

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Lincoln Center, Suite 881 • 5401 W. Kennedy Blvd.
Tampa, Florida 33609 • Phone: 813/228-2815

3

March 9, 1981

00.MAR.81*001508

The Honorable Malcolm Baldrige
Secretary of Commerce
Washington, D.C. 20230

Dear Mr. Baldrige:

It has come to our attention that certain nautical charts recently published by NOAA (11363, 11364, 11371, and 11371) have depicted several enclaves of the fishery conservation zone (FCZ) within the waters of Breton, Chandeleur, and Mississippi Sounds, which areas are claimed by the states of Alabama, Mississippi, and Louisiana as inland waters and territorial seas, respectively. We are uncertain as to the nature of the claims asserted by the federal government to these enclaves, but it would appear that these claims pertain to the ownership of the waters and water-bottoms and that the United States is seeking to establish the ownership of the mineral rights and possibly other seabed resources pertaining to the submerged lands. It is also possible that these pockets of high seas have been depicted for international law purposes, and that in any event the affected states are challenging the validity of any such claims.

We further understand that it is the position of the U.S. Department of Justice that the management authority for marine fisheries resources in these enclaves rests with the federal government and not the states. While our Council takes no position on the ownership of these waters and submerged lands and the mineral rights and seabed resources pertaining thereto, we are concerned over the issue of fishery management authority within these enclaves.

Under the Magnuson Fishery Conservation and Management Act (MFCMA), we are charged with a specific role in the management of fisheries within the waters of the fishery conservation zone. The MFCMA also stipulated that the states would have management authority within internal waters, thus it is our understanding that the sovereign states have this management authority within their

The Honorable Malcolm Baldrige
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respective internal waters. All of our planning and the provisions of our fishery management plans (FMPs), including those implemented, submitted for implementation, and under development, are based on the premise that the states would manage these waters.

This unanticipated potential change in areas under state and federal management authority will create very serious fishery management problems. Traditionally, the states have closed their internal estuarine waters for certain periods in the management of species such as shrimp, menhaden, oysters, and occasionally other species. Additionally, there are state statutes and regulations which specify the size and type of gear which may be used to harvest seafood. All of these statutes and regulatory provisions may become unenforceable at the state level. This would create a major fishery management void and very severe adverse environmental impacts on the resources and user groups.

The shrimping closures, for example, are used by the states to prevent harvest of juvenile shrimp until they grow to a more usable size. These closures are very important to the success of our shrimp plan in obtaining optimum yield from the fishery. Whereas, if these enclaves are determined to be federal waters, the states could possibly enforce the provisions of their closures on their own citizens, but they cannot on citizens of other states. Further, as our plan is very specific on the areas of the FCZ which will be closed seasonally to shrimp fishing, and since these enclave areas are not included in the plan provisions, the states may not be able to regulate their own citizens. We would expect major unrestricted harvest to occur during this closed period to the detriment of industry.

The states also regulate the gear that may be used in certain fisheries and these restrictions would not be applicable to the enclaves. For example, the states limit shrimp trawl size to a 50-foot width in their internal waters. This measure provides for a socioeconomic allocation of the resource between user groups which has been worked out over the years by their legislative bodies. If large offshore trawlers pulling 160 feet of nets are allowed to operate in the enclaves, then the small vessel operators will be impacted adversely.

Numerous other examples of the adverse impacts which will result from segmented enforcement jurisdictions could be cited; however, the basic point is that there may be no regulation in these enclaves for several years, since under the terms of MFMCA no federal regulations can be promulgated unless a FMP has been

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implemented for the fishery. Even if a plan has been implemented, as in the case of the shrimp fishery, it requires almost a year to implement an amendment to the plan. In order to manage other fisheries throughout their ranges, we would have to develop FMP for fisheries such as menhaden, oysters, and numerous other fisheries that are largely estuarine dependent and which were managed competently by the states at no cost to the federal government.

Our Council, therefore, requests that you reaffirm that the states have fisheries management authority within these enclaves, and that the NOAA charts (11363, 11364, 11371, and 11373) be corrected accordingly. National Marine Fisheries Service and the Councils desperately need the assistance and cooperation of the states in implementing and enforcing the provisions of the plans implemented under the FCMA. The states, in turn, need the assistance and cooperation of the federal government in resolving this potential enforcement nightmare.

