Fishing Club. And I'm trying to pick dates with them right now.

Ms. Flanigan: I think I'd just like to see us just hold off at least on the scoping meetings through the month of April. Because I think Kerry's right; we're definitely going to be getting a lot more response in now that the word's getting out. And I think we're going to get a lot better information out of the informal meetings.

Mr. Moffitt: Is there any reason that we couldn't continue to have these informal informative meetings and still have the bigger scoping meetings? I just pose that question. Susan, you had a comment?

Ms. Shipman: Actually a question. And just to your question, I think that may be a tremendous demand on staff to be conducting two series of meetings going on at the same time. I'm not sure how feasible that is.

But my question had to do with -- actually to Gregg. Scoping, is it the intent to finish all of that by the end of June? Because the way the document reads, we say we will do this in mid-2000, and then we will come back at the December meeting and decide where we go from there.

So I guess I was of the impression we were going to be doing this sort of through the summer. I didn't know we were on an expedited time frame to get it all done by the end of June.

Mr. Waugh: Bob may want to go into this in more detail, but I know we do have some funds identified as carry-over from last year that were specifically identified as being associated with holding these scoping meetings, or things to do with the marine reserve discussion.

It does not preclude us from going beyond that, but then we would get into monies from this current year, and I'm not sure off the top of my head how much monies we have identified in the budget for that.

Mr. Mahood: Initially, we had scheduled a round of scoping meetings at the end of last year, and then after that round, we were going to kind of come back, regroup and then do another round. We never were able to get those done last year, so we were able to carry forward a certain number of dollars. But it has to be used before June 30.

So anything we do now on marine reserves we can use those dollars for. But like Gregg said, that doesn't preclude us from doing whatever we want out of this year's money. We also have

money in this year's budget to do more scoping meetings. So if we do some before June, then we can do as many as we want after June. We just need to try to spend as much of that money as we can before the end of June.

Mr. Moffitt: Is there a suggestion from the Committee as to what we may want to do between now and June? I certainly don't want to be under the gun of having to do all this before then. But should we have any at all before?

Mr. Mahood: As I recall before, too, we had talked about the possibility of having scoping meetings and informal meetings going on at the same time, because I think if you start having scoping meetings, you may get some more in-depth interest to where we may get more invitations to come out to different groups and speak to them.

I don't know that there's any sequence. I mean, the informal meetings are a format we put together ourselves. It's not part of any of the Magnuson Stevens Act process. So if we hold scoping meetings and then decide to, at the same time, continue with our informal meetings or go back later and have more informal meetings, I don't think that that's a factor that we have to worry about. I think we can do it both ways.

In other words, it doesn't have to be a progression of informal meetings then scoping meetings, then some sort of action to lead us to public hearings.

And as I might point out, as we heard last night, there's a little bit of confusion about our responsibility relative to letting people know about it. The informal meetings, those are meetings people invite us to. We can't even -- if somebody calls the office -- and we've had people call saying, "We understand you're meeting with such and such a club down wherever, can I come?" And we say, "You need to contact those people. It's not our place to invite you to that meeting, because it's not our meeting." And I think Kerry had to try to make that clear last night relative to the notice and everything.

So you're really talking about two different things. So if we do go to the more formal scoping meeting -- we do advertise them -- we're obviously going to get much greater public input, or at least greater spread of the potential of people coming to give public input than we are at these informal meetings.

So I think the scoping meetings could lead to more informal meetings if we so wish, not that Kerry has many more free nights to go do them.

Mr. Moffitt: Then my feeling of this is that -- and I'm certainly sensitive to Susan's suggestion that it does put a burden on the staff. We would have to, I think, if we want to have regular scoping meetings, schedule those, and if we have the time and the requests for these informal meetings, we could try and fit them in around that.

But we've got to give the scoping meetings priority if that's what we're going to do. What's the desire of the Committee as far as scheduling scoping meetings?

Mr. Mahood: What about if we look at setting up at least two scoping meetings between now and the June meeting in each of the states, which would be eight scoping meetings? And I think we're going to see more -- we're probably not getting the public -- we're not getting as much of the public involved as we may think we are with these individual meetings. And I think once we start getting that word out, we're even going to get greater input from the public relative to try to get more specific information.

Right now, I think the State of Georgia is the only state where most of the people know what's going on with marine reserves and where we are in the process.

Dr. Nelson: I'd be concerned that I don't know that two meetings would be adequate to present the issue in Florida. You're just talking about getting --

Mr. Mahood: Initial meetings.

Dr. Nelson: -- the first meetings.

Mr. Mahood: That's what I was talking about initially, and then we can add more as we go. I was talking about as far as establishing something right now, then when we get to the June meeting, if we decide we need four more in Florida or whatever, we can then go ahead and do those.

You know how it is, Russell, when you've got money you want to spend, you want to try to get the most bang for your buck and then move on from there.

Mr. Moffitt: Can we do eight meetings in three months from this point?

Dr. Nelson: Sounds fine to me.

Mr. Moffitt: The answer is Yes. Then Bob, I think we just defer to staff to set these up. I think each of the states would probably want to have some input as to where within the states you want to have them. I'm going to have one at the bombing range at Camp Lejeune.

Mr. Gay: Pete, I can't go back there. I already hold the record for having been run out of there more than anyone else.

Mr. Mahood: Okay. So staff will just get up with the state people to decide initially which two sites would be best, and then we'll have Cindy go ahead and set it up. And again, it would be run similar to public hearings, much more informal of course, but we would expect the states, each state to provide a hearing or a scoping meeting chairman, if that'd be appropriate.

