SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Gregg T. Waugh, Deputy Executive Director

April 6, 1999

Dr. Andrew J. Kemmerer, Regional Administrator
National Marine Fisheries Service, Southeast Region
9721 Executive Center Drive, North
St. Petersburg, Florida 33702

Dear Andy:

Pursuant to Section 305(c)(2)(A) of the Magnuson-Stevens Act, the Council hereby requests a prohibition on harvest and possession of red porgy be implemented through emergency action. The Council approved this request at the March 5, 1999 Council meeting in St. Simons Island, Georgia after receiving the 1999 Red Porgy Stock Assessment Report.

BACKGROUND

Red porgy maximum sustainable yield, optimum yield, and overfishing levels as proposed in the Council's Comprehensive SFA Amendment (SAFMC, 1998) are shown below:

Maximum Sustainable Yield (MSY)

Maximum sustainable yield for red porgy is unknown. The Council reviewed alternatives and concluded the best available data supports using 30% Static SPR as a MSY proxy for red porgy.

Optimum Yield (OY)

Optimum Yield (OY) for red porgy is the amount of harvest that can be taken by U.S. fishermen while maintaining the Spawning Potential Ratio (SPR) at or above 40% Static SPR.

Overfishing Level to meet Magnuson-Stevens Mandate

The National Standards Guidelines provided the following two definitions: (1) "To overfish means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis" and (2) "Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis." The Guidelines go on to indicate that "In all cases, status determination criteria must specify both of the following: (i) A maximum fishing mortality threshold or reasonable proxy thereof, and (ii) A minimum stock size threshold or reasonable proxy thereof."

Overfishing for red porgy is defined as a fishing mortality rate (F) in excess of the fishing mortality rate at 30% Static SPR ($F_{30\%}$ Static SPR) which is the red porgy MSY proxy.

The "threshold level" for red porgy is defined as 10% Static SPR.

STOCK STATUS

1. 1994 Assessment

This assessment consisted of a complete virtual population analysis (VPA) and included data through 1992. The spawning potential ratio (SPR) was determined to be 13%. The Council used this assessment to develop Snapper Grouper Amendment 9.

2. 1998 Updated Trends Analysis

This assessment consisted of a "snap-shot" estimate of SPR using virtual population analysis (VPA) and 1996 data. The spawning potential ratio (SPR) was determined to be 14-19%.

3. 1999 Assessment

This assessment consisted of a complete virtual population analysis (VPA) and included data through 1996 for VPA analyses and through 1997 for other analyses. The spawning potential ratio (SPR) was determined to be 24%.

The increased level of information available for red porgy in the 1999 assessment, for the first time, allowed for examination of the biomass and recruitment levels. The assessment report concluded that biomass had decreased from an annual estimate of 9,913 metric tons during the time period 1972-78, to 3,557 metric tons during 1982-86, and to 685 metric tons during 1992-96. This represents a 93% reduction from the 1972-78 period to the 1992-96 period. Over the same time periods, recruitment (the number of age 1 fish entering the population) declined from 6.53 million fish per year (1972-78), to 2.38 million fish per year (1982-86), and to 0.66 million fish per year (1992-96). This represents a 90% reduction from the 1972-78 period to the 1992-96 period. The most recent recruitment level (1997) is substantially below the 1992-96 average.

The 1999 assessment indicates that Static SPR is not (and has not been) a valid MSY proxy for red porgy. While the Static SPR level has increased from 13% in 1994 (data through 1992) to 24% in 1999 (data through 1996), biomass and recruitment levels have declined or remained extremely low.

PREVIOUS COUNCIL ACTION

The Council's Snapper Grouper Assessment Panel concluded that with implementation of the measures in Snapper Grouper Amendments 8 and 9, the red porgy SPR was projected to be above 30% which is the Council's overfishing level. Progress towards rebuilding, using SPR as a measure, can be seen as the SPR increased from 13% (1994 assessment) to 24% (1999 assessment). However, as stated earlier, Static SPR appears to be an invalid proxy for biomass MSY.

The Council finalized Amendment 8 and sent the document to the Secretary of Commerce for formal review and implementation on July 10, 1997. The controlled access program became fully effective in December 1998.

Amendment 9, which was based on the 1994 stock assessment, was finalized and sent to the Secretary of Commerce for formal review and implementation on February 3, 1998. Recognizing the crucial need for measures contained in Amendment 9, particularly for red porgy, the Council requested implementation of Amendment 9 (except the black sea bass pot construction measure) as an interim rule request on January 16, 1998. On May 14, 1998 the

National Marine Fisheries Service informed the Council that they suspended action on the interim rule and that they intended, instead, to address these measures under Amendment 9.

On September 24, 1998 the Council requested that all measures in Amendment 9 be implemented through emergency action. Once again, the Council was attempting to begin rebuilding of overfished species, particularly red porgy, as soon as possible. On January 22, 1999 the National Marine Fisheries Service informed the Council the final rule for Amendment 9 was to be filed with the Office of the Federal Register on January 21, 1999, with an effective date of February 24, 1999. Thus regulations addressing red porgy based on the 1994 stock assessment using data through 1992 took effect on February 24, 1999.

NEW STOCK ASSESSMENT

For the first time, the stock assessment on red porgy was able to address stock status in terms of biomass and recruitment levels using data through 1996 for the VPA analyses. This provided the Council with a new level of information to address overfishing criteria in terms related to biomass as was done for black sea bass in the Council's SFA Comprehensive Amendment. The Magnuson-Steven Act, as amended, and associated guidelines prepared by the National Marine Fisheries Service require the Council to specify MSY in terms of biomass when data are available to do so. Biomass levels and/or proxies must be specified for all data-moderate species which had previously only included black sea bass but now with the 1999 assessment includes red porgy. These new values for red porgy are as follows:

Overfishing is defined in terms of the NMFS Guidelines Checklist (Appendix D in SFA Comprehensive Amendment) and information provided in the new stock assessment as well as subsequent analysis from the NMFS Beaufort Lab. The two components of the status determination criteria are:

A. A maximum fishing mortality threshold (MFMT) — A fishing mortality rate (F) in excess of $F_{30\%}$ Static SPR which is 0.45. Current fishing mortality was estimated as 0.64 based on data through 1996.