Sincerely,

Bobby O'Barr by wa

Bobby G. O'Barr
Chairman

BGO:WES:jak

cc: The Honorable William French Smith
Attorney General of the United States
The Honorable Fob James
Governor of Alabama
The Honorable David Treen
Governor of Louisiana
The Honorable William Winter
Governor of Mississippi
The Honorable Charles Graddick
Attorney General of Alabama
The Honorable William J. Guste, Jr.
Attorney General of Louisiana
The Honorable Bill Allian
Attorney General of Mississippi
Gulf Council
Staff

APR 21 1981

AGENDA D-1(m) -
April 1981



C: C45

00 MAR 81 * 00 1548

Mr. Bobby G. O'Barr
Gulf of Mexico Fishery
Management Council
Lincoln Center, Suite 881
5401 W. Kennedy Boulevard
Tampa, Florida 33609

ACTION	ROUTE TO	INITIAL
UNITED STATES DEPARTMENT OF COMMERCE		
National Oceanic and Atmospheric Administration		
Washington, D.C. 20230		
Admin. Off.		
OFFICE OF THE ADMINISTRATOR		
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	OA/C3x5:CEH
	Economist	
	Sec./Bkkr.	
	Sec./Typist	
MAR 27 1981		
RECEIVED		
APR 1 1981		
GULF OF MEXICO FISHERY MANAGEMENT COUNCIL		

Dear Mr. O'Barr:

This is in response to your letter of March 9, 1981, to the Honorable Malcolm Baldrige, Secretary of Commerce, regarding the depiction of territorial sea limits on NOAA's National Ocean Survey nautical charts and the management authority of fisheries in Breton, Chandeaur, and Mississippi Sounds. The limits are shown on our charts as set forth by the Ad Hoc Committee on Delimitation of the United States Coastline and in conjunction with the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.

The territorial sea and contiguous zone limits currently shown on National Ocean Survey nautical charts are shown in accordance with the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone and approved by the Baseline Committee. Implementation of the Convention has been through the Ad Hoc Committee on Delimitation of the United States Coastline (more commonly referred to as the Baseline Committee). This Committee was established to provide an interagency forum to discuss and make decisions on all questions and issues relating to the delimitation of the coastline of the United States. Decisions by the Committee are considered final unless changed by a higher authority; i.e., the U.S. Congress or the Supreme Court. Represented on the Committee are those agencies of the Federal Government most directly concerned with implementation of United States policy with respect to the coastline: the Departments of Commerce, Interior, Justice, State, and Transportation.

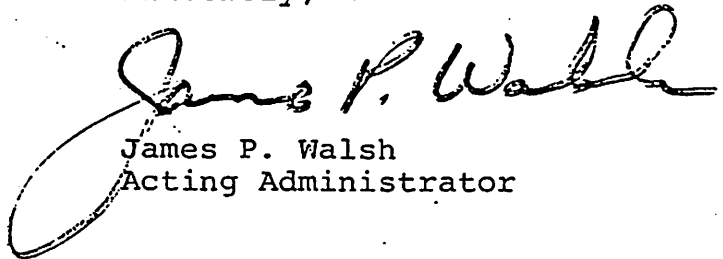
Jurisdiction of the waters of Breton, Chandeaur, and Mississippi Sounds is currently in litigation [U.S. vs. Louisiana (Mississippi-Alabama Boundary Cases)]. The



jurisdictional situation in Louisiana, however, is being handled differently than that of Mississippi and Alabama, as noted on the enclosed copy taken from Notice to Mariners No. 1, 1981.

Mr. Donald Carr, the attorney at the Department of Justice who is handling the case, can be reached on 202-633-2750.

