

S. 39, HEARING ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Y 4. C 73/7: S. HRG. 104-174

S. 39, Hearing on the Reauthorizatio...

HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MARCH 4, 1995
ROCKPORT, MAINE

Printed for the use of the Committee on Commerce, Science, and Transportation



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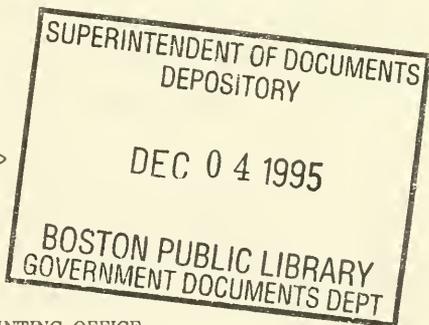
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HEARING ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SATURDAY, MARCH 4, 1995

U.S. SENATE,
SUBCOMMITTEE ON OCEANS AND FISHERIES COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION,
Rockport, Maine

The subcommittee, met, pursuant to notice, at 2:28 p.m., in the Ballroom, Samoset Conference Center, Rockport, Maine, the Hon. Ted Stevens, chairman, presiding.

Subcommittee Members Present: Senators Stevens, Snowe, and Kerry. Also Present: Senator Cohen and Representative Longley.

Staff members assigned to this hearing: Thomas O. Melius, professional staff member, and John Trevor McCabe, professional staff member; and Penelope D. Dalton, minority senior professional staff member.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you very much, and thank you for your hospitality. Gatherings such as this are nothing new for me. We have them in our State quite often. I think there are a couple of you here that I have met at our gatherings, particularly at Kodiak.

I thank the Maine Fishermen's Forum for allowing us to come up here and hold this hearing during your meeting. Our goal today is to bring this process of the reauthorization of the Magnuson Act to fishermen rather than having you come to us in Washington.

Senator Kerry and I have introduced S. 39 again this year. It is the product of work that we did over the past 2 to 3 years. The election in November changed one thing on this subcommittee, and that is that I get to hold the gavel; other than that, there is no difference in our approach to the bill that is before us now. The Sustainable Fisheries Act is basically the same bill that we have been working on during this whole period. We have made some changes in it.

I am pleased Senator Snowe has joined us on the new Oceans and Fisheries Subcommittee. She will be a great help to us in this Magnuson effort, and we know she is committed to protecting our fisheries and fishermen as we are. The ideas that are in S. 39, as a matter of fact, are some we took from you when you were in the House. So I am sure they are still all right.

We are pleased that she has joined us, and pleased, too, that my friend of many years, Senator Bill Cohen, is with us. He is not on

the Commerce Committee, but he has shown his interest in the area, and I am sure he will be a great help to us in the Senate.

I would also like to welcome Congressman Jim Longley, who has taken the time to join us today. We know that he will be committed to helping on our issues, too.

I would like to ask the Senators and Congressman Longley to make brief statements—brief statements—in just a few moments, and we will welcome the witnesses here. Most of you have seen the bill. We have received statements from the witnesses in advance. Additional copies of the bill, S. 39, and the statements that were made when it was introduced are here on the table. We intend to leave the record for this hearing open for another week; if you feel the urge to send us a statement, please do so. The staff has a little slip. If you will fill that out, when you send your statement it will get to the right record, so we urge you to send the slip in with any written testimony that you send to us.

We apologize for being slightly late. We are going to have to leave this room at 5:30 p.m. unfortunately. We will go through the afternoon, with a slight break part way through just for a seventh-inning stretch. But, I request that witnesses keep their statements to 5 minutes. We will make some small allowances for the witnesses that have the long statements to begin with. I know that you will have a difficult time limiting those, but, basically, I would urge you to keep it for 5 minutes. The lights that are before you here are being handled by my staff behind me. The green says keep on speaking; the red says stop speaking.

With that, I will first turn to Senator Kerry. Do you have a statement, Senator Kerry?

STATEMENT OF SENATOR KERRY

Senator KERRY. Mr. Chairman, let me just say very briefly and then defer to my colleagues from Maine that it is nice to be back here with cousins in this territory we ceded long ago. [Laughter.]

I am happy to be able to share with you the bipartisan approach that we have to this issue. I think it is important to emphasize that Senator Stevens and I have worked very closely on this issue for a long time. The change of gavel really is all that has happened. It is not a change in spirit or a change in our approach.

Whether it is Massachusetts, Rhode Island, Connecticut, or Maine, we all share a tremendous heritage in fishing and in the ocean. And we come to this Magnuson reauthorization, the Sustainable Fisheries Act, which is what we have called it, with the view that we are facing a crisis in our fisheries, and we have a fundamental set of choices we must make.

This is not a woe that is falling on us alone. Thirteen of the world's 17 most important fisheries are in distress. And the problem is worldwide. The Koreans, the Japanese, the Europeans, the Russians—there is too much capital chasing this finite resource. There are ways, we have learned, that we can deal with this. There are ways to conserve. We have had our own experience in Massachusetts with striped bass. We have seen what lobstermen here have been able to do. There are examples, and there is in all of us, I think, particularly in New Englanders, an ethic that runs very deep about this ecosystem and about our responsibility toward it.

We must develop a partnership here between Federal, State, and local entities to find the best means possible of conserving the species while simultaneously minimizing the negative impact on our communities and our fisherfolk. That is the task.

The Sustainable Fisheries Act is our best effort to put a first foot forward. We do not claim it has all of the answers. It is not a deal that is signed, sealed, and delivered. So we look to you today and in the weeks and months ahead for your help in fashioning the remedy, and together we are convinced we can put together a response.

Let me just apologize up front because, as the ranking member of the subcommittee, I can only be here until around 4:15. I have a daughter who aspires to play for the Bruins and she has a hockey game this afternoon. It is her last of the season and so I am going to go be a dad for a while. I know you will endorse that.

But that is why I am going to leave here a little bit early. But I am delighted to share with you this wonderful forum and thank my colleagues for their welcome.

Senator STEVENS: Thank you very much. Senator Snowe?

STATEMENT OF SENATOR OLYMPIA SNOWE

Senator SNOWE. Thank you, Chairman Stevens. I want to welcome all of you here.

I certainly want to express my appreciation to you, Chairman Stevens, for agreeing to hold a field hearing here in the State of Maine, and to Senator Kerry, as ranking member of the subcommittee, to join us at this field hearing. I think it is a privilege to have two Senators who have such knowledge and expertise on fishing issues to be here to take testimony.

Chairman Stevens, I think everybody knows, is one of the original authors of the Magnuson Act, and is probably as well-versed as anybody in the country on this issue. And thanks to your efforts, this is probably the first time in recent memory that a Senate subcommittee on fishing issues has visited the State of Maine, and it comes at a most appropriate and critical time, considering the many challenges that the industry faces, not only in Maine but throughout New England.

I think, Chairman Stevens, you understand these issues since you represent the State of Alaska, which has the largest fishing industry of any State in the country, and we appreciate the fact that you are here.

And, Senator Kerry, obviously you understand what we are going through since you represent Massachusetts, although I thought we granted you independence. [Laughter.]

Senator KERRY. We are entitled to revisionism.

Senator SNOWE. Believe it or not, that was 175 years ago next week.