B. A minimum stock size threshold (MSST) — The minimum stock size threshold is 2,854 metric tons. Current stock size was estimated to be 685 metric tons based on data through 1996. Further, the MSST needed to achieve OY would be 3,805 metric tons

CONCLUSIONS/RATIONALE

The Council concluded a total prohibition on harvest and possession of red porgy was necessary and justified based on consideration of these determination criteria. First, the Council evaluated the fishing mortality rate which needs to be reduced by 30% to get above the maximum fishing mortality threshold. Amendment 9 measures, which were implemented on February 24, 1999, were projected to reduce the commercial catch by 65%, the recreational catch by 50%, and the total catch by 59%. Thus, the 30% reduction required to get above the maximum fishing mortality threshold would have been effectively doubled. So, no additional action was required as far as the fishing mortality rate component of the new status determination criteria is concerned.

However, the Council had to look at the biomass estimate which is a much more effective way of ensuring there are sufficient fish to reproduce and support the continued productivity of a species. Review of these data make it clear that measures must be taken to increase the stock size by 317% (from 685 to 2,854.1 metric tons) just to get the stock above the minimum stock size threshold. Additional data showed that annual recruitment had declined from 6.53 million

fish during the years 1972-78 to 2.38 million fish during 1882-86 and to 0.66 million fish during 1992-96. Further, the most recent recruitment level (1997) is substantially below the 1992-96 average. Recruitment, total stock biomass and landings still appear to be trending down. Also, the size at maturity and size at transition from females to males have occurred at progressively smaller sizes which indicates severe overfishing. Most recent data suggest the situation may be getting worse than the 1992-96 average indicates.

In light of the new stock assessment, the Council determined an emergency exists and had no choice but to take the drastic step of voting to prohibit all harvest and possession of red porgy. The Council requests implementation of a prohibition on harvest and possession immediately. The draft regulations are being prepared in conjunction with NMFS regional staff. The Council is requesting the emergency regulations to be effective no later than May 1, 1999 when the current red porgy closure is scheduled to end. This action is deemed necessary to meet the Congressionally-mandated deadline to prevent overfishing and rebuild overfished resources.

We appreciate your assistance in expediting implementation of this request. If you require any additional information, please do not hesitate to contact Bob Mahood.

A minority report has been prepared by Council Member Jodie Gay from North Carolina and is being submitted with this request.

Sincerely,

Pete by RKM

Pete Moffitt
Chairman

Enclosure

PM:GTW/mac

cc: SAFMC Members & Staff
Snapper Grouper Advisory Panel
Scientific & Statistical Committee
Jim Weaver, Joe Kimmel, Pete Eldridge, Rod Dalton & Roy Crabtree (NMFS SERO)
Monica Smit-Brunello & Mike McLemore (NOAA GC)
John Merriner, Chuck Manooch & Doug Vaughan (NMFS SEFSC, Beaufort Lab)
Perry Allen
Wayne Swingle (GMFMC), Dan Furlong (MAFMC)

MINORITY REPORT

Jodie E. Gay
105 Friendly Lane
Hampstead, NC 28443

April 4, 1999

The Honorable William Daley
Secretary of Commerce
Washington, DC

Dear Sir,

In accordance with the South Atlantic Fishery Management Council's Manual Of Organizations Practices and Procedures, I wish to submit the following minority report for your consideration.

In this report I will convey to you reasons that I believe should prevent your supporting the Council's request for emergency action to prohibit harvest and possession of red porgy.

I believe this action would be inappropriate for the following reasons:

It would be contrary to procedures described in Federal Register Vol. 62, No. 162 titled "Policy Guidelines for the use of Emergency Rules".

It violates and in some cases completely ignores National Standards 5, 8, 9, 10, as stated in the Magnuson-Stevens Fishery Conservation and Management Act.

Some of the justification was based on incorrect statements during Council deliberations.

Federal Register notice Vol. 62. No. 162 (attached) states four criteria to be used for emergency Justification. The only one that could apply in this situation is number 1. Number 1 deals with ecological reasons and reads " to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP". The Council has an FMP and overfishing is defined
as 30% spawning potential ratio (SPR). The latest stock assessment estimates SPR for red porgy at 24%. This value is below the 30% value, but Doug Vaughan the author of the assessment notes "the value of 24% for the recent period is slightly underestimated". Amendment 9 of the Snapper-Grouper Plan, **which had been in effect only 6 days**

prior to the Council's vote to request emergency action, has measures included in it that are projected to raise SPR above the 30% level.

The policy guidelines also state that "Controversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and-comment rulemaking". It goes on to say "The process of implementing emergency regulations limits substantially the public participation in rulemaking that Congress intended under the Magnuson-Stevens Act and the Administrative Procedure Act. The Councils and the Secretary must, whenever possible, afford the full scope of public participation in rulemaking".

During the week preceding the Council meeting, at least one fisherman interested in the management of red porgy, telephoned the Council office asking if they should attend the meeting. They were told by Council staff, and rightfully so, that we were only receiving the stock assessment and no action items were on the agenda.

National Standard 5 states: "Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose".

I believe this emergency action request violates this National Standard, because the Snapper-Grouper fishery is a multispecies fishery. It is executed almost entirely with hook & line. Where red porgy are taken many other species are caught at the same time. It will not be any cheaper for a fisherman to go fishing. Other than the actual cost of owning a vessel, bait and fuel are the major expenses incurred to make a trip. The cost of these items will not go down, they will in fact go up. Moving around to leave areas with heavy concentrations of red porgy will increase fuel consumption. Also longer trips will be required to harvest enough other species to make up the lost income from not being able to save red porgy.

Packing houses and fish dealers expenses will not go down because they can't handle red porgy. Only their income will go down, in some cases substantially.

This action certainly would not "promote efficiency" !

National Standard 8 reads: "Conservation and management measures shall, consistent with the conservation requirements of this act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) the extent practicable, minimize adverse economic impacts on such communities.

During Council deliberations economic concerns were not discussed in any meaningful manner.

Amendment 9 alone will have a significant negative economic impact on commercial fishermen and fish dealers. A total prohibition could be devastating. The Final Amendment 9 document estimates a 25% reduction in weight landed (86,437 pounds) during the March and April closure with an estimated value of $104,000. In

addition, based on a 40% reduction in landings due to the increased size limit, the document projects a loss in revenue of an additional $164,500. This figure will be higher given the revised discard estimate of 54+%. This loss would not be spread evenly the federal snapper-grouper permits or over the many permitted fish dealers. North Carolina fishermen in 1998 landed 166,388 pounds of red porgy. About 78% of these landings were bought by 8 dealers in 3 counties; one dealer alone accounted for 26% of the total state landings (43,429 pounds, estimated value of $55,600). Implementation of Amendment 9 and/or the emergency action will have an even greater impact on individual fishermen. One vessel which has targeted red porgies to a degree landed 9.3% of the total NC catch in 1998 (15,419 pounds). These were worth at least $19,700 to that vessel. This vessel's red porgy catches averaged between 8.5-16.1 % of its total annual catches from 1994 to 1998 with an estimated annual value between $18,200 -$31,000. Between 13.8 - 23.9% of its catch was landed in March and April (1994-1998). This should give you some idea of the impact of Amendment 9 which includes a March-April closure and an increased minimum size of 14".