Ms. Shipman: Sorry to keep interjecting. That goes back to the earlier discussion you all had at your last meeting on format. You talked about having a round-table type format, and if you're going to do that, I think Becky and Reed can certainly tell you that's fairly labor intensive, because you're going to need facilitators at those various tables, and that's going to require a lot more effort from staff and the other people that are participating.

I think it's a real good way and an excellent way to do it, but I think it's going to be more demanding on resources in putting that type of thing together than the typical scoping meeting we've held in the past.

How many facilitators did you all have, Becky? About six, seven?

Ms. Shortland: Probably the largest number was about ten facilitators. We try to have no more than ten people per table, and even that was a bit much. But it depends on -- I mean, it's very hard to tell who you're going to have turning out to these things. So we would try to prepare for the maximum number.

And you don't have to be trained facilitators. Our folks were there. You were listening. It was a very strong listening capacity and recording informally.

Mr. Moffitt: I see logistically us trying to do that and finding six or eight people to go to eight meetings from Hatteras to Key West is going to be a major logistical problem.

Mr. Mahood: Well, I don't know that you would need ten facilitators for what we're doing. If we could get the three state Council members to participate along with a couple or three staff at each of the meetings, then I think if we could set it up like that we would be in pretty good shape.

Mr. Sanchez: And since we've had enough meetings in the Keys, I guess that leaves Ebbie to do some up in North Florida.

Mr. LeMaster: Russell says it's premature to point this out, but I really hate for us to get into a quarrel that I know we're going to lose. Carl Wickstrom and CCA in Florida, when they get on the warpath, they're a worthy adversary, let me tell you. And they're going to jump right over us and go right up to his outfit.

I don't know how we could negotiate this thing at this stage with these people, but once they get together on something like this -- and I'm not saying they're right or we're right -- we're going to have a major battle on this. And Carl Wickstrom in the letter that you all got, he's told us how he feels. And I've talked to Ted Forster, and I know exactly he feels.

And I think we need to -- I'm not saying we're wrong in this approach, but that I know the power that this group can hold in Florida, and they'll go directly to Washington with it and may mess the whole thing up. So I caution you.

Mr. Mahood: Well, Ebbie, that makes it easy, because if Congress comes back and says we can't do it, then we don't have to worry about it. But I don't think you can back off just because of fear of a particular group. We know there's going to be opposition. And I certainly know, you know, what they've been able to accomplish in Florida.

But if it's a thing the Council needs to decide to go ahead with and Congress steps in, which -- I think ITQ is a good example where the councils were looking at using ITQs, IFQs as a management tool and had strong support from the National Marine Fisheries Service, and Congress just basically stepped in and said, "No, you won't do that at least until 2000 or until we say it's okay."

This may be a similar circumstance, but I think you still have to move ahead and make them play their hand. You can't just sit back and say, "Oh, they're going to do this, so let's not move forward if this looks like a good idea."

Dr. Nelson: I note that Mr. LeMaster probably is not cognizant of the full range of possibilities that we've discussed, too, in the past about how reserves can be used, the use of artificial refugia or many other things that I think are definitely worth bringing out to the public.

Mr. Sanchez: There does tend to be a lot of support for artificial refugia, and if money needs to be spent, I don't think you could find more bang for your buck than Mel Bell in terms of inviting him or paying for him to be a presenter, a guest speaker at some of these meetings, because he can for sure answer any artificial refugia questions that may come up very eloquently, very insightful.

Mr. Moffitt: Excuse me. Who was that again?

Mr. Sanchez: Mel Bell.

Mr. Moffitt: Excuse me. I agree with you.

Dr. Daniel: That brings up sort of my concern. I was going to get you to go back to the public information document, but I guess we can do it here. We don't really discuss artificial refugia in the public information document or in the presentation. And yet that's been something that has been sort of a consistent theme, at least at the meetings that I attended and people discussing those.

And I think, particularly in areas where there is limited live bottom or hard bottom, you know, that instead of closing down those limited areas, that the idea has a lot of merit. And I would suggest that we put that into the public information document, the discussion of artificial refugia and some of the merits, which may temper some of the concerns that we're hearing in terms of just large live bottom areas.

Mr. Mahood: One other thing. If the Council thinks it's appropriate, and listening, and now that we've been through almost a dozen of these informal meetings, I think maybe another thing we might want to add to the document is perhaps a final section that indicates some of the things that Kerry's been saying. She goes into that in her presentation. She went through it somewhat here today.

I think we could add that to the document to show people this is the type of thing we're hearing. This is the feedback the Council's getting. Because you want to try to stimulate discussion. As you saw last night, sometimes it's tough to stimulate discussion, although this was a more diverse group, and I think Kerry's been meeting with groups that are more -- whatever the word is. I mean, they know each other, and they talk amongst each other and debate each other.

So that may be something else we can do to improve the document as we move forward.

Mr. Moffitt: Any other comments on this? Ebbie, in relation to your comments earlier, I've always taken the position in this -- a number of people have come to me and said, "We're absolutely opposed to what you're doing," and I say, "How can you be because we haven't done anything? How do you know what you're against or what you're for until this Commission has taken a stand to move one way or the other?"

And I think during this process, that's the way we've tried to keep it open. So what I read from Carl Wickstrom, what he sent me, it doesn't mean anything to me because I don't know how he can be against something that we haven't established.

I understand the drum roll and all of that, but until we get to that point, we just keep moving and see what shows up when we get there.

Okay. Any other comments?

Becky, if we'll move forward and you bring us up to date on Gray's Reef, please.

Ms. Shortland: Thank you, sir. I'll backtrack just a little bit for folks who may not have heard all of this before. But Gray's Reef National Marine Sanctuary was designated in 1981. A management plan followed in 1983. And we have not reviewed and revised that management plan since then.