In any event, certainly Senator Kerry understands and has extensive knowledge of these issues. As he said, he chaired the previous subcommittee, and so therefore can contribute a great deal to our efforts and to our concerns.

I am pleased to join my colleagues from Maine, Senator Cohen and Congressman Longley. As you all know, we have had a long-standing tradition of working together on issues, especially when

it comes to the fishing industry, and you can expect that same kind of unity in the critical months and years ahead.

I want to express gratitude to two people here who did so much to organize this forum—Pat Percy of the Maine Fishermen's Wives, who organized the forum and helped with it and worked with many of the witnesses over the last 2 weeks, and Penn Estabrook, the Forum president, who also made sure the logistics were worked out in a timely fashion.

As we have all been talking about here today and throughout the Forum, unfortunately 1995 brings many challenges to the fishing industry, to those who care very much about it. And clearly we are going to have to chart a sustainable path to the future, not only, as I have said in the past, to ensure that we preserve the marine resources which of course are essential, but also to preserve the human resources as well.

And the focal point of this testimony is the introduction of the legislation by Chairman Stevens and Senator Kerry, which is the reauthorization of the Magnuson Act, and there are many issues that we will be exploring today with the vessel buy-back announcement by NOAA yesterday, to by-catch reductions, overfishing, and negotiated rulemaking, just to name a few.

I hope that you will feel free to express your concerns. Hopefully at the end of this, Mr. Chairman, if there is any remaining time, people from the audience could have a chance to express their views again. Thank you.

Senator STEVENS. Thank you very much.

Bill, I am sure it could not have been 175 years. Strom Thurmond told me it was just yesterday. [Laughter.]

Senator COHEN. And he was there. [Laughter.]

Senator KERRY. And he is for term limits. [Laughter.]

Senator COHEN. Strom Thurmond said he only wants two more. [Laughter.]

STATEMENT OF SENATOR WILLIAM S. COHEN

Senator COHEN. When Senator Stevens says be brief, we take him at his word. He is in charge of the Rules Committee, and he cuts off our office space if we go beyond any dictates that he gives us. I will be very brief, 30 seconds, if I can, Mr. Chairman.

There are two provisions in the Magnuson Act which I think are of importance to Maine in addition to all of the others that you will want to focus on today. When amendment 5 was first proposed, many of you came to me saying we need some help here. We ought to have some kind of negotiated rulemaking provision to resolve this impasse. Under this reauthorization legislation, that rule-making possibility is going to be there.

No. 2, as Olympia Snowe has mentioned, is the buy-back provision. I will tell you that it is the only piece of any proposal on the table right now that deals with conservation and also with economic consequences, and I support it, provided—there are some real provisos here. No. 1, is it going to be effective? Namely, if boats are bought out, do they stay bought out, or do they go elsewhere? Is it going to be equitable in terms of geographic equity as well as social equity? And what is the cost going to be? We have to resolve all three of those issues. This is not just for

groundfishermen; it is the entire commercial industry that is at stake.

So I think that we have got to address these concerns during this meeting and hopefully in the future. And if we address them, then hopefully we can lend our support to it.

Mr. Chairman, thank you very much, Senator Kerry, welcome, Senator Snowe, thank you also for inviting me to join the panel.

Senator STEVENS. Thank you all very much. The ground rules for the hearing—5 minutes, as I said. We hope that the witnesses will keep to that schedule.

Pardon me, Congressman Longley. I did forget. I want to move along; that is all.

STATEMENT OF HON. JAMES LONGLEY, U.S. REPRESENTATIVE FROM MAINE

Mr. LONGLEY. You have to understand if you are in the House it is a little different. Mr. Chairman, I want to extend to you my appreciation for the opportunity to sit on this panel. I will be very brief.

There is a tendency to look at what is happening in the fisheries in terms of jobs and the impact on the economy. But I think the issues are much deeper than that. They go right to the heart of our way of life and our traditions of independence and the culture of this State and the reputation that we have across the country for the kind of life that we have in this State.

I view the problems as extremely serious. I am sitting as a member of the Fisheries Subcommittee, and I will just add to what the Governor said a little bit earlier. I have only been in office about 7 weeks, and there were two or three immediate crises demanding some attention. First of all, obviously the great threat to the Naval Air Station in Brunswick and Kittery Yard, but, just as important, the threat to the fisheries and to the jobs that that industry, that way of life represents to the State.

I am committing to spend as much time as I can in the next foreseeable future to get to learn as much as I can about the fisheries, to get to the bottom of the issues, and to try to ask some of the tough questions that I know every one of you is already being forced to ask, based on the difficulties that you are confronting.

I hope that we can lend the same measure of toughness to the decisions that we have to make as the type of discipline that you have got to use yourself to survive in this industry during these difficult times. So, Mr. Chairman, I appreciate the opportunity to be here today.

Senator STEVENS. Thank you very much, Congressman. Nice to have you here.

Senate's rules forbid any demonstrations, applause, or other outbursts during a hearing. I hope we will be able to respect our rules. As I said, we will have limits on the witnesses. Hopefully we will be able to use, Senator Snowe, the microphone that is established there to allow participation from members of the audience at the end of our hearing today.

Let me thank the Coast Guard. Admiral Henn has made the Coast Guard available to support our effort here, to have the testi-

mony in Boston; then here this afternoon, and to get us back to our families so we can have Sunday at home tomorrow.

Our leadoff witness today is Rear Admiral Linnon. We are very pleased to have the participation of the Coast Guard. I note with great interest, Admiral Linnon, that your wife is a fisheries biologist, so you come well informed. We appreciate you being with us today, sir.

STATEMENT OF REAR ADMIRAL JOHN L. LINNON, COMMANDER, FIRST COAST GUARD DISTRICT, BOSTON, MASSACHUSETTS

Admiral LINNON. And she has had a great time mixing it up with the fisheries folks here in Maine for the last few days, so it has been a great opportunity.

Good afternoon, Mr. Chairman, and members of the subcommittee, Senator Cohen, Congressman Longley. It is a pleasure to appear before you here today to represent the First Coast Guard District and to report on the Coast Guard's enforcement of fisheries laws and our views regarding the Sustainable Fisheries Act and the reauthorization of the Magnuson Fishery Conservation Management Act.

This district encompasses the waters from Tom's River, New Jersey, to the Canadian border and westward to Lake Champlain. It contains over 42,000 square nautical miles of fishing ground used by over 2,000 offshore fishing vessels. Although search and rescue is our most visible mission, more cutter and aircraft employment hours are dedicated to fisheries enforcement than to any other mission in the First District.

On a daily basis we have two large offshore cutters and three coastal patrol boats deployed for fisheries patrol, further complemented by at least three aircraft patrols each day and several shore station-based small boat patrols. In fiscal year 1994, this amounted to over 1,300 cutter days, about 2,500 flight hours, and 1,100 small boat patrol hours. In that same year, those same resources performed 8,400 search and rescue cases, saving 630 lives and property valued at over \$1.2 million.

Many of these search and rescue cases had early response by units which were already operating on the fishing grounds doing enforcement patrols. Recently, much of our patrol effort has been applied to the enforcement of closed spawning areas affecting large portions of Georges Bank and the waters south of Nantucket Island. In conjunction with our fisheries conservation enforcement responsibilities, we are also checking on mandatory safety equipment requirements for commercial fishing vessels at sea.