Since other states catches are similar to North Carolina, one can assume that economic impacts are similar.

Headboat operators have also expressed opposition to a moratorium. They're concerned that they will lose paying passengers if they are unable to retain red porgy (letter attached).

National Standard 9: "Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch".

This again received very little discussion during Council deliberations.

As mentioned before this is a mixed species fishery. There is absolutely no way to avoid catching red porgy if you drop a baited hook to the bottom to fish for the other species.

This action would indeed create bycatch, not minimize it!

National Standard 10: "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea".

This received absolutely no discussion during Council deliberations.

This fishery is executed in most areas, 30 to 70 miles offshore. The vessels are normally 25 to 45 feet in length. The loss of income from red porgy will require many fishermen to stay longer than they normally would, often in inclement weather. Some vessels will likely switch into other fisheries such as snowy grouper that are even farther offshore, or black sea bass where pots are used and overloading of small boats can easily become a safety concern.

This measure certainly does not promote safety of human life at sea!

Inaccurate statements during Council deliberations had a substantial effect on the outcome of the vote. The following are exerts from the Draft Summary Minutes.

First statement: "We've been watching declines in mean size in this fishery for 8 or 9 years now".

Annual mean weight has in fact been stable since about 1986 (Fig. 3 Vaughan 1999).

Second statement: "total catch has continued to decline dramatically".

Commercial landings constitute 84% of the total catch. There have been two significant declines in commercial catch. First in 1984 when trawls were prohibited, and second in 1992 when traps were prohibited and a 12" size limit was implemented (Fig. 1, Vaughan 1999). Since this time commercial landings have remained stable. These decreases were created by regulations that were intended to lower the catch. The regulations worked and should not now be used as evidence that the stock is in poor shape, creating the need for more regulations. Certainly no one can expect a hook & line fishery, regulated by a 12" minimum size limit to continue to land what a trawl and trap fishery, without a single regulation to restrain harvest, was able to produce.

Third statement: " you can see by looking at Figure 12 Doug's first attempts to model biomass relative to the biomass at MSY, that biomass has actually fallen".

This statement holds some truth. Biomass did fall in the early 1980s when the fishery first started and there was a trawl fishery operating. However, for the past 15 years both relative fishing mortality and relative population biomass have remained stable (Fig. 12, Vaughan 1999).

It was mentioned in deliberations that North Carolina seems to be the center of the population. It is said that, "as the catch has gone down,... certainly also the range has continued to shrink".

As mentioned before commercial landings account for the bulk of the catch. Florida commercial landings in 1996 were higher than 13 of the 26 previous years (attached). This is as far from NC as one can get and remain in the SAFMC area of jurisdiction. Keep in mind this would be hook & line only now that traps are prohibited.

Next statement: "we basically have zilch recruitment".

Regulations prohibit fish smaller than 12" from being retained. A 12" fish is 3 1/2 years old so surely no age 1 fish can be sampled in the landings. The only way they can be sampled is MARMAP data.

The statement implies there is no recruitment. This is inconsistent with Table 6 in the assessment which shows catch per unit of effort at age for the MARMAP data. CPUE for hook & line at age 1 has fluctuated since 1979 from .01 to .18. Two of the years with high CPUE (.11) were 1993 and 1995. Trap CPUE has also shown considerable fluctuations ranging from .06 to .84. Interestingly, the high occurred in 1989 and 1995 with the lows in 1984 and 1997.

Two concerns raised in the assessment are as follows;

(1) Commercial landings dropped after 1991.

This a direct result of Amendment 4 (12" size limit and trap prohibition) and changes in fishing practices after its implementation.

(2) There was a precipitous decline in the trap CPUE , with a similar but less dramatic decline noted in hook & line CPUE.
The decline in the trap CPUE coincides with the change in the type trap used. Although comparisons were made between the two types of traps (Florida snapper and Chevron) and conversion factors developed, the huge decline from 1987 to 1989, which coincides with the change in traps raises the question of how useful the merging of the two data sets can be. During the two year period that both gears were used they fished differently. Considerably less hauls were made (84 and 65 compared to 306 to 414 in other years), and they were soaked for 90 minutes instead of 2 hours, which had been used previously. Also, these two years the traps were tied to the vessel rather than buoyed off as in all other years (methods and tables attached). From 1988 to 1997 when only Chevron traps are compared, CPUE fluctuates with no apparent trend.

Hook & line CPUE has declined overall since 1980 but there has been some significant numbers, 1993 and 1997, both of which had the highest CPUE since 1984.

It was estimated in the Amendment 9 Final Document that the 14" size limit would reduce the commercial catch by 40% based on numbers of fish. Based on more recent 1998 TIP data, this reduction would be 54%. The reduction in fishing mortality would actually be higher than 54% since fishermen that target red porgy to some degree will discontinue that practice because of economics.

Based on 1998 data, there would be a 63.6% reduction in numbers caught by headboats. This is significantly greater than the 37% reduction projected in the Amendment 9 document.

In addition to the above 54% reduction in mortality from the increased size limit, the March and April closure will also reduce commercial landings by another 25% based on numbers.

In conclusion, while this species has experienced some problems, there are no compelling reasons to circumvent the process of allowing Amendment 9 to do what it was designed to do, i.e., raise SPR above 30%. Commercial landings which constitute 84% of the catch have been stable since implementation of Amendment 4 in 1992. CPUEs for age 1 fish in the independent data have been relatively stable with a peak in 1995. SPR is around 24% and annual mean weights are stable. Other indicators are down since the early 1980s but basically little has changed in the 1990s. Emergency action would violate four National Standards as well as NOAA's own Policy Guidelines. With SPR near the overfishing level set by the Council , a complete closure, especially without public participation, would not foster good relations between the fishing public and the Council.

Sir, with all due respect to you and my fellow Council members, I ask that this request be denied. I thank you for your consideration of these concerns.

Since I am involved in the fishing industry, for the record, less than 1% of my income is derived from red porgy.