In mid-1999, the Marine Sanctuaries Division initiated the review and revision, possible revision of the plan with the constituent meetings that Manager Reed Bohne and I and others were doing, going around to different fishing and sport fishing clubs and others and just talking to them about the revision possibilities.

We also, at the same time, established a Sanctuary Advisory Council with eight members, and I was very, very pleased to have some of those members here last night, and I know they got to

meet some of you all but not all of you all. But I was very pleased and hope that that kind of relationship can continue on.

We also then published a notice of intent as required under the NEPA process that outlined, in addition to our intent to review and revise, the upcoming scoping meetings that we held back in December. We again then held some more meetings in January.

So where we are right now, we had a scoping period, a phase of scoping that went from essentially November 19th to February 1st of this year. Over the past few weeks, or since February 1st, I've been in the process, we have been in the process of evaluating all those, outlining everything from eight public meetings, from E-mails, faxes, letters, and in some cases some telephone calls.

We received over 1300 written comments by fax, E-mail, personal letter, whatever. We also estimated approximately 500 or so participants in the scoping meetings.

In addition to that, we also had a resolution that was passed by the Georgia DNR board and then subsequently by the Senate and the House in the State Legislature, which we have taken into consideration, too. And I believe that was in the package of information that was sent out to you all along with our draft MOU that we're going to be discussing soon.

If anybody has any questions about that, I'm sure Susan or I or Reed could discuss some of that as well. Of course, we'd like to see the originals one of these days, too.

We just had our Sanctuary Advisory Council meeting on Friday, and that was the first time that that group of people have had to -- the first opportunity they've had to see the synthesis of comments that we have been putting together since February 1st. We hope to have their full input by the end of this week, finalize things, and then we will have that synthesis available to the public.

We intend to send that out to all the participants, all of the folks who sent us comments, post it on our web page, find every means that we can to make sure that all the publics that have an interest get to see this and to continue to participate.

We also will have the, quote, "raw" comments available, the 30-40 pages worth of flip chart notes and comments derived from the written comments. That is also available, and if folks don't have access to the web, we'll make sure we get it to them by mail or whatever means.

We're even discussing putting this information out at different interest sites, marinas, outfitters stores, boating stores. You know, however we can widely spread the information, we intend to do that.

Our next step, I think probably the one thing -- and I'll ask Reed to address it further if he wishes to. But our major next priority is to develop a state of the reef report. That is

consistently what we heard throughout in terms of written comments and in terms of the public scoping comments is that we needed to have more information available up front to the public so they knew what to comment on.

We intend to have a meeting on the 21st of this month with the scientists and others involved in helping to put that report together. We'll have a draft of that, we hope, by April 21st and published and distributed by the end of May.

We are still working toward taking the information from scoping and putting it together in a series of workshops that will be targeted on the specific issues that were highlighted. Those we shall see in the summer, late summer of this year.

We also are still targeting spring, approximately a year from now, to have a draft EIS and then possibly a final in the fall of 2001. Of course, there'll be public hearings and many other opportunities for public input in between that.

Reed, do you want to add more about the state of the reef report?

Mr. Bohne: As Becky mentioned, one of the things that we heard fairly consistently at most of the scoping meetings is an interest in having some sort of document, some foundation against which people could make comment, some assessment of the health of the reef and the amount of activity at the reef.

And we are, as Becky mentioned, trying to design that now with the help of our Sanctuary Advisory Council, and we will be having a group from our offices in Silver Spring who designed a number of these kinds of documents working with us on that. We feel that this will take the level of discussion to a more targeted direction based on the information that we currently have available on the health of the reef.

And we also want to put in there information from the science community on major gaps, areas where there needs to be more science conducted. We think that should be very helpful as we then proceed into specific workshops and, beyond that, develop a DEIS and final management plan.

I guess that's really all I have on the state of the reef report.

Becky, why don't you briefly summarize some of the areas of comment from the scoping meetings? We've divided the report, the synthesis, into topical areas and have tried to, as best we can, characterize the many comments that we received there.

And one of the tasks that we're asking our Council, our Sanctuary Advisory Council, to address is have we captured these kinds of comments sufficiently to reflect the intent of the speaker and overall the groups that were involved in our scoping process.

Ms. Shortland: The way it has panned out so far, I think, we have the major -- the bulk of the comments that came in were in what we term the fishing activities, and we broke that down further into fishing access and then into fisheries enforcement, that being an area that we heard a consistent message. And Kerry was also expressing the same thing, that you've been hearing a lot about enforcement.

We broke it down further then into other activities which, of course, are diving, and then a variety of other activities that are related to users. The question of anchoring, the question of mooring buoys came up over and over again. We then, I think, characterized things in education and research and some of the other areas that are part of our goals and mandates of the program

And it was real difficult to try to put these in areas that we felt that we were doing the best job we could to reflect what the public was saying to us. There was a lot of discussion about artificial reefs, and we have hopefully captured as much of that as possible. I think we were hearing very similar things. It was sort of in a category by itself in a way. But it was a very significant part of the discussion.

I think that's pretty much the areas.

Mr. Bohne: If there are any comments on this part of our presentation, that would be great. Then we will discuss the MOU.

Mr. Dean: Would you give us what's the time frame on the state of the reef report?

Mr. Bohne: We're hoping to have that, a draft, in late April and a report in late May out. We view this on a sort of 10- to 15-page length, in plain language, distributed widely to the public. So we're looking to try and get that pulled together by the end of May.