Mr. Chairman, the Coast Guard's search and rescue duties in this region are understood by everyone and our commitment to safety of life at sea is at the core of the service's existence. As demonstrated by our efforts last month when the New Bedford-based trawler Sharon Marie sank southeast of Nantucket Island and all 5 crewmembers were rescued from their liferaft by one of our helicopters, we are always ready to respond to that call. The Coast Guard is firmly committed to the safety of life and property at sea in New England waters.

I am frequently asked, especially since the 12th of December, if the Coast Guard has enough resources to do today's fisheries enforcement mission. Although I believe we are meeting our fisheries enforcement responsibilities, the question warrants more than just a simple yes or no response. Today's fisheries management plans are complex and the number of management plans continues to grow as resource managers work to protect existing fish stocks.

To address that increased complexity, we have just commissioned a Regional Fisheries Training Center at the Massachusetts Military Reservation and recently expanded the staff of that school as part of a Coast Guard-wide initiative to improve our effectiveness. This training center is similar to the one established in Kodiak, which has been the subject of strong congressional interest and support. Today the school is providing in-depth training in a variety of fisheries enforcement areas, both to our own people and to the National Marine Fisheries Service, as well as to State enforcement agents.

So I am confident that the level of education and training provided our boarding teams has been greatly improved, allowing us to perform our duties more effectively. The challenges which lie ahead will involve all the vessels which continue to operate in the various fisheries, the future economic environment in which they will be operating, and industry's overall acceptance of and compliance with new fishery management plans. Today, I believe our current amount of effort and presence is adequate to meet the region's needs. However, it is difficult to forecast the future, not knowing all the economic and regulatory conditions the industry will confront in the years ahead.

The Coast Guard is trying to look over the horizon. As you know, our service recently conducted a comprehensive study of its living marine resource conservation and enforcement programs. To give us an objective look at how we were doing, the study was conducted by a diverse group representing various stakeholders in marine resource use, conservation, and management. This group included representatives from Federal and State fisheries enforcement agencies, regional fisheries management councils, industry, and National Oceanic and Atmospheric Administration General Counsel. They looked at how we were currently conducting the mission, the changes and trends in fisheries and fisheries management, and what the Coast Guard should do to respond to these changes and trends.

Based on that, regarding the Magnuson Act itself, it is the Coast Guard's view that no significant changes are necessary. The law contains all elements necessary to authorize effective enforcement. While there are some issues regarding regulatory enforceability which need to be addressed, these are narrow in scope, being limited to particular elements of specific fishery management plans. Most of these issues are best addressed through the management council process and do not warrant statutory changes.

The Coast Guard would, however, like to offer its views on a few issues pertinent to S. 39.

Efforts to reduce by-catch and economic discards as outlined in S. 39 will require continued at-sea enforcement by Coast Guard units. The principal means to prevent harvesting and mortality of

undersized fish is through the examination of fishing gear as it is being employed on the fishing grounds. Similarly, forcing rules on regulatory discards—that is, prohibited species such as eggbearing lobsters—will require continuous at-sea presence. None of this is new to the Coast Guard; it is something we have been doing successfully for many years.

The success of a fishery management measure depends largely upon the compliance of resource users. We see compliance as a function of industry support for the measure, as well as effective law enforcement presence. While consensus on specific management measures for a particular fishery may be difficult to obtain, a regulation must have the support of resource users to be optimally effective.

The industry cannot be expected to fully comply with regulations they do not understand, and understanding is enhanced through participation in the regulatory process. Most fishermen have useful ideas on the need for and practicality of particular regulations. Affording them the opportunity to fully participate in the management process helps to secure buy-in of resource users with a particular management measure.

This Coast Guard District takes its role in the management council process very seriously. I personally attend council and committee meetings on a regular basis. I have people involved in more day-to-day activity with the council who are long-term senior officers who have previously commanded ships up here and have a lot of experience in patrolling the fishing grounds located in this district.

A recommendation occasionally voiced by various interest groups is to have the Coast Guard designated a voting member of each of the regional fishery management councils. Today, the councils are not only concerned with developing plans to conserve and manage our fisheries resources; they are increasingly involved in allocating limited fishery resources among competing commercial and recreational user groups. The Coast Guard needs to remain neutral to allocation issues and to specific conservation and economic objectives. Our role, rather, is to aid fisheries managers in choosing among various management alternatives by providing them expert advice on the operational realities of at-sea enforcement.

Reduced fish stocks and competition over remaining productive fish grounds is placing more pressure on the industry than ever before. One important consequence of this has been the rapid rise of gear conflicts between mobile and fixed gear fishermen. In the past, we would receive a report of a large loss caused by conflicts between industry members at the rate of about one per month.

Today, however, we are receiving as many as five such reports a week. As we respond to many of these incidents and document their circumstances, we now recognize that the existing language for enforcement of fixed gear conflicts makes it difficult for us to take appropriate enforcement action.

Existing language regarding fixed gear conflicts includes a "knowing" provision which requires an enforcement officer to establish the culpable intent of the parties involved. At this point, I believe the fishing industry would be better served by standards of simple negligence with respect to damaging others' property on the

fishing grounds. We will be reviewing this issue and I would expect that we would hope to lead development of an administration position after we discuss this with other agencies and with the industry.

In conclusion, the Coast Guard recognizes the importance of conserving and responsibly managing the fisheries resources of the waters in the northeast United States and the safety of those who work to harvest those resources on these traditional fishing grounds. We are firmly committed to doing our part to guarantee conservation of those stocks and to promote safety in this important industry. We consider ourselves the world's premier maritime service, sir, and the goals just mentioned—conservation and safety—are part of the very foundation of our organization.

I would be happy, sir, to answer any questions that any of you may have. Thank you.

[The prepared statement of Admiral Linnon follows:]

U.S. Department
of Transportation

United States
Coast Guard



Commander
First Coast Guard District

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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF REAR ADMIRAL JOHN L. LINNON

COMMANDER, FIRST COAST GUARD DISTRICT

ON THE SUSTAINABLE FISHERIES ACT (S. 39)

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

SATURDAY, MARCH 4, 1994

ROCKPORT, MAINE

REAR ADMIRAL JOHN L. LINNON, USCG

Commander, First Coast Guard District; and

Commander, Maritime Defense Command One

Rear Admiral John L. Linnon oversees Coast Guard missions of search and rescue, law enforcement, commercial vessel certification and safety, and marine pollution response from Canada to Tom's River, NJ. He is also Commander, U.S. Navy Maritime Defense Command One, with responsibility for the security of all First District ports and harbors, and the corresponding coastline out to 200 nautical miles. He also serves as the Department of Transportation Regional Emergency Transportation Coordinator for Regions 1 and 2.

Rear Admiral Linnon, a native of Hartford, CT, was commissioned in 1961 through the Officer Candidate School (OCS) program after several years of enlisted service. While an enlisted man, he saw service on the ocean station vessel MACKINAC, lifeboat station Fishers Island, NY, and the polar icebreaker WESTWIND. He attained the rate of first class radarman before being selected to attend OCS.