Best Regards,

Jodie E. Gay
SAFMC Member -NC

THEFT RATES OF MODEL YEAR 1995 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1995—Continued

Manufacturer	Make/model (line)	Thefts 1995	Production (mfgr's) 1995	1995 (per 1,000 vehicles produced) theft rate
205 ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS	0	132	0.0000
206 ROLLS-ROYCE	TURBO R	0	19	0.0000
207 VOLKSWAGEN	EUROVAN	0	1,814	0.0000
208 VOLVO	LIMOUSINE	0	6	0.0000

Issued on: August 18, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–22263 Filed 8–20–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 970728184–7184–01; I.D. 060997C]

Policy Guidelines for the Use of Emergency Rules

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Policy guidelines for the use of emergency rules.

SUMMARY: NMFS is issuing revised guidelines for the Regional Fishery Management Councils (Councils) in determining whether the use of an emergency rule is justified under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The guidelines were also developed to provide the NMFS Regional Administrators guidance in the development and approval of regulations to address events or problems that require immediate action. These revisions make the guidelines consistent with the requirements of section 305(c) of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act.

DATES: Effective August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Paula N. Evans, NMFS, 301/713–2341.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1992, NMFS issued policy guidelines for the use of emergency rules that were published in the Federal Register on January 6, 1992 (57 FR 375). These guidelines were consistent with the requirements of section 305(c) of the Magnuson Fishery Conservation and Management Act. On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act. The amendments significantly changed the process under which fishery management plans (FMPs), FMP amendments, and most regulations are reviewed and implemented. Because of these changes, NMFS is revising the policy guidelines for the preparation and approval of emergency regulations. Another change to section 305(c), concerning interim measures to reduce overfishing, will be addressed in revisions to the national standards guidelines.

Rationale for Emergency Action

Section 305(c) of the Magnuson-Stevens Act provides for taking emergency action with regard to any fishery, but does not define the circumstances that would justify such emergency action. Section 305(c) provides that:

1. The Secretary of Commerce (Secretary) may promulgate emergency regulations to address an emergency if the Secretary finds that an emergency exists, without regard to whether a fishery management plan exists for that fishery;

2. The Secretary shall promulgate emergency regulations to address the emergency if the Council, by a unanimous vote of the voting members, requests the Secretary to take such action;

3. The Secretary may promulgate emergency regulations to address the emergency if the Council, by less than a unanimous vote of its voting members, requests the Secretary to take such action; and

4. The Secretary may promulgate emergency regulations that respond to a public health emergency or an oil spill. Such emergency regulations may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has had an opportunity to comment on the regulation after it has been published, and in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action.

Policy

The NOAA Office of General Counsel has defined the phrase "unanimous vote," in paragraphs 2 and 3 above, to mean the unanimous vote of a quorum of the voting members of the Council only. An abstention has no effect on the unanimity of the quorum vote. The only legal prerequisite for use of the Secretary's emergency authority is that an emergency must exist. Congress intended that emergency authority be available to address conservation, biological, economic, social, and health emergencies. In addition, emergency regulations may make direct allocations among user groups, if strong justification and the administrative record demonstrate that, absent emergency regulations, substantial harm will occur to one or more segments of the fishing industry. Controversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and-comment rulemaking.

The preparation or approval of management actions under the emergency provisions of section 305(c) of the Magnuson-Stevens Act should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. An emergency action may not be based on administrative inaction to solve a long-recognized problem. In order to approve an emergency rule, the Secretary must have an administrative record justifying emergency regulatory action and demonstrating its compliance with the national standards. In addition, the preamble to the emergency rule should indicate what measures could be taken

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

104-297

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

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(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

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(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

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(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

97-453

(b) **GUIDELINES.**-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

Impacts of size limits are presented in two ways. First, the direct reduction in landings by sector is examined using data for each species as shown for red porgy in Table 20. Then the overall reduction is determined by weighting the reduction for each sector by the landings for each sector. This methodology is described under the Economic Impacts heading for red porgy (see below) and is the same for each species. The total percent reduction in numbers of fish is then compared with the percent reduction in fishing mortality required to reach 30% SPR. Analyses for all measures assume the reduction in numbers of fish is equivalent to an equal reduction in fishing mortality (F). This assumption is valid as long as the number of trips does not increase significantly. We have no way of gauging the future number of trips. In addition. reductions in terms of weight are presented and used to gauge economic value based on price per pound.

A 14" size limit would reduce the recreational catch by 37% based on numbers of fish (Table 20). Based on 1995 data on numbers of fish, a bag limit of 5 in combination with a 14" size limit would reduce the charterboat and headboat catches by 36% and 61% respectively (Table 21). There are no bag limit savings for bag limits of 1-5 fish with size limits of 12-14" for the private/rental sector; the 14" size limit in conjunction with a 5-fish bag limit would reduce the private/rental boat catch by 33% based on numbers of fish (NMFS Beaufort Lab analyses of impacts, 1996). It should be noted that increasing the size limit would result in about a two year loss in yield before the increased size limit would produce a weight gain.

The size limit will reduce the commercial catch by 40% based on numbers of fish (Table 20). Closure of the commercial fishery during March and April will reduce the commercial catch by 25% based on numbers of fish (Table 22).

To achieve a transitional SPR of 30% (overfished level), total fishing mortality must be reduced by 65%. To achieve the long-term goal of 40% static SPR, fishing mortality must be reduced by 75%. The proposed combination of recreational and commercial measures will reduce the commercial catch by 65%, the recreational catch by 50%, and the total catch by 59% based on numbers of fish.

Table 19. Percent of Red Porgy Catch Below Legal Size Limit. (Source: Mays and Manooch, 1997).

Year	Headboat	Recreational (MRFSS)	Commercial
1996	10%	6%	5%
1995	8%	30%	5%
1994	11%	37%	5%
1993	13%	6%	6%
1992	24%	66%	NO DATA
1991	32%	51%	24%

CAROLINA PRINCESS

CAROLINA HEADBOATS, INC

March 12, 1999

South Atlantic Fishery Management Council
One Southpark Circle, Suite 306
Charleston, South Carolina 29407-4699

Dear S. A. F. M. C. Member,

I just received word that a moratorium may be enacted on Red Porgys due to a negative stock assessment report from Beaufort Marine Lab. I find this hard to accept especially since the passing of Amendment 8 which greatly restricts the size and bag limits of Red Porgy and has only been in effect for two weeks.