Ms. Shipman: Reed, you may have said this. Is there a peer review that your reports go through, so that your status of the reef or state of the reef report -- do you all have an external scientific group that you will run that report by, similar to -- you know, the Council has an SSC, and we run our reports and all through them.

Mr. Bohne: Right. We're running through our Sanctuary Advisory Council. No, we don't have a scientific peer review group outside of the scientists that have been involved that'll be putting the information together. But I'd be interested in your thoughts on that.

Ms. Shipman: I would suggest that you all do that. I think that will lend better acceptability to the public of the final report. And I think it'll raise the comfort level of the Council as well. I mean, we try to have an external peer review process, if you will, of our scientific information.

Ms. Shortland: Susan, could I take that a little bit further and ask, do you think, for instance, the Snapper Grouper Assessment Team of the Council would be a good group to look to as a peer review group?

Ms. Shipman: No. I would think it'd need to be broader, and I would suggest people outside of this Region take a look at it as well, be involved in that peer review.

Mr. Moffitt: Reed, any other comments from you or Becky, before we go to the MOU?

Okay. Let's move on, Gregg, to the discussion of the MOU that was to be continued from our last meeting.

Mr. Waugh: This is included as Attachment 3, and we were asked to go back and look at the protocol that was used in the Florida Keys Marine Sanctuary and pull from that. I also included that signed protocol as an attachment, so that's in here as well.

I went through and modified the other sections beside the protocol, based on the Committee's recommendations at the last Committee meeting. Those changes, proposed changes, are shown in bold where we had some suggestions, and anything that's proposed to be removed we show with a strike-through.

The bottom of Page 5, we did add this, that "Data is subject to Section 402 of the Magnuson-Stevens Act which deals with confidentiality of data." But the bulk of the discussion is going to focus on the protocol, which begins on Page 6 and runs to Page 7.

In between, in working with Reed and the other NOS folks, they have prepared some wording that we inserted in here for you to review, and their suggestion is that this wording replace what's in the document that was pulled from the protocol in the Florida Keys Sanctuary.

I think when you boil both of these down, the discussion focuses on what is included when it's stated that the Council is responsible for preparing draft regulations for fishing. As I understand, the Marine Reserve Committee was interested in getting clarification such that regulations for fishing, including establishing marine reserves or closed areas, would be under the purview of the Council.

And I think that's what we were looking to see reflected in the protocol. And that's what I've tried to do in the material that we have prepared here for you to look at.

And I think if we could hear from NOS, as well as Monica, in terms of their thoughts on this protocol. We did not do a lot with the other sections of this, figured that if we could iron out this section, then any further guidance with the rest of the document, we would make those modifications.

Mr. Bohne: Would you like me to follow on then? All right. We certainly appreciate all the work Gregg has done from the onset in this MOU in our discussions and believe that the MOU is in very good shape, and it addresses the key functions that we want to ensure that we have together in terms of working through this management plan, that we coordinate fully on every activity related to that.

In looking at the revised protocol from the Florida Keys Sanctuary, we recognize that there are very significant differences between the Florida Keys Sanctuary and Gray's Reef, and that the situation under which the Florida Keys protocol was developed was to address two different councils and state waters, 65 percent of which comprise the Sanctuary, as well as an additional statute that's targeted directly on the Florida Keys Sanctuary.

And in our review of the revisions, we found that the revised Florida protocol we feel adds more confusion than we need to, and that the key in this effort, in our view, is to maximize clarity for both of our organizations and, most specifically, for the public.

What we have proposed is basically an adaptation of the statutory language that is in the National Marine Sanctuary Act that spells out how the councils and the Sanctuary interact in any decisions relating to fishing regulations in the Sanctuary.

Upon even further discussion with our general counsel and with the Fisheries' general counsel, their view is that we would be better served not even to try and adapt the statutory language, but to include it directly, because that lends the least ambiguity and confusion about this important interaction between our organizations.

I have asked Ted Beuttler to review that with the Committee here and go through the steps specifically that are outlined in the statute, and then would like to have some discussion about how this, we feel, may be a better way to represent this relationship in terms of fishing regulations than the revised protocol.

What we have done as well for the Committee is made copies of the actual language which I can circulate, if that would be appropriate, Pete.

Mr. Sanchez: One of the things I saw in the language tends to be similar in our experience with the Key Sanctuary, and I will say this, that recent experience with Tortugas 2000 does indicate that some of the problems we had have been ironed out in terms of concerns with acceptable economic impact statements and what have you. They've really done a fantastic job in Tortugas 2000, as opposed to when we originally started.

But there still does appear to be language here which indicates that despite the activities of NMFS or the South Atlantic Council, basically NOS reserves the right to, if push comes to shove, have the final say in things, because there's language all over this that says "to the extent such standards are consistent with the objectives of Sanctuary designation."

And that was something that we addressed in Washington and brought it up, because there tended to be, in terms of Sanctuary designations, a pretty good distinction between what we consider an adequate economic impact statement and perhaps what the Sanctuary folks do. That was something that we tried to get reauthorized, and I don't know that we did or not, although the Tortugas experience does indicate that they listened.

But legally, I'm looking at what's on paper here, and apparently they still have the final say.

Mr. Cole: Mr. Chairman, this is getting a little confusing. In the briefing book on Page 6 is an item called "Protocol," and following that is a new insert labeled 6A, and we were just handed another one, which I assume is a new insert for the original insert for the original language. Is that correct?

Mr. Bohne: That is correct. That's a revision of the insert that takes the language -- we tried to modify the statutory language to be specific about Gray's Reef and this Council. Our legal advisers suggested that we go back just to the statutory language, and that's what has been circulated at this time.