Since commissioning, he has served on five ships, commanding the seagoing buoy tender PLANETREE, the medium-endurance cutter DURABLE, and the Honolulu-based high-endurance cutter MUNRO. While commanding MUNRO, he participated in the two-month underwater search for the wreckage of Korean Airlines (KAL) Flight 007, which had been shot down by the Soviet Union over the Sea of Japan. Assignments ashore have included chief of the Officer Candidate School Branch at Reserve Training Center Yorktown and the first Coast Guard liaison officer to the Organization of the Joint Chiefs of Staff. Rear Admiral Linnon served as the assistant chief of staff for operations for Commander Atlantic Area in New York City, and collaterally as the deputy regional coordinator for the Northeast Region, National Narcotics Border Interdiction System. Prior to his promotion to flag rank, he served as chief of staff of the Seventh Coast Guard District, Miami, FL. He is a distinguished graduate of the Naval War College Command and General Staff Course.

His last assignment was as Commander, Joint Task Force Five, the U.S. Pacific Command Center coordinating Department of Defense support to the nation's counter-drug efforts.

His awards include the two Defense Superior Service Medals, the Legion of Merit, three Meritorious Service Medals, and five Coast Guard Commendation Medals.

Rear Admiral Linnon is married to the former Beth Anderson of Deep River, Ct. Mrs. Linnon is a fisheries biologist and most recently held a research associate position at the University of Miami Rosenstiel School of Marine and Atmospheric Science.

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
STATEMENT OF REAR ADMIRAL JOHN L. LINNON
COMMANDER, FIRST COAST GUARD DISTRICT
ON THE SUSTAINABLE FISHERIES ACT (S. 39)
BEFORE THE
SUBCOMMITTEE ON OCEANS AND FISHERIES
ON THE COMMITTEE
ON COMMERCE, SCIENCE, AND TRANSPORTATION
SATURDAY, MARCH 4, 1994
ROCKPORT, MAINE

Good afternoon Mr. Chairman, members of the Subcommittee, it is a pleasure to appear before you today to represent the First Coast Guard District. I appreciate the opportunity to report on the Coast Guard's enforcement of fisheries laws and our views regarding the Sustainable Fisheries Act and the reauthorization of the Magnuson Fishery Conservation Management Act (MFCMA).

The First Coast Guard District encompasses the waters from Tom's River, New Jersey, to the Canadian border and westward to Lake Champlain. There are over 42,000 square nautical miles of fishing ground within the First Coast Guard District used by over 2,000 offshore fishing vessels. Although Search and Rescue is our most visible mission, more cutter and aircraft employment hours are dedicated to fisheries enforcement than any other mission in the First District. On a daily basis we have two large offshore cutters and three coastal patrol boats deployed for fisheries patrol. These surface assets are further complemented by at least three aircraft patrols each day and several shore station based small boat patrols. In fiscal year 1994, this amounted to 1,327 cutter patrol days, 2,493 flight hours, and 1,163 small boat patrol hours. In fiscal year 1994,

these same resources performed 8,402 search and rescue cases saving 630 lives and property valued at 1.2 million dollars. Many of these search and rescue cases were responded to by units which were already operating on the fishing grounds doing enforcement patrols. Recently, much effort has been applied to the enforcement of closed spawning areas affecting large portions of Georges Bank and the waters south of Nantucket Island. In conjunction with our fisheries conservation enforcement responsibilities, the Coast Guard also checks for compliance with mandatory safety equipment requirements for commercial fishing vessels at sea.

Mr. Chairman, the Coast Guard's search and rescue duties in this region are understood by everyone and our commitment to safety of life at sea is at the core of the service's existence. As demonstrated by our efforts last month when the New Bedford based trawler Sharon Marie sank southeast of Nantucket Island and all 5 crewmembers were rescued from their liferaft by one of our helicopters, we are always ready to respond to the call. The Coast Guard is firmly committed to the safety of life and property at sea in New England waters.

I am frequently asked if the Coast Guard has enough resources to do today's fisheries enforcement mission. Although I believe we are meeting our fisheries enforcement responsibilities, the question warrants more than just a simple yes or no response. Today's fisheries management plans are complex and the number of management plans continues to grow as resource managers work to protect existing fish stocks. To address that increased complexity, our Northeast Regional Fisheries Training Center at

the Massachusetts Military Reservation recently expanded its staff as part of a Coast Guard wide initiative to improve our effectiveness. This training center is similar to the one established in Kodiak, Alaska, which has been the subject of strong congressional interest and support. Today the school is providing in-depth training in a variety of fisheries enforcement areas. I am confident the level of education and training provided our boarding teams has been greatly improved allowing us to perform our duties more effectively. The challenges which lie ahead will involve all the vessels which continue to operate in the various fisheries, the future economic environment in which they will be operating, and industry's overall acceptance of and compliance with new fishery management plans. I believe our current effort and presence is adequate to meet the region's needs. However, it is difficult to forecast the future not knowing all the economic and regulatory conditions the industry will confront in the years ahead.

The Coast Guard is trying to look over the horizon. As you know, our service recently conducted a comprehensive study of its living marine resource conservation and enforcement programs. To give us an objective look at how we were doing, the study was conducted by a diverse working group representing various stakeholders in marine resource use, conservation, and management. This group included representatives from federal and state fisheries enforcement agencies, regional fisheries management councils, industry, and National Oceanic and Atmospheric Administration (NOAA) General Counsel. They looked at how the Coast Guard was currently conducting the mission, the

changes and trends in our fisheries and in fisheries management, and what the Coast Guard should do to respond to these changes and trends. Based on this study, it is the Coast Guard's view that no significant changes are necessary regarding the MFCMA itself. The law contains all elements necessary to authorize effective enforcement. While there are some issues regarding regulatory enforceability which need to be addressed, these are narrow in scope, being limited to particular elements of specific fishery management plans. Most of these issues are best addressed through the management council process and do not warrant statutory changes. The Coast Guard would, however, like to offer its views on a few issues pertinent to law enforcement in S. 39.

(1) Efforts to reduce by-catch and economic discards as outlined in S. 39 will require continued at-sea enforcement by Coast Guard units. The principal means to prevent harvesting and mortality of undersized fish is through the examination of fishing gear as it is being employed on the fishing grounds. Similarly, forcing rules on regulatory discards, i.e., prohibited species such as eggbearing lobsters, will require continuous at-sea presence. None of this is new to the Coast Guard; it is something we have been doing successfully for many years.

(2) The success of a fishery management measure depends largely upon the compliance of resource users. We see compliance as a function of industry support for the measure as well as effective law enforcement presence. While consensus on specific management measures for a particular fishery may be difficult to obtain, a regulation must have the support of resource users to be

optimally effective. The fishing industry cannot be expected to fully comply with regulations they do not understand, and understanding is enhanced through participation in the regulatory process. Most fishermen have useful ideas on the need for and practicality of particular regulations. Affording them the opportunity to fully participate in the management process helps to secure buy-in of resource users with a particular management measure. The First Coast Guard District takes its role in the management council process very seriously. I personally attend council and committee meetings on a regular basis. My designee on the New England Fisheries Management Council is the Chief of the District's Law Enforcement Branch, Captain Paul Howard. He is a very experienced senior officer who previously commanded one of our offshore cutters that spent most of its time patrolling the fishing grounds located in the First District.