Sincerely,



James P. Walsh
Acting Administrator

Enclosure

cc:

Honorable William French Smith
Attorney General of the United States
Honorable Fob James
Governor of Alabama
Honorable David Treen
Governor of Louisiana
Honorable William Winter
Governor of Mississippi
Honorable Charles Graddick
Attorney General of Alabama
Honorable William J. Guste, Jr.
Attorney General of Louisiana
Honorable Bill Allian
Attorney General of Mississippi

(47) TERRITORIAL SEA BOUNDARY OFF COAST OF LOUISIANA.

The lines indicating the seaward boundary of the territorial sea on charts depicting waters off the coast of Louisiana do not necessarily coincide with the limit of the State's jurisdiction under the Submerged Lands Act, including fisheries regulation.

Notably, on Charts No. 11363 and 11373 the indicated line of the territorial sea is not the limit of the State's jurisdiction. In the area of Chandeleur and Breton Sounds, Louisiana's jurisdiction, including fisheries regulation, extends to all waters on its side of the Louisiana-Mississippi boundary and landward of a line beginning approximately at the center of Ship Island to the northernmost point on the Chandeleur Islands, following the low water line along the seaward shore of those islands, then to Grande Gosier Island, Breton Island, and finally to the mainland at Main Pass; and also all waters on the Louisiana side of the Mississippi-Louisiana boundary and within a belt 3 geographical miles seaward of the lines just described.

Charts 11351, 22nd Ed 1/20/80
11356, 20th Ed 1/26/80
11357, 20th Ed 1/19/80
11358, 29th Ed 8/9/80

Supersedes N.M. 1(47)80)

11361,, 43rd Ed 8/9/80
11363, 20th Ed 1/12/80
11371, 22nd Ed 4/19/80
11373, 25th Ed 6/28/80

(NOS, Rockville, MD; RS6265/80)



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

~~Rockville, Maryland 20852~~
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

May 5, 1981

Mr. Hugh A. Swingle, Director
State Department of Conservation and
Natural Resources
Marine Resources Division
P. O. Box 188
Dauphin Island, Alabama 36528

Dear Hugh:

Your letter of April 7, 1981, asks about enforcement of Alabama's shrimp management regulations in the "enclaves" in Mississippi Sound, after Federal regulations are promulgated to implement the Shrimp FMP.

The dispute about jurisdiction over the enclaves is being litigated between the United States and the States of Alabama and Mississippi. The attorney for the United States has offered to stipulate that the regulations implementing the Shrimp FMP would not be enforced in the enclaves during the 1981 season, pending resolution of the lawsuit. If the States agree to the stipulation, they would be free to enforce their own regulations in the enclaves during 1981.

I enclose a copy of the draft stipulation for your information. You might want to discuss it with Benjamin Cohen of your Attorney General's office; the stipulation appears to serve the best interests of the States and the Federal government while the legal dispute is being resolved.

Sincerely yours,

Jay S. Johnson
Assistant General Counsel
for Fisheries

Enclosure



10TH ANNIVERSARY 1970-1980

National Oceanic and Atmospheric Administration

A young agency with a historic
tradition of service to the Nation



DRAFT

Washington, D.C. 20530

February 26, 1981

DAC
90-4-03

Jim R. Bruce
Special Assistant
Attorney General
Office of the Attorney General
Gartin Justice Building -- Suite 4
504 High Street
Jackson, Mississippi 39205

Benjamin G. Cohen, Esquire
Assistant Attorney General
State of Alabama
64 North Union
Montgomery, Alabama 36130

Gentlemen:

This letter memorializes our agreement with respect to the Gulf of Mexico Shrimp Fishery Management Plan recently approved by the Department of Commerce.

The United States will in 1981 undertake no enforcement of the provisions of the shrimp fishery management plan applicable to those areas which are in dispute in this litigation. This stipulation does not in any respect diminish the United States' position that the disputed areas are properly treated as high seas under the Geneva Convention on the Territorial Sea and Contiguous Zone and as parts of the Fishery Conservation Zone subject to Federal regulation under the Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. This stipulation does not commit the United States to fore swear current implementation of the shrimp plan in other areas or post-1981 enforcement in the disputed areas. Further, this stipulation does not commit the United States to enter similar agreements with respect to non-enforcement in the disputed areas of other fishery management plans during the pendency of the litigation.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Donald A. Carr
Attorney, Marine Resources Section