Mr. Cole: So the notion then in the original language under the protocol, wherein it attempted to develop a protocol which described the roles of the federal and the state governments, there's no attempt now to describe any role for the state, and in not defining one, that I am to assume that the state has no role here?

Mr. Bohne: The Florida Keys situation, the Sanctuary, 65 percent of the Sanctuary is comprised of state waters. At Gray's Reef, our 17-square-mile area is 17 miles offshore. So the same situation doesn't really apply. Certainly the state is an important partner in this, and certainly through the Council, the role being specified in the statute of the Council, they have an important role there as well in decisions that are made reflecting fishing in Gray's Reef.

Mr. Cole: Are there species that are not managed by this Council living, occupying the Sanctuary that are exclusively under regulation of the state?

Mr. Bohne: Not to my knowledge. Susan?

Mr. Cole: Because we have a precedent in North Carolina wherein if that's the case, in the absence of a federal plan, the state rules provide and exist and are implemented and enforced out to 200 miles. And if there are species -- before Susan starts -- then you're going to have to include the state as part of this protocol.

Mr. Bohne: Thank you.

Ms. Shipman: I'd have to see a complete species list. I mean, you know, obviously the bottom fishes come to mind, but those are under our Snapper Grouper Plan. The pelagics are under the

-- I just need to see a complete list. There may well be species out there -- I wouldn't be surprised if there weren't -- that aren't under a fishery management plan.

Mr. Gay: When you look at the list of snapper grouper species that we don't have listed in the Snapper Grouper Management Plan -- well, I don't know that they're snapper grouper species since they're not in our plan, but it'd be stuff like spot tail finfish. Octopus, I don't believe are listed. I doubt you'd have any state regulations on them, but they very most likely do live in the Sanctuary. However, we don't have regulations in place on them, and they aren't part of our management unit.

So every fish in the Sanctuary is not necessarily under our Snapper Grouper or any other plan at this time.

Dr. Nelson: In the case of the Keys Sanctuary, it was a very unique situation because, as Reed's pointed out, 65 percent of that Sanctuary's in state waters. And the state had the choice of whether to participate or not to participate and include those waters within a single sanctuary. So there was certain leverage the state had, which this Council's not going to have.

The protocol that we developed with NOS and the councils and NMFS was fairly extraordinary in terms of, you know, a concession back to the states of how things could be done in terms of fisheries regulations.

The bottom line here is that under the law, under the sanctuary law, the Secretary's always been required to consult with the councils about fisheries plans, then if he doesn't like what the councils are doing, they can implement their own. That's always been the case.

And I think the South Atlantic was looking perhaps to get through an understanding, a Memorandum of Understanding with Gray's Reef a stronger role in that process. And it seems that's where the protocol started. The protocol here is clearly just what the law says.

So the bottom line is that the Secretary, through the NOS, the Sanctuary Program, they have to consult with the councils about fishing regulations. So if they want to say we want to impose, you know, this size limit or close the whole area to all fishing, whatever they want to do, they've got to come to the Council and ask you all, and if you don't want to go ahead and do that, and they feel it's important to do it to meet the goals of their plans for their sanctuaries, they can do it.

So that's really what the situation is. It's pretty clear. And I'm not trying to, you know, really take sides in this. The Sanctuary Act tells the sanctuaries what they should do. But I just wonder whether if that's where we've come to, whether there's any point in having this memorandum whatsoever in trying to agree to it.

And I ask that as a question, because I assume that there are other points within here that are important to us all above and beyond acknowledging what exists in federal law over how fisheries regulations can be implemented.

Mr. Moffitt: Russell, thank you. When I read this and I look at it, and it says to provide the appropriate council with the opportunity to prepare the draft regulations, are we or are we not in the process of doing that? I don't know. I mean, in my mind we are. Maybe in somebody else's mind we aren't.

The question I'd like to walk out of here with the answer to -- and I've got a "leave word" from a reporter in North Carolina that wants to talk about reserves. And if he were to ask me, "What is the procedure," or if I were to get a call from a Savannah newspaper that says, "How is this going to work, who does what, who's responsible for these regulations?", I want to be able to give them a very clear and concise answer as to who's doing what, where, when and how.

And I think until we can do that, we're going to have a lot of confusion within the public.

Ted, are you going to make a comment? I think maybe it's an appropriate time for you to weigh into this.

Mr. Beuttler: Thank you. And all I would like to describe is what the Sanctuary regulates and a short description of the process it would have to go through if it wanted to change that or expand its authority certainly with regard to fishing.

The regulations prohibit some specific activities, altering the sea bed, discharging or depositing in the Sanctuary, damaging or removing bottom formation, invertebrates, prohibition against taking tropical fish or taking marine animals with poisons or electric charges or explosives. There's also a prohibition against damaging, removing cultural resources. Also, there's no bottom trawling allowed and no use of wire fish traps.

Spear fishing's not regulated, but that activity was reserved by the Sanctuary when it was created as something that, if necessary, it could get back to and regulate. The same is true with anchoring and vessel operations; they're not regulated, but that's been reserved.

So if the Sanctuary had concerns about a fishing activity or issue, certainly one of the options would be to come to you and express those concerns, and you could determine if action is appropriate under your Magnuson-Stevens Act authority.

Another option for the Sanctuary, if it wants to be able to regulate some specific activities under sanctuary regulations beyond the activities I mentioned already, it would have to engage in a fairly lengthy process that involves actually more consultations and steps, I think, than what you normally have to do when you're doing an impact statement under NEPA.

It has to make findings, and it is required by the law to consult with committees from the U.S. Senate and House of Representatives, numerous federal agencies, the state and your Council. It has to consult with you. It would then have to prepare reports, and some of those reports would have to describe commercial and recreational fishing activities that are ongoing right now.