A recommendation occasionally voiced by various interest groups is to have the Coast Guard designated a voting member of each of the regional fishery management councils. Today, the councils are not only concerned with developing plans to conserve and manage our fisheries resources, they are increasingly involved in allocating limited fishery resources among competing commercial and recreational user groups. The Coast Guard needs to remain neutral to allocation issues and to specific conservation and economic objectives. Our role, rather, is to aid fisheries managers in choosing among various management alternatives by providing them expert advice on the operational realities of at-sea enforcement.

(3) Reduced fish stocks and competition over remaining

productive fish grounds is placing more pressure on the industry than ever before. One important consequence of this has been the rapid rise of gear conflicts between mobile and fixed gear fishermen. In the past, the Coast Guard would receive a report of a large loss caused by conflicts between industry members at the rate of about one a month. Currently, however, we are receiving as many as five such reports a week. As we respond to many of these incidents and document their circumstances, we now recognize that the existing language for enforcement of fixed gear conflicts makes it difficult for us to take appropriate enforcement action. Existing language regarding fixed gear conflicts includes a "knowing" provision which requires an enforcement officer to establish the culpable intent of the parties involved. At this point, I believe the fishing industry would be better served by standards of simple negligence with respect to damaging others' property on the fishing grounds. We will be reviewing this issue and I would expect that we would hope to lead development of an administration position after we discuss this with other agencies and with the industry.

In conclusion, the Coast Guard recognizes the importance of conserving and responsibly managing the fisheries resources of the waters in the Northeast United States and the safety of those who work to harvest those resources on these traditional fishing grounds. We are firmly committed to doing our part to guarantee conservation of those stocks and to promote safety in this important industry. We consider ourselves the world's premier maritime service. The goals just mentioned - conservation and safety - are part of the very foundation of our organization.

I would be pleased to answer any questions.

Senator STEVENS. Thank you, Admiral, for being here. I think all of us who have so great a connection with the fishing industry are grateful to you and the Coast Guard for all you do to help our constituents.

Mr. Coates is the next witness. He is the chairman of the Groundfish Committee for the New England Fisheries Management Council. Mr. Coates.

STATEMENT OF PHILIP G. COATES, CHAIRMAN, GROUND FISH COMMITTEE, NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Mr. COATES. Thank you, Mr. Chairman, Senators, Congressman Longley. I come before you as a member of the New England Fishery Management Council. The Council has not met since S. 39 became available, so I cannot give you a formal council position at this time. We will be discussing the bill at our next council meeting on March 29 and 30 and will convey any positions to you at that time.

I can provide you, however, two things today. First, I'd like to mention that the chairmen of all eight of the Fishery Management Councils met in May 1994 and reached consensus as chairmen on several issues. A summary of their views was submitted last week by our council chairman to the House subcommittee, and I offer that document for Senate consideration also.

Very briefly, the chairmen believe conflicts of interest are not as great as many perceive, and they offer specific language to address that matter. They also recommend that the councils should be able to establish fees relating to data collection programs or to limited entry programs. They think compensation for members should not be lowered, and that the definition or description of "essential habitat" should not be a required provision of fishery management plans.

They also concluded that defining overfishing in the Act is unnecessary and that rebuilding programs should be dealt with at the regional level under existing procedures and rules. There was full agreement with the 180-day period for emergency actions and for extensions of such actions.

Second, over the past 2 years our council has reviewed several bills relating to Magnuson and has addressed several specific issues. When it became clear that there would not be amendments to the Act in 1994, we deferred any full council action. A council subcommittee looked at earlier positions adopted by the eight council chairmen and then attempted to outline a general view not specific to any bill of how the Act and the council system ideally should work. Some of their conclusions follow.

Generally the Federal agency process should be less intrusive. The National Marine Fisheries Service role should be to expedite, facilitate, and implement council plans efficiently and effectively. If NMFS will have difficulty implementing or enforcing a council plan, they should inform the council before the plan's submission.

Funding for fishery management has generally not been adequate, either for the councils or for the NMFS itself. Any fishing fees collected to raise funds should be prescribed in the relevant fishery management plan, and should be used only for manage-

ment purposes in the region where they are collected. Fees should not be seen as a substitute for appropriated funding but as a supplement.

NMFS should be required to implement council plans as long as they are developed according to the procedures set out in the Act and are not inconsistent with the national standards of section 301. Differences between a council and the National Marine Fisheries Service should not be the basis for NMFS's disapproval of a plan.

Definition of "essential habitat" and description of protective measures should be discretionary, not required, provisions of fishery management plans under section 303(b).

Fishery management plans should not be subjected to National Environmental Policy Act standards, but any crucial process elements in NEPA could be added to the Magnuson process, eliminating separate review periods and timetables for plan development.

The regional director of the National Marine Fisheries Service should not be allowed to vote on council requests for emergency action, and NMFS should be obligated to act on emergency request within 30 or, at most, 60 days.

Programs to buy out fishing vessels from owners willing to leave the fishery, whether privately or federally funded, should be used to remove effort from the fisheries where it is necessary. We are very pleased to see the administration announcement of the pilot buyout program for the New England fishery, and very pleased to see your support for the concept of a buyout.

Compensation for members of the councils should not be reduced. They work long hours beyond the time expended at meetings and subcommittee meetings.

Despite perceptions to the contrary, conflict of interest is not and has not been a serious problem on the New England council. Perhaps the language offered by the eight council chairmen would be appropriate.

We should support addressing the issue of overfishing in a manner that will make fishery management more effective. However, the 602 guidelines should not be embodied in the Act.

The councils should be free to address management needs incrementally through a series of minor amendments rather than being forced by NMFS to prepare comprehensive FMPs.

Mr. Chairman, I reiterate that none of the foregoing views have been formally adopted by the council, but we will discuss them shortly and inform you of our position. Thank you for this opportunity to testify on S. 39 and the other bills on behalf of the New England Fishery Management Council.

[The prepared statement of Mr. Coates and the information referred to follow:]

Testimony of Philip G. Coates
New England Fishery Management Council Member
Before the
Senate Subcommittee on Oceans and Fisheries
Rockport, Maine
March 4, 1995

Mr. Chairman, Members of the Subcommittee:

I come before you as a member of the New England Fishery Management Council. The Council has not met since S. 39 became available so I cannot give you a formal Council position. We will discuss the bill at our next Council meeting on March 29-30 and if we take positions on the bill or its specific provisions, they will be communicated to the subcommittee by the Council. I can provide you here today with two things.

First, the chairmen of all eight of the Fishery Management Councils met in May 1994 and reached consensus, as chairmen, on several issues. A summary of their views was submitted last week by our Council Chairman to the House subcommittee and I offer that document for Senate consideration also. Very briefly the chairmen believe conflicts of interest are not as great as many perceive and they offer specific language to address that matter. They also recommend that Councils should be able to establish fees related to data collection programs or to limited entry programs. They think compensation for members should not be lowered and that the definition or description of essential habitat should not be a required provision of fishery management plans. (FMPs). They also conclude that defining overfishing in the Act is unnecessary and that rebuilding programs should be dealt with at the regional level under existing procedures and rules. There was full agreement with a 180 day period for emergency actions and for extensions of such actions.