There are many reasons why Mr. Vaughn's report could be in serious error or falsely interpreted - the least not being is that Red Porgy are not a targeted species. I know I am speaking for only our area, the northern and mid coast of North Carolina, but Red Porgy are really just a by-catch No one that I know in the headboat or commercial fishing business go exclusively for Red Porgy. More targeted species include Vermillion Snapper, assorted Grouper and fish with a higher dockside value. Headboats don't usually target any certain species, but usually fish in areas where Vermillion Snapper, Triggerfish and Grouper are predominate catches. Most headboats in these areas mainly fish in deeper waters in areas where you usually don't catch Red Porgys. There has been an increase in Red Porgys in both size and numbers over the last two years - way up from the last six to eight years prior to 1997. What there has been a reduction of is fishing effort, not for just Red Porgy but all bottom fish. There are about forty charter boats in the Morehead City - Atlantic Beach area and you cannot find a half dozen that will even carry bottom fishing customers. The same is true in fishing ports of Cape Hatteras and Oregon Inlet.

With the approval of Amendment 8 hundreds of people including myself have been out of the commercial fishing game. With less people bottom fishing there has been an even greater reduction of bottom fish being caught. I feel the Council has a mindset that there is more and more fishing pressure each year when in reality there isn't half the bottom fishing pressure now as opposed to ten years ago. The commercial fleet has been reduced to a rag tag fleet of very small boats - most less than 35'and most not capable of making more than a two day trip in any but the most favorable weather.

When we catch Red Porgy it is usually in combination with Grunts, Tomtates, Gag Grouper and usually in areas where there are a large assortment of different fish. Fish landings in general are up in spite of greatly reduced effort Also, the fish sizes are increasing which to me would indicate healthier stocks. Regulations enacted in the past years appear to have had a positive impact on the numbers and size of fish. If Mr. Vaughn's report on Red Porgy show otherwise it could very well be due to less fishing effort for them. In other words, instead of over-fishing for Red Porgy, it could very well be a case of under - fishing for Red Porgy. Again, I am speaking for what I see off of our coast where we work.

There are three headboatsin our county and it has never been any easier to produce good fishing for our customers than present day We practice fishing methods that enable us to satisfy our customers but at the same time fish in such a way that the fish will be preserved for the forth-

coming years. If I have a fishing problem it is trying to find a place where we don't catch our limit too quickly We have dropped our twenty-four hour trips mainly because we felt like we were simply catching too much. In addition , our customers generally had their limit four to five hours before the trip was over. We continue to do two scheduled eighteen hour trips per month, but as you know we are only allowed a one day bag limit on these trips. Just this move alone has cost me as well as the other headboats a large amount of money in the difference in the ticket price. We've done this in part in the interest of fish conservation.

We strictly enforce the bag and size limits and do everything we can to enhance fishing for now and for the future. Red Porgys have shown as I said earlier in the areas where we generally catch them that they are more plentiful and larger than they have been in the previous years. Fish limits have proven themselves effective. You have Amendment 8 which has taken many people out of fishing and you just had a size limit increase on Red Porgy to 14" from 12" and from a no bag limit to a limit of 5 per person, not to mention the March and April Red Porgy commercial closure.

Red Porgy is a very durable and sturdy fish and survives better after being released than any other bottom fish. If we don't have this problem off our coast why should we be limited to zero Red Porgys? We don't mind having to cut back, we just don't want to be cut out.

Please give Amendment 9 more than a two week chance to show some positive results and please reconsider the moratorium.

Respectfully,

Jimmy Harker

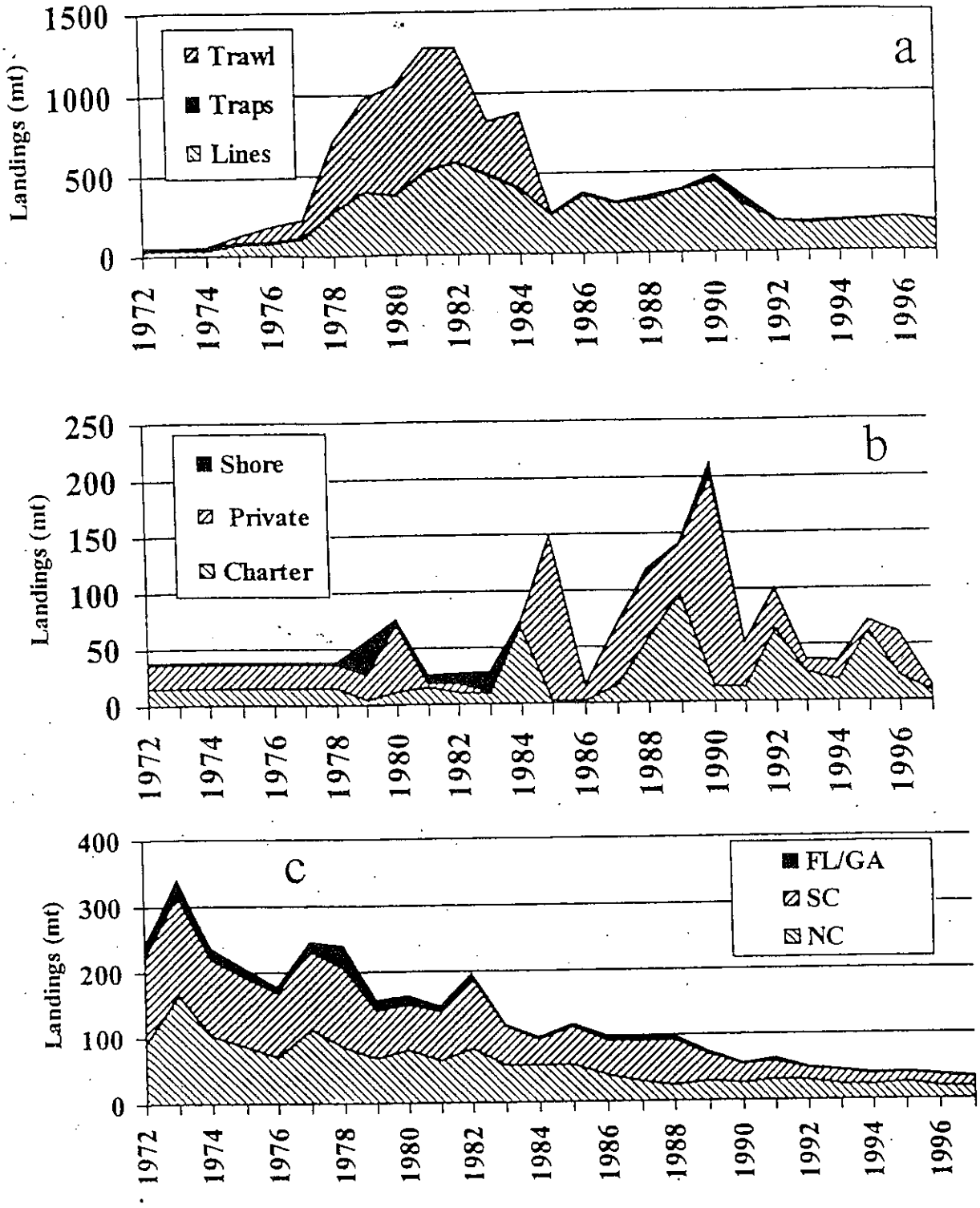

Figure 1. Annual landings of U.S. south Atlantic red porgy by category within fishery: a) commercial landings by gear, b) recreational landings by mode of fishing, and c) headboat landings by state.