There is a mandatory environmental impact statement, and that triggers public scoping hearings and a public review period with public comments.

As part of that process, then, if the Sanctuary is still interested in sanctuary fishing regulations, it would ask you to prepare the regulations. It is required to ask you to do that. And you would be preparing the fishing regulations for the Sanctuary.

The law that spells that out, I think, has just been distributed to you. That's from the National Marine Sanctuary Act. And the Council would be drafting the regulations that it determines would be necessary for the Sanctuary and to implement what the Sanctuary wants to do.

And then, obviously, that language, as you just heard, says that the Secretary will accept those regulations unless there's a finding that they're not fulfilling the statute and the goals and objectives of the Sanctuary. And in that case, the Secretary could go ahead and prepare the fishing regulations.

The Secretary could also do that if the Council declined to prepare them in the first instance or didn't prepare the regs. in a timely manner. That's all set out in the language that got handed out to you.

Dr. Nelson: Ted, do you see a need to reaffirm the language that Congress passed in any kind of memorandum between this Council and the Sanctuary?

Mr. Beuttler: What I think's helpful is that this is the procedure, and it's occurring to us that it's not a very well understood procedure. And what the statute makes clear is the Council prepares the fishing regulations. If that's helpful to have as part of the MOU, then by all means.

Dr. Nelson: My only question is, why are we bothering to try to come up with an MOU which, you know, above and beyond this issue, which is clear, isn't going to change? Is there a reason for it? If not, then why waste the paper and time? Because we all know how we're working together anyway.

But are there additional benefits that we're trying to see generated by this MOU?

Mr. Moffitt: I think that's where we left it at our last meeting, and I think the reason we're revisiting this is to clarify who is responsible for the fishing regulations. The Council, as everybody is aware, is in the process of reviewing the potential use of marine reserves

throughout the total South Atlantic EEZ, and does this fit into that whole scheme or do we isolate it and handle it as something separate?

And I think we need to at least make a statement to the public so they know if there are fishing regulations there that would impact them, which body are they going to have to come stand before to discuss those issues as it relates to fishing.

And I don't know personally that we need the MOU, as long as we can clarify it. And I think Ted, your comment was, as I understood it, what this says is very clear; what it means maybe isn't. And if we can describe what it means, then I think everybody's free and clear and we can move on.

Mr. Bohne: Of course, most of this language in any statute is difficult to understand, and perhaps if we can have our counsel and the Fisheries counsel make a plain language statement of what these procedures are and how these interactions are designed in the statute for clarity's sake, that might be beneficial, and include that either in this document or separately.

Mr. Moffitt: That makes sense to me.

Mr. Sanchez: This is really much ado about nothing. I mean, Russ is right. It's very clear. If it makes you feel better, you can say we'll accept your fishing rules if we like them; if we don't, then we'll do our own. Thank you.

Mr. Moffitt: We operate under that scenario all the time anyway, don't we, Dr. Hogarth?

Ms. Shipman: If I could add to that, Pete, I'm not sure we've seen the Secretaries step forward in a very timely manner to do a few things. But anyway, aside from that, would one then in turn read or interpret the first sentence of this protocol that the Sanctuary or NOS will give the Council the opportunity to serve as the lead agency?

I think that's the bottom line question to the State of Georgia and the question we've posed, and in the resolution that our Board of Natural Resources has passed, and it's not stated but somewhat implicit in the resolution that our General Assembly has passed. They would like to see the lead for fishery management taken by this Council as opposed to the Sanctuary.

Mr. Beuttler: The statute makes the Council the lead for preparing the regulations. And I'm not trying to just restate what you're already reading, but that's how it would apply.

Mr. Moffitt: I'm now comfortable with that.

Dr. Nelson: I think it's clear that in many ways the Council is the lead. All the fishing regulations promulgated by this Council for the South Atlantic apply within Gray's Reef. That's standard. Anything we do applies automatically in Gray's Reef, unless they decide they want specific Sanctuary regulations.

In which case, Susan, I think what you want to do is get some commitment that, if this Council does not concur with such regulations within the Sanctuary, they would not go in place. And that's not going to happen. I mean, I'm not an attorney, but that's -- what you see is what you get.

If they say we want to, you know, do anything within the Sanctuary, because it's consistent with our charge and our plan, they have to come to this Council and ask us to implement those regulations. And we go through all the hoops and do all the NEPA and everything, all that, and in the end -- but if this Council were to go, "We don't believe we should do that, we won't do that, we won't pass that regulation," then they go back to the Secretary and present their case, and if the Secretary of Commerce believes that what they're proposing is necessary, given their charge in their management plan, he'll put it in place.

And that's what it is. So you're not going to get what you want unless you can get some kind of extraordinary agreement from them. But the bottom line is that as a practical matter, my guess is that what this Council does is going to be very, very, very important in terms of how they respond to any requests for regulations, and this Council process will be taken seriously.

My experience in dealing with NOS is that the process of this Council, as the process is in Florida, will be taken very seriously administratively within the bureaucracy, and politically the reaction of this Council and its role will be taken very seriously. But I think that's as much assurance as you can get.

Mr. Lindelof: Well, I think is where the value of the MOU may come in, because what we want to do is avoid the situation where we're coming forth to the Council suggesting or asking for certain kinds of regulations to be developed, and the Council feeling that they're inappropriate.

And this is where the MOU, I think, really becomes valuable, because there are a number of steps before you get to the point of us presenting before the Council and making a request. And that involves things like joint information collection and analysis, developing some of the recommendations.

There are a lot of steps that we can do together to assure that by the time we come to the point where we think action is needed, we are pretty much of like mind. And those are the kinds of items that I think the MOU should probably contain.