Second, over the past two years our Council has reviewed several bills relating to Magnuson and has addressed several specific issues. Last fall the Council chairman appointed a five member subcommittee led by our vice chairman to formulate recommended positions for Council consideration. When it became clear

there would not be amendments to the Act in 1994 we deferred any full Council action. Our subcommittee looked at the positions referred to earlier that were adopted by the eight Council chairmen. Subcommittee members agreed with the Council chairmen on most points. They then attempted to outline a general view (not specific to any bill) of how the Act and the Council system ideally should work. Some of their conclusions follow:

- Generally the federal agency process should be less intrusive. The National Marine Fisheries Service (NMFS) role should be to expedite, facilitate and implement Council plans efficiently and effectively. If NMFS will have difficulty implementing or enforcing a Council plan, they should inform the Council before the plan is formally submitted.
- Funding for fishery management generally has not been adequate, either for the Councils or for NMFS itself. Any fishing fees collected to raise funds should be prescribed in the relevant FMP and should be used only for management purposes in the region where they are collected. Fees should not be seen as a substitute for appropriated funding, but as a supplement.
- NMFS should be required to implement Council plans as long as they are developed according to the procedures set out in the Act and are not inconsistent with the National Standards at section 301. If there are strong policy differences between a Council and NMFS that should not be a basis for NMFS disapproval of a plan. If there are differences of opinion regarding consistency with the National Standards, some third party should arbitrate those differences.
- Definition of essential habitats and descriptions of protective measures should be listed as Discretionary Provisions of FMPs under Section 303(b), not under Required Provisions.

- FMPs should not be subjected to NEPA but any crucial process elements in NEPA that are not currently in the Act should be added to the Magnuson process. This would eliminate separate review periods and timetables for plan development and would streamline the process.
- The Regional Director of NMFS should not be allowed to vote on Council requests for emergency actions and NMFS should be obligated to act on emergency requests within 30 (or at most 60) days.
- Programs to buy out fishing vessels from owners willing to leave the fishery, whether privately or federally funded, should be used to remove effort from fisheries where it is necessary.
- There are no good reasons for reducing compensation for appointed members. There are several good reasons for not reducing compensation. Council work requires great effort and much more time than just that spent in meetings of committees or the Council. Many truly qualified people would be discouraged by lower compensation and paid lobbyists or people with strictly personal interests or agendas would replace them.
- Conflict of interest is not a serious problem with the New England Council (and has not been) but the perception is widespread and it may be a real problem in some other regions. Perhaps the language offered by the eight Council chairmen would be appropriate.
- We should support addressing the issue of overfishing in a manner that will make fishery management more effective. However, the 602 guidelines should not be embodied in the Act. The present language in the Act, along with the NMFS guidelines, provides the necessary tools to deal with overfishing.

- The Councils should be free to address management needs incrementally through a series of minor amendments rather than being forced by NMFS policy concerns to prepare "comprehensive FMPs" which may delay useful and necessary partial measures that could otherwise be quickly implemented to delay further deterioration in a fishery or stock or to marginally improve matters.

Mr. Chairman, I reiterate that none of the foregoing views have been formally adopted by the Council. Almost certainly, some of them will not find unanimous agreement by all our members – although most may find wide Council support. We will inform you of the results of our consideration after we have taken up S. 39 for a discussion at our next meeting

I will be glad to answer any questions.

This document submitted with the testimony of Philip G. Coates before the Senate Subcommittee on Oceans and Fisheries, March 4, 1995.

PROPOSED TESTIMONY FOR LEE ANDERSON ON BEHALF OF THE CHAIRS OF THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS BEFORE A POSSIBLE HEARING OF THE HOUSE OF REPRESENTATIVES FISHERY MANAGEMENT SUBCOMMITTEE

COUNCIL COMPOSITION/CONFLICT OF INTEREST

The Council Chairmen oppose giving lower priority to paid association representatives in making Council appointments, because industry representatives have experience and time to study issues and materials associated with Council decisions. They also oppose the Gilchrest bill requirement for 25% of appointed members to have university, environmental or other non-user group affiliation. The Governors and the Secretary can nominate and appoint from a broad variety of interests. Advisory Panels and Scientific and Statistical Committees also provide input from diverse backgrounds.

The Chairmen oppose mandatory recusal and abstention requirements which would deprive the Council of expertise in debating issues and may even rule out most Council members from voting on certain key issues.

The Council Chairmen suggested alternative language to NMFS' procedures:

1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.
2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.
3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.
4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The Assistant Administrator shall be required to act not later than 30 days after receiving the grievance.

OTHER COUNCIL PROCEDURES

The Council Chairmen agree with proposal to amend compensating rates to reflect new Federal compensation levels, that is, the fact that there is no longer a grade 18.

They agreed that Councils should be allowed to retain independent legal counsel.

They oppose the proposed requirement for a minimum number of Scientific and Statistical Committee and Advisory Panel meetings. This should be left to each Council to determine

according to their agenda, the issues being discussed, and budget concerns.

They also opposed the 2/3 vote proposal and the proposal to require roll call votes on all decisions.

OVERFISHING/RECOVERY PLANS

Council Chairmen agreed that the current overfishing definition in 802 Guidelines is sufficient. The Council Chairmen and Executive Directors expressed concern over legislating rebuilding programs, saying that overfishing may not necessarily be a result of fishing practices. For instance, the Pacific Council cited Pacific salmon where a significant amount of their mortality is non-fishing mortality.

The Chairmen agreed that all Councils should move toward an ecosystem approach. However, a Congressional mandate will only make management more difficult without adequate funding to achieve the desired result.

With regard to rebuilding plans, this is best left to each Council to determine for each fishery based on information on the specific fishery and region.

OBSERVERS

Regarding the Gilchrest amendments, The Council Chairmen believe the Councils already have the authority to initiate observer plans. It is not necessary to amend Act.

HABITAT

Council Chairmen believe the Magnuson Act should allow for discretionary (rather than mandatory) designation of essential habitat in FMPs. If essential habitat is designated in an FMP, project proponents would be required to consult with NMFS (similar to ESA Section 7 consultation) on impact on species in FMP.

Activities by all entities receiving federal funding for anadromous fish should be required to be consistent with FMPs and the Act; activities would be audited at least biennially.

Chairmen agreed that Councils need to respond to the need to provide long-term protection for essential fish habitats, but they need the regulatory tools to accomplish this goal, including the additional funding required.

OTHER FEES

The Council Chairmen concluded that Councils should be allowed to establish fees for implementation and maintenance of data collection programs and controlled access systems. Fees should be assessed on regional basis through Council plans or

amendments and put in a dedicated fund to be used specifically for program for which collected. A cap on fees should be set.

If the Secretary imposes fees, a substantial amount of the fees collected in a region should go to that region's programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle. If the Secretary imposes fees, Councils should have input as to the collection and use of the fees.

BYCATCH/WASTE

The Chairmen favored the bycatch demonstration program. They felt that options to reduce bycatch, waste, and high-grading should be included in the discretionary part of Act.

The Chairmen recommended the new National Standard 8 should read: "Minimize discard of fisheries resources." Some discards are unavoidable and a cost of doing business. Chairmen feel the real issue is reducing discard mortality.

602 GUIDELINES

The Council Chairmen believe the 602 Guidelines already seem to have the force of law and the Secretary can reject any recommendation which does not conform to the Guidelines and National Standards.

CITIZEN SUITS AND CITIZEN PETITIONS

The Council Chairmen concluded that providing for citizen suits and citizen petitions in the Magnuson Act is not necessary. Citizens already have a myriad of ways to have input into the fishery management process.