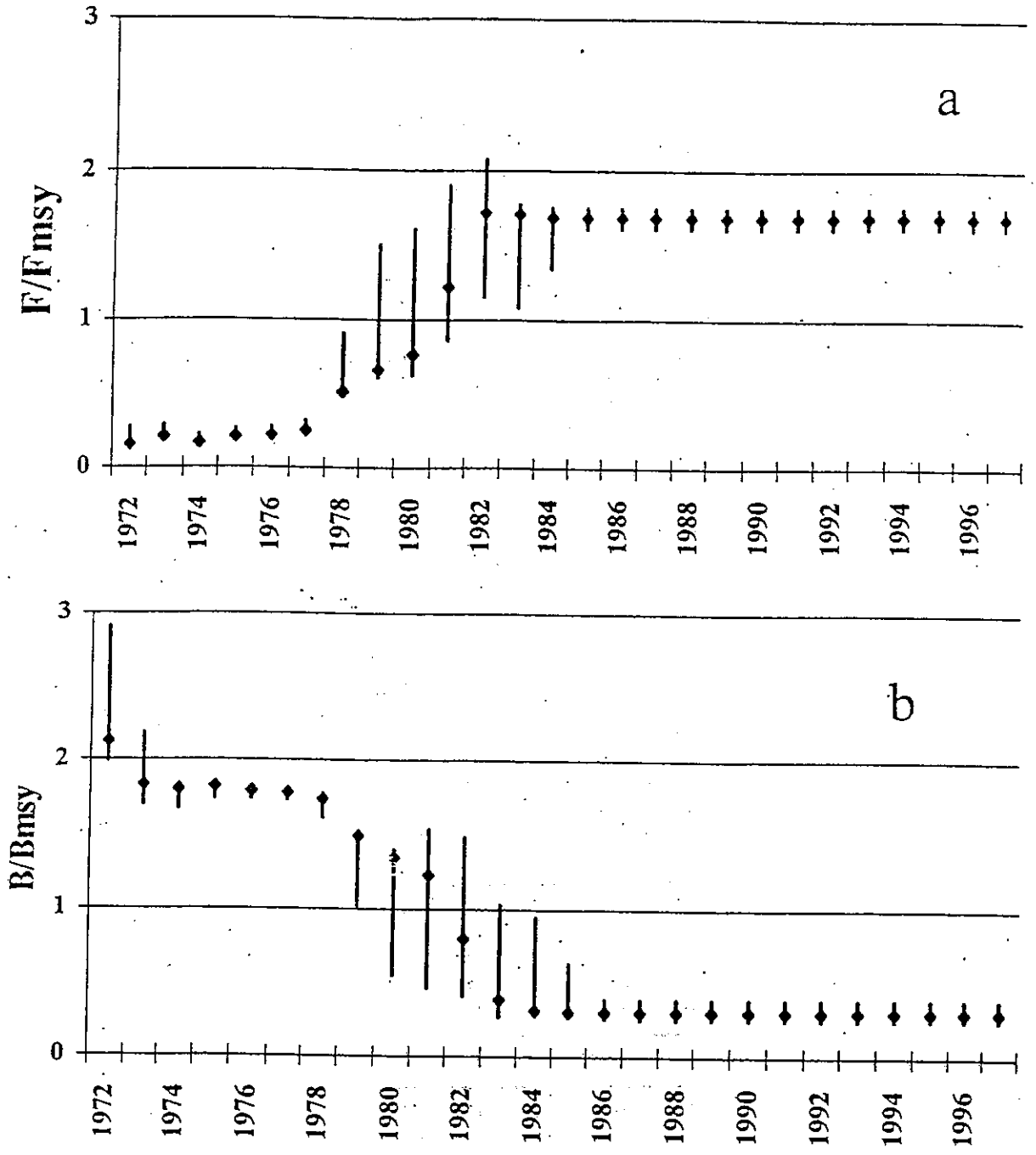

Figure 12. Plots of a) relative fishing mortality (F/Fmsy) and b) relative population biomass (B/Bmsy) from surplus production model (ASPIC) of U.S. south Atlantic red porgy population with total landings and CPE from MARMAP (hook & line and extended Chevron trap). [Vertical lines represent 80% confidence intervals from bootstrap procedure.]

			SUM
ST	YEAR		
FL	94	LBS	85507.20
	95	LBS	133762.50
	96	LBS	149479.40
	97	LBS	113621.40
GA	72	LBS	1647.00
	73	LBS	174.60
	74	LBS	3697.20
	75	LBS	3425.40
	76	LBS	42343.20
	77	LBS	121669.20
	78	LBS	70506.00
	79	LBS	37641.60
	80	LBS	93127.50
	81	LBS	72481.50
	82	LBS	38392.20
	83	LBS	14851.80
	84	LBS	100841.40
	85	LBS	166806.00
	86	LBS	145900.00
	87	LBS	75916.00
	88	LBS	60232.00
	89	LBS	52693.00

(CONTINUED)

			SUM
ST	YEAR		

Corrected Red Porgy Commercial Landings for FL(E) - NC
By State 08:35 Thursday, March 18, 1999

			SUM
ST	YEAR		
FL	72	LBS	68130.00
	73	LBS	76410.00
	74	LBS	68130.00
	75	LBS	140950.00
	76	LBS	91710.00
	77	LBS	119700.00
	78	LBS	176040.00
	79	LBS	173700.00
	80	LBS	202684.50
	81	LBS	293487.90
	82	LBS	197440.20
	83	LBS	148137.30
	84	LBS	152805.60
	85	LBS	101403.00
	86	LBS	166428.00
	87	LBS	145236.60
	88	LBS	181123.40
	89	LBS	218249.10
	90	LBS	295357.50
	91	LBS	183498.30
	92	LBS	138149.10
	93	LBS	111090.60

(CONTINUED)

individuals. Therefore, red porgy in deeper water may experience reduced fishing mortality in comparision with those in shallower waters. In shallower water, fishermen reduce hook and bait size to catch smaller fishes, and more red porgy of all sizes are landed. Alternatively, the increase in size and age with depth

Table 6

Sampling data for 1988–94, collected from the RV *Oregon* (1988–89) and the RV *Palmetto* (1990–94).