It's a statement -- and it could go beyond the statement of the obvious, which is working together, coordinating, but making sure the public outreach work is done together, making sure that we really share some of these analyses, maybe even developing some of the analyses jointly and working up some joint schedules on some of these activities.

And that's where I think, if we're going to talk about an MOU, that's where it's valuable, and I'd like to bring the discussion back more to that, I think, if we can.

Ms. Shipman: To Russell's point, I think ideally the State of Georgia would like an extraordinary agreement, and we would hope to have it through this MOU. It doesn't appear that NOS is inclined to go that route. And be that as it may, we'll end up with whatever we end up with.

But that's exactly what the State of Georgia would like. They would like an extraordinary agreement that there would be a deference to this Council on the fishery management regulations in that Sanctuary.

Dr. Hogarth : It's just I want a clarification. Ted, you and Monica may have talked on this. But it was my understanding that, for example, if the Council developed regulations and then the NOS decided, "Well I want different regulations or something different," then the Secretary would sort of arbitrate.

He may not choose what NOS does. He could choose what the Council did. Yours are not binding either, so to speak. The Secretary makes the final decision. Is that -- that was my understanding, and I just want to know if that's clear or not.

Mr. Beuttler: Well, you know, I don't think we've ever been that far in the process where we've experienced, we've used those steps, so I don't know what kind of an arbitration role the Secretary would be doing. The law does say -- again, it's that section of the law that you got handed to you -- that there have to be findings; it's not just we like it or we don't like it.

There have to be findings based on the statute and the Sanctuary goals and objectives, and determinations based on that before you can not accept what the Council has prepared. So I guess -- as Russ said, the Council's work, its opinions would be given great weight by the Sanctuary, certainly by the Secretary.

Dr. Hogarth : The only reason I bring it up, I think it does give Georgia a little bit more what they were asking for. It doesn't give you 100 percent, but it does give you more of what you're saying. I mean, this Council can develop regulations. NOS could say, "Well, we want something different." And then it's really up to the Secretary to decide which he does.

Ms. Shipman: But that's standard procedure now. I mean, there's nothing different. I think we were hoping to come out, or the Council to come out of this with something more along the lines of what had been done in the Florida Keys. And I realize that was an extraordinary situation because of the State of Florida and the two council jurisdictions, and it was different from this situation. But we liked the way that had been set up.

Mr. Cole: Let me go back to Dr. Hogarth's point and ask the Sanctuary, what kinds of regulations would you want to pass that would be any different than what this Council would have, or what the State of Georgia would have as an example? Then I have a follow-up.

Mr. Bohne: We don't know. We're at this beginning stage of the process, and we are very committed to making those determinations in concert with the Council in an analysis of the information. And we do not at this point know if we are even going to come to the Council to have any regulations developed. We may get to the end or through the process and determine that no change is necessary.

Mr. Cole: Okay, to that point. I've got refuges and parks and lands and waters all over the place. I cannot create a regulation to manage a natural resource that's regulated by someone else without going to the original regulator and asking for an exemption or change.

And if I do it, I have to justify it in the Federal Register, and I must be able to determine that only by having something more strict or less strict can I accomplish the objectives for which that piece of property was set aside by the United States Congress. So I think you may be worrying about something that isn't there to worry about is my gut feeling.

Now, as it relates to MOUs, MOUs are usually instruments that we create between us to implement two laws or to implement the same law. You don't repeat the law in the MOU. The MOU is a "let's be friends" document because you've got a law and I've got a law, and here we're going to have this agreement so that we can both do what the lawyers say we've got to do, but we can live with each other. That's what an MOU does.

And I have a great deal of problem -- I understand the legal problems that NOAA has, I really do, but I'm having a little bit of trouble with all this legalese of repeating the law here, particularly in an MOU, when I'm not so sure that we need one. But if we do, let's get this highfalutin stuff out of here. Okay?

Mr. Bohne: So your recommendation would be to remove the reference to the legal statute? I think one of the -- we do want to do exactly what you suggested about making clear how we hope to cooperate through this effort. And the advantage that we feel having the statutory language or a clear, plain talk version of it in here, is to present not only to both our organizations, but to the public the process through which we will address any changes in fishing regulations at the Sanctuary.

Mr. Cole: Maybe we need to create another Redrafting Subcommittee here or something. I can see some ways to simplify this and take this -- I mean, to me, what we've done, we've substituted 6, 6A, and now this new language, and all I'm seeing in the new language is what's in the law. And a protocol should be implementing the law, not the law itself.

Ms. Smit-Brunello: Bill, do you have before you the agreement as the Council was looking at last December? Because it's pretty -- Gregg, is that agreement in here, but then you have taken in bold and with the strikeouts and that sort of thing?

Because why don't you look at from that way, Bill, without the fishing regulations protocol, and maybe that's more straightforward the way you were talking about. I mean, we don't have to go into -- it doesn't have to be in this way.

Mr. Cole: My experience writing MOUs, Monica, I'm sure is the same as yours. The simpler you make them, the easier they are to live with.

Ms. Smit-Brunello: Well, I mean, it's all up to you all if you want this fishing protocol in here or not.

Dr. Hogarth : I personally think we can develop an MOU which sort of outlines the cooperation through this. If you cannot do it in an environmental impact statement, you work together, you wouldn't be developing two environmental impact statements. If you're going to have public hearings, you would piggy-back public hearings to keep from confusing the public and this type of thing.

I think they're the type -- you could collect information. If you've got the data collection system, we'll share the data, you know, that type. Go through all those types of things that you can put in an MOU, so that you're not duplicating the effort and that type.