FMP IMPLEMENTATION

The Council Chairmen recommend that the Magnuson Act be amended to extend authority to impose emergency rule to 180 days, with one 180 day extension. The Administration's suggestion of 90 days followed by 270 days would not solve the problem. If the first period is 180 days, there will be fewer instances for the need to extend.

With regard to the recommendation for "interim measures" in the Gilchrest bill, Chairmen indicated that a 180 day emergency rule with possible extension of 180 days would make the interim measure unnecessary.

Regional Directors should not vote on any emergency action in any fishery. A unanimous vote, without the RD, on emergency actions, should compel the Secretary to act.

The Act should be amended to impose 60 day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. In general, the Council Chairmen would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.

Additionally, FMPs and amendments should be exempt from the impact analyses required by other applicable law. If exemption is not possible, require consistent reviews and time schedules for MFCMA/NEPA. In other words, facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.

OVERCAPITALIZATION

The Council Chairmen believe the Councils need the tools to deal with overcapitalization, but should not be required to take specific action. Give the Councils authority to research and establish buyback programs if they are feasible for the fishery involved. It was suggested that NMFS develop a revolving fund for buyback programs.

ALLOCATIONS

The Chairmen agreed that Congress should not take a position on whether or not ITQs, CDQs, or other allocative programs should be allowed, but rather section 303(b)(6) should be amended to give the Councils clear authority to use ITQs, CDQs, processor quotas, etc., with sufficient guidelines to protect the national interest, existing participants in the fisheries, and conservation of the resource.

GEAR

Council Chairmen voiced concern that gear restrictions could be a deterrent to research and development of new and possibly more efficient gear. Councils should preserve the right to determine whether to prohibit certain types of gear. A particular gear may be acceptable in one fishery or area and totally inappropriate for another. The ability to apply for experimental permits now exists and, along with Council oversight, can provide protection yet allow new gears to be tested.

FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION

The Chairmen of 3 out of 5 affected Councils recommend return of Highly Migratory Species in the Atlantic EEZ to the Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS. Four out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils combined.

BEST SCIENTIFIC INFORMATION AVAILABLE

The Council Chairmen concluded that no action is required in this area. The Secretary may already disapprove actions based on whether or not the best scientific information was utilized. The Gilchrest amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

OTHER ISSUES

The Chairmen supported a limit on disclosure of information collected pursuant to the North Pacific Fisheries Research Plan (Section 313) when information is not relevant fishery management information.

RELATED TO ATLANTIC TUNAS CONVENTION ACT

Council Chairmen made no recommendations concerning changes to the Atlantic Tunas Convention Act.

FOREIGN FISHING PERMITS FOR TRANSSHIPMENT

The Chairmen had no recommendation in the area of foreign fishing permits for transshipment, but stressed the need for NMFS to consider specific requirements in their areas, that is, vessel tracking systems.

ECONOMIC DATA FROM PROCESSORS

With regard to the proposal that processors be required to submit economic data, the Council Chairmen felt that this information was very specifically exempted from the Act to protect confidential economic data.

3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS

The Council Chairmen oppose the recommendation that statistics not be considered confidential after three years. Disclosure of any confidential information, particularly after only three years, could deter fishermen and processors from divulging reliable information. It was also pointed out that States may not be willing to share confidential data if a future release is against their policy.

NATIONAL DATA COLLECTION PROGRAM

Concerning the NMFS proposal for a National data collection program, the Council Chairmen concluded that the Councils already have the authority to initiate data

collection programs, and several have. Most fish are landed within the States' jurisdiction and their data gathering programs should be sufficient. One suggestion was to set national standards for recordkeeping and getting States to agree and comply.

DATA FROM INTERNAL WATERS PROCESSING OPERATIONS

The Chairmen agreed on no recommendations on the issue of requiring data from internal waters processing operations.

ASSAULT AGAINST DATA COLLECTORS

The Council Chairmen did not oppose the proposal to protect data collectors.

LARGE SCALE DRIFTNETS

The Chairmen did not oppose to the proposal concerning large scale driftnets.

PERMIT SANCTIONS

There were no recommendations or comments on the permit sanctions proposals.

PENALTY AND FORFEITURE FUND

There were no recommendations or comments on the penalty and forfeiture fund proposal.

PACIFIC COUNCIL SEAT FOR TREATY INDIAN

The Chairman of the Pacific Council said he would prefer it not be restricted to one term. If tribal leaders concurred, a member should be able to serve more than one term. There was discussion of whether the Secretary of the Interior should be involved in the appointment process.

STREAMLINED FISHERY MANAGEMENT PLANS

The Chairmen are in favor of increasing efficiency and reducing the time required to implement fishery regulations. There is some concern, however, over the amount of latitude NMFS would have in interpreting Council intent.

Senator STEVENS. Thank you. We will put the document you referred to in the record.

We will now turn to Ms. Robin Alden, the Maine Commissioner of Marine Resources, a former member of the regional council board.

STATEMENT OF ROBIN ALDEN, COMMISSIONER OF MARINE RESOURCES, STATE OF MAINE, FORMER NEFMC MEMBER

Ms. ALDEN. Thank you, Mr. Chairman, members of the subcommittee, Senator Cohen and Representative Longley. Thank you for providing me with the opportunity to testify on the reauthorization of the Magnuson Act on behalf of Maine's Department of Marine Resources, the agency with statutory responsibility for both conserving and developing the State's marine resources.

We have submitted written testimony on some aspects of S. 39 and plan to submit additional testimony specifically covering the buyout program, the sustainable fisheries section, fisheries disaster relief, individual transferable quotas, the habitat section, and fishery monitoring and research.

Today I will comment on one specific concern about council management. Unfortunately, the fishery management council system has become so bogged down in process, requirements, standards, and definitions that it is no longer a functional conservation mechanism. As the person responsible for managing Maine's marine resources, I no longer can count on the council system either to be able to respond to problems in a timely way or to enact effective measures when it does act.

This is of tremendous and grave consequence to this State, which is known for fishing and whose coastal communities have had a fishing tradition based on over 300 years of fishing. Sustainable fishing is an essential State priority, and our industry depends on resources that are managed by the council. Because of this, we cannot abandon the council and Federal arena.

The irony is that the reason the system is ineffective right now is because of the very standards and guidelines of the Magnuson Act designed to make it more effective as a conservation tool. Those standards have become an obstacle to sensible, responsible fishery management. The load of analysis and public process which is necessary to prove in this litigious world that the council is meeting each and every national standard and has a reasonable chance of avoiding overfishing is literally crippling it.

Specifically, the requirement in S. 39 for plans to include a definition of overfishing and to prevent overfishing will be counterproductive to the cause of conservation. This requirement, which currently is being administered through the 602 guidelines, forces the council and National Marine Fisheries Service to assert that they know things they cannot know. It precludes the common sense measures that provide incremental improvements in management. This approach, this incremental approach, has been the backbone of State management in the northeast, and it has provided very good results.

The classic example of this problem in the council arena comes in groundfish. The fact that the Conservation Law Foundation was able to stop amendment 4 to the New England Council's groundfish

plan because it did not promise on paper to prevent overfishing actually resulted in putting off raising the mesh size and closing spawning areas for over 3 years.