Year	Trap collections	No. porgy	Hook-and-line collections	No. porgy	No. processed	No. aged
1988	84	294	261	170	427	371
1989	65	248	198	174	388	345
1990	348	957	111	44	997	545
1991	306	830	33	25	519	426
1992	324	1,107	25	1	494	419
1993	414	722	52	45	538	385
1994	370	1,107	38	11	986	444
Total	1,911	5,265	718	470	4,349	2,935

Table 7

Mean observed fork length (mm) at age for red porgy (standard error in parenthesis).

Age (yr)	1988	1989	1990	1991	1992	1993	1994
1	191 (2) *n*=124	203 (3) *n*=70	197 (3) *n*=78	200 (2) *n*=126	190 (2) *n*=78	206 (3) *n*=70	186 (1) *n*=53
2	256 (2) *n*=107	248 (2) *n*=149	234 (2) *n*=218	237 (2) *n*=110	228 (2) *n*=119	245 (3) *n*=78	253 (2) *n*=101
3	284 (3) *n*=95	284 (4) *n*=54	264 (2) *n*=180	274 (3) *n*=71	261 (3) *n*=72	267 (3) *n*=104	264 (3) *n*=50
4	328 (7) *n*=26	305 (5) *n*=39	295 (5) *n*=26	282 (4) *n*=70	287 (3) *n*=64	290 (4) *n*=59	283 (3) *n*=106
5	386 (34) *n*=2	328 (6) *n*=18	314 (10) *n*=16	303 (8) *n*=17	305 (4) *n*=43	308 (5) *n*=35	297 (3) *n*=86
6	334 (7) *n*=4	305 (34) *n*=3	317 (13) *n*=5	335 (7) *n*=13	310 (7) *n*=14	305 (5) *n*=25	313 (5) *n*=32
7	374 (10) *n*=5	340 (35) *n*=3	308 (7) *n*=6	339 (20) *n*=5	321 (7) *n*=8	359 *n*=1	334 (5) *n*=9
8	352 (3) *n*=4	335 *n*=1	307 (9) *n*=3	322 (5) *n*=4	328 (5) *n*=2	348 (25) *n*=6	324 (6) *n*=4
9	389 *n*=1	394 (42) *n*=2	384 (17) *n*=2	362 *n*=1	344 (8) *n*=6	322 (18) *n*=2	
10		372 (28) *n*=2		361 (16) *n*=4		344 (7) *n*=2	390 *n*=1
11		363 *n*=1					
12		368 *n*=1			360 *n*=1	354 *n*=1	
13					390 (9) *n*=2		

(McGovern, Machowski 1998)
MARMAP

Methods

Trapping

From 1983 to 1987, Florida snapper traps (Collins 1990) baited with cut clupeids were soaked for approximately two hours during daylight at 12 study areas with known live-bottom and/or rocky ridges. In 1988 and 1989, Florida snapper traps and chevron traps (Collins 1990) were fished for approximately 90 minutes from a 33.5 m research vessel that was anchored over a randomly selected reef locations (Figure 1 and 2). Since 1990, only chevron traps were deployed at randomly selected reef stations and buoyed for approximately 90 minutes. After each trap set, depth, salinity, and temperature were measured with a CTD. All fishes were sorted to species, weighed and measured to the nearest cm.

CPUE and mean lengths (FL) were calculated for vermilion snapper, red porgy, white grunt and gray triggerfish at four study areas (1: 32° 16'N, 79°10'W; 2: 32° 21' N, 79°02'W; 3: 32°21'N, 78°57'W; 4: 32°51'N 78°15'N) off South Carolina that were used by Collins and Sedberry (1991) to describe the status of vermilion snapper and red porgy during 1983-1987. The sites are ~ 50 m deep with a bottom type that consists of rock outcroppings and 1-2 m of relief.

CPUE and mean lengths (TL or FL where appropriate) were also determined for black sea bass taken at depths < 45 m as well as vermilion snapper, red porgy, white grunt, and gray triggerfish taken in the SAB depths ranging from 26 to 55 m. This area included mid-shelf live bottom reefs as well as shelf edge rocky outcrop habitat. Analyses were restricted to fishes