And I think it would probably be fine, I think, personally, if you tried to just put in laymen's language what the law says, you know, put it in laymen's language. And I think that could be done. I think it's very simple to have a very good MOU that lays out so the public looks at it.

Have the two, three agencies -- and we're willing to sign it also -- have the three who're going to work together to go through process of cooperation, hearings, data collection, environmental impact statements and all this sort of stuff, and in laymen's language on how this really works as far as the law is concerned. And I think we could do that pretty simply.

And if Ted, Monica and Gregg or I or somebody could work on it, I think we could get that done in a simple manner.

Mr. Moffitt: I think that may be the answer to it, and that's kind of the protocol we've been asking for that has got to come from NMFS and NOS or whoever. And I think you folks are the ones that can sit down and simplify this. And I would say, unless there's some other suggestion, that we leave it at that and let them put their heads together and see what we come up with. And that might take some of the chaos out of the confusion.

Any other comments on that? I'm going to ask one question. Joel, Ken, Diane, you've been sitting down there watching this. When you leave today, are you going to be comfortable how

the regulations as they pertain to fisheries are going to be -- okay. We need to clear that up for them so they know who's going to be responsible for fisheries regulations from Key West to Kill Devil Hills.

Dr. Hogarth : To that point, I don't think you can do that. It's not quite that simple. If NOS wants to do a sanctuary or reserve, that is one process. If this Council wants to do a marine reserve or whatever, then it's another process. Because you have total authority over what this Council wants to do.

I mean, that's no MOU or anything else. Under Magnuson Stevens Act, if this Council wants to set up a marine reserve or refuge or time/area closure or spawning season aggregate area closure or anything like this, you have that total authority.

But if NOS wants to do a marine reserve for a purpose or a sanctuary, then it's a different set of rules that Congress has passed, and that's the one that says that you have to consult, and if you don't like what you get, you do -- "Thank you, ma'am, I'll do my own," and then the Secretary says, "I'll arbitrate."

So you just can't write one thing. There are two separate complete issues here, and I think that's what's confusing the public and everyone else is we haven't put down what all these are and what the purposes of them are, what we hope to do later. In this white paper, we would probably address some of these issues that I feel we're talking about would be addressed between NOS and NMFS.

But you can't say to the public that, Yes, you know, the NOS is going to do this, marine reserve's going to do this, because you may want to do this. If you do it, you have the total authority, and you don't -- you see the difference is, you don't have to consult with NOS if you want to do a marine reserve at all. You can just do it. But if they want to do it, they do have to consult. So there's a total, complete difference here.

Mr. Moffitt: Bill, thank you. My concern is this -- and some day we've got to clear this up -- if I'm a resident of the State of Georgia, or North Carolina, for that fact, and I've got an understanding that there are regulations being considered in a sanctuary off of my state or off of a neighboring state, and I'm about to address those issues, and I look over my shoulder and here comes the South Atlantic Council discussing it, I don't know which way to turn.

And maybe I'm confusing something that's simple to everybody. But that's why I asked the people in the back -- and Joel wanted to make a comment -- because if they don't understand it and can't communicate it to the people within their region, then how in the world are we going to make this thing go.

Joel, do you have any comments?

Mr. Williams: Thank you. I appreciate that. Not only do we have the Council to contend with and NOAA to contend with, but we also have the Coral Reef Task Force. It is tremendously difficult to understand the relation between those three entities when the three entities can't even agree on what those relationships are.

The burden upon the fishing public right now is we have no idea who we go to express our concerns or give our input. And I can guarantee you that the public absolutely will not -- and I think it was evidenced here last night -- continue to attend public hearing after public hearing after public hearing when they don't know what's going on and they don't know who's going to have the final authority.

When this issue first reached prominence in Georgia, it was through the Gray's Reef process, and more participants appeared at those public hearings than have ever appeared in Georgia. It is beginning to wane out. People are confused.

And what I as a fisherman would like to see this Council and NOAA work out is a white paper which includes all three entities coming up and letting us know who's going to make the final decision with respect to fishery regulations out there. And if you can't do that, leave it alone, and we'll just do the best we can.

But we implore this Council and NOAA to work out an understanding as to who will be the final arbiter. If you can't do that, at the very least hold your public hearings in conjunction with each other. Thank you.

Mr. Moffitt: Joel, thank you. All I can comment to that is I, as a member of the general public, would want to know who is the final authority for me to go express my concerns to about what's going to happen to what I do when I go on the water.

Ms. Shipman: It's the Secretary of Commerce, Pete.

Mr. Moffitt: Well, I know that.

Ms. Shipman: I mean, that's clear.

Mr. Moffitt: I know that's clear. And maybe I'm adding chaos to the confusion, but -- I am. Thank you. And until I can get back to North Carolina with Lou, we won't be able to work this out. Leave it alone then. But I just think there's more out there that the people need to know.

How can I go to a public hearing and work with the Council and try and reach some resolution as to what I would think is in the best interests of my activities in the fisheries, when I know next week there's another hearing that may impact those two over the same thing? Enough said.

Any other comments? Bill, then you and the rest of whoever you can work with will come back to us.

Dr. Hogarth: Yes. And the other thing I'll say is the Coral Reef Task Force has no management authority. So, I mean, they will have to look at the Council or NOS or somebody. I'm not sure where that would go to. What the Coral Reef Task Force recommends has to go through a regulatory body that's already in existence. They have no power.

Mr. Moffitt: Any other comments to come before the Marine Reserves Committee? Hearing none, we stand adjourned.

The meeting adjourned at 3:25 o'clock p.m., March 7, 2000.

TAPE OF PROCEEDINGS ON FILE (2)

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