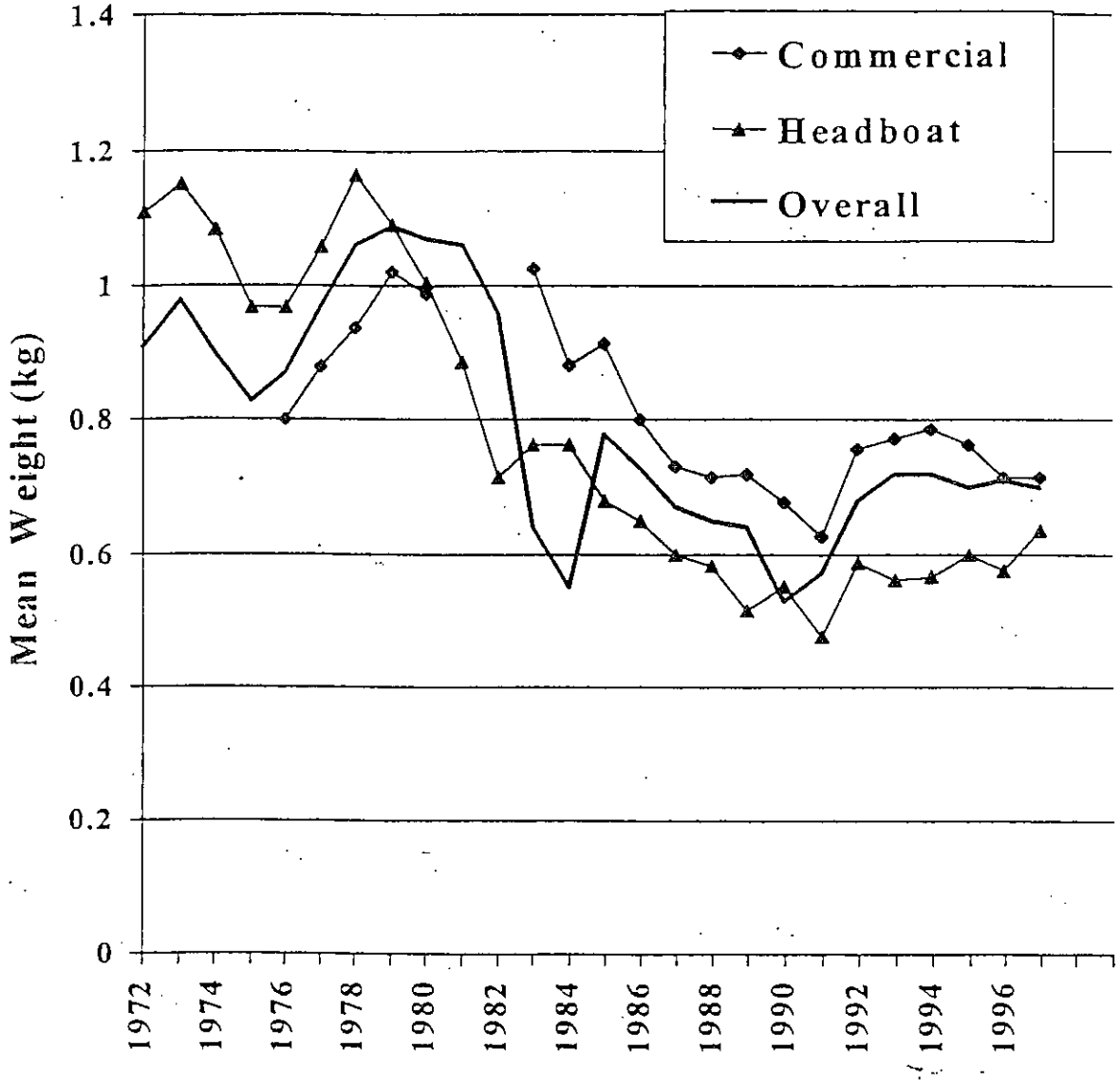

Figure 3. Annual mean weight of U.S. south Atlantic red porgy in the landings for commercial hook & line, headboat from the Carolinas, and overall all fisheries.

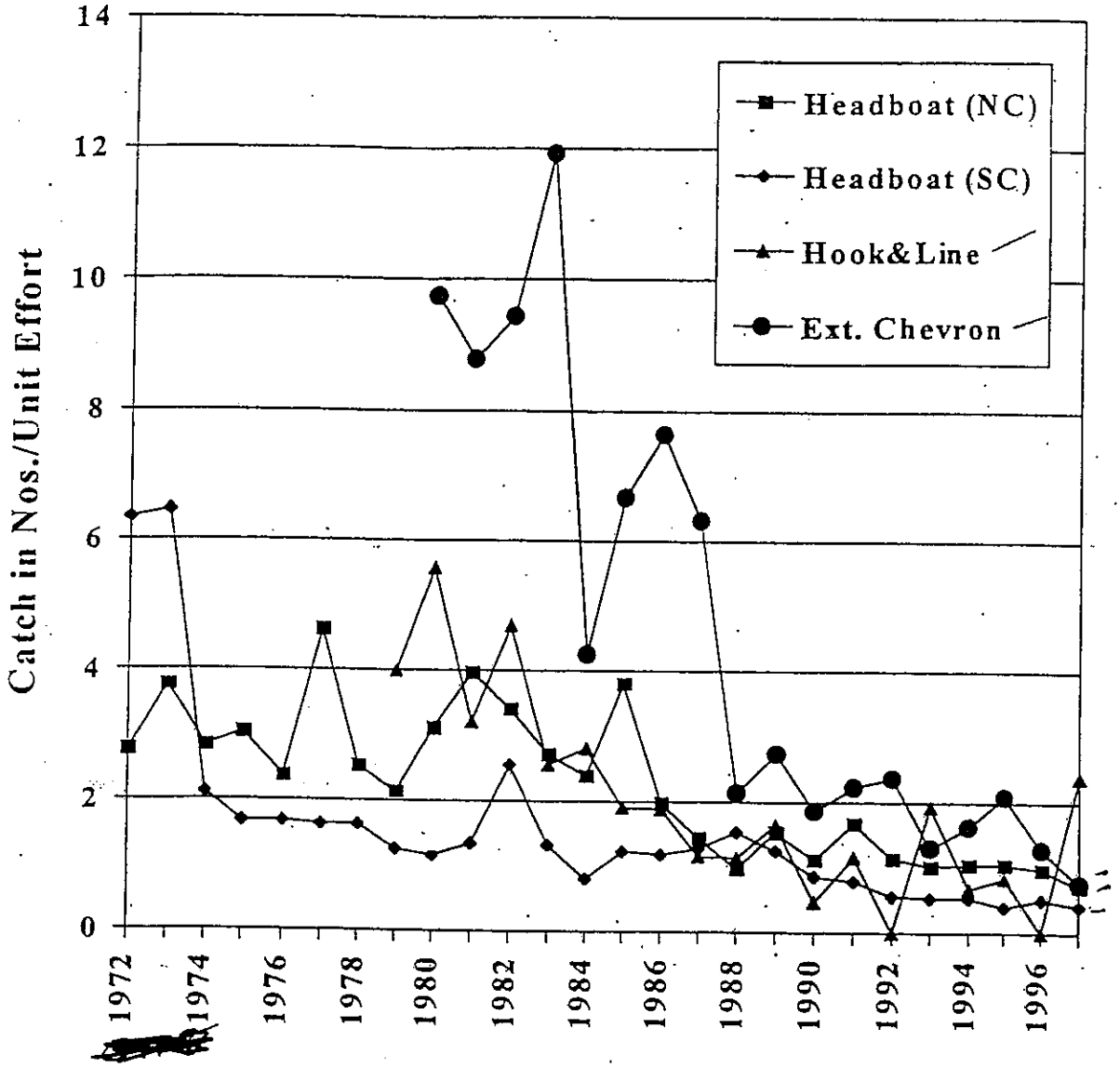

Figure 2. U.S. south Atlantic red porgy catch per unit effort from headboat fishery in North and South Carolina (effort in number fish caught per angler day, 1972-1997); and from MARMAP sampling by gear (hook & line, 1979-1997; and extended Chevron trap, 1980-1997).