We have one other example that I will mention right now which borders on the ludicrous. The National Marine Fisheries Service has told the council that in the lobster plan which is currently under development if the States do not put compatible rules on at the same time that the National Marine Fisheries Service is approving the council plan, they will be unable to approve the plan, and if that happens the Federal plan will probably be withdrawn, leaving no management of lobster in Federal waters.

Clearly, this is counterproductive and clearly it's not a responsible situation. However, the requirement to create plans that promise to prevent overfishing in one fell swoop is the cause of this problem.

I would just mention that today. I will leave my testimony at this point and provide more in writing. Thank you very much.

[The prepared statement of Ms. Alden follows:]

TESTIMONY ON S. 39
SUSTAINABLE FISHERIES ACT
by
ROBIN ALDEN
COMMISSIONER OF MARINE RESOURCES
STATE OF MAINE
March 4, 1995
Samoset Resort, Rockport, ME

Honorable Senators Pressler and Stevens:

Thank you for the opportunity to testify on the reauthorization of the Magnuson Fishery Conservation and Management Act on behalf of Maine's Department of Marine Resources, the agency with statutory responsibility for both conserving and developing the state's marine resources.

Due to the extremely short time frame prior to this hearing, this department has not been able to develop comments on all aspects of S. 39. We plan to submit additional testimony, specifically covering the buy-out program, the sustainable fisheries section, fisheries disaster relief, individual transferable quotas, the habitat section, and fishery monitoring and research.

Today I will comment overall on the council system and on the definition of overfishing, conflict of interest, fishery dependent communities, and negotiated rulemaking.

Effectiveness of the council system

Unfortunately, the fishery management council system has become so bogged down in process, requirements, standards, and definitions that it is no longer a functional conservation mechanism. As the person responsible for managing Maine's resources, I no longer expect the council system either to be able to respond to problems in a timely way or to enact effective measures when it does act.

This of tremendous and grave consequence to this state which is known for fishing and whose coastal communities have a fishing tradition based on over 300 years of fishing. Sustainable fishing is an essential state priority and our industry depends on resources that are managed by the council. Because of this, we cannot abandon this arena.

The irony is that the very standards and guidelines of the Magnuson Act designed to make it more effective as a conservation tool have become

an obstacle to sensible, responsible fishery management. The load of analysis and public process which is necessary to prove -- in this litigious world -- that the council is meeting each and every national standard, and has a reasonable chance of avoiding overfishing is literally crippling.

Fishing and overfishing take place in a natural system. Our understanding of that system is, in fact, extremely limited and changes take place in that system on a real time basis to which the councils and National Marine Fisheries Service are unable to respond. We have a reasonable idea of stock sizes due to the fishery assessment work, but aside from an intuitive understanding that fishing affects stock size, we have little precise understanding of what factors determine that size. Our ability even to know and measure fishing effort in a timely manner is very limited. The New England Fishery Management Council is currently trying to create a "crisis" groundfish amendment -- Number 7 -- and National Marine Fisheries Service is unable to provide the council with information about how many boats were groundfishing in 1994.

I applaud your attention to strengthening the Act. However, what is really needed is to enable the management and fisheries community to work together to take responsibility for changing the way fishing is done so that we are harvesting within the means of the resource. That involves imposing common sense measures that provide incremental improvements in management. This approach has been the backbone of state management in the Northeast, and has provided good results.

Definition of Overfishing

Specifically, the requirement in S. 39 for plans to include a definition of overfishing and to prevent overfishing will be counterproductive. This requirement forces the council and National Marine Fisheries Service to assert that they know things they cannot know. It prevents incremental measures that would be of benefit to the stock. The classic example of this was the fact that Conservation Law Foundation was able to stop Amendment 4 to the New England council's groundfish plan because it did not promise on paper to prevent overfishing. However, the amendment would have raised mesh size and closed spawning areas -- things which would clearly have been beneficial to the stock. As a result, those measures were delayed by several years.

Furthermore, the overfishing definitions are alienating rather than enlisting the industry. The American Lobster plan is such an example. Currently the Gulf of Maine lobster is determined to be 20% overfished. Maine has an excellent track record of lobster management, and

participation by fishermen in developing and supporting management rules. The state conserves breeders through its v-notch, oversize measure, and seed lobster programs, and juveniles through vents in the traps. After over 10 years of record landings, preliminary figures for 1994 show that Maine delivered a 25% increase in landings over the record the year before, and furthermore that there are a number of other significant indications of the population's health. Despite this, it is very likely that the definition of overfishing, which has then produced a determination of overfishing, will drive the councils to impose additional rules on the state that may not be either essential or advisable and which certainly will not have the support of the lobstering community. This threatens a very important element of our existing conservation program.

Fishery Dependent Communities

I support inclusion of a National Standard for fisheries dependent communities. This is a matter of great importance in eastern Maine and deserves this level of consideration.

Conflict of Interest

I have concern that the conflict of interest language in S.39 may exclude the industry people who can contribute most to the council process. Despite this, I agree that the potential for conflict of interest real and that the procedures established in S.39 are not unreasonable. I would prefer to see Congress instruct the councils to establish such rules rather than weighing the process down further with legal requirements which may prove to be additional stalling mechanisms in an already-slow process.

It is essential that working people from the fishing industry continue to be appointed to the fishery management councils. The fisheries ecosystem and market are both extremely complex, and the knowledge that is pertinent to quality decisions is local and detailed. Despite the fact that it is impossible to get a complete cross-section of the fishery on the council, the presence of working knowledge among the council members upgrades the quality of both listening and decision-making. The right individuals with that knowledge can lead the industry where no non-fishing person, or paid lobbyist could.

Negotiated Conservation and Management Measures:

In principle, I strongly support facilitated rulemaking as something that can be a very a constructive alternative to the normal political process because it creates a explicit commitment to inclusion of many interests, each on an equal footing and with fair, impartial process. In the past, the

fishing industry in Maine has called for a formal Negotiated Rulemaking process, to address the process problems they have experienced in the New England Fishery Management Council and under the previous administration, the Maine Department of Marine Resources supported that request.

I have two concerns about the draft language:

1. There is no discussion of the council's obligation to use the results of the negotiation process. The value of facilitated negotiations is that the expectations are clear and it would be a waste of time and money to participate in such an exercise without clear understanding about the expected use of the resulting decisions. My understanding of the value of the existing Negotiated Rulemaking process is that it is binding on the agencies that agree to participate.
2. Facilitated negotiation is expensive. Additional funding should be provided if the councils are to take this on.

Senator STEVENS. Thank you very much. I did notice your other comments about conflict of interest, which we will take into consideration.

Senator Kerry, do you have any questions?

Senator KERRY. I would like to just ask a couple of very quick ones, Mr. Chairman. I will not take long.

Admiral you talked about gear regulations and resources. Some people, particularly at the Boston hearing earlier this morning and in the past, have suggested that gear requirements are getting too complicated and they change too quickly. It is getting so expensive that we might be better off with an overall quota, mixed with maybe some efforts to address the by-catch issue by including some method of bringing in fish that are part of the by-catch.

Have you looked at that from your point of view? Do you think there may be an excess of regulatory zeal with regard to fisheries?

Admiral LINNON. Clearly, as we add regulations the enforcement things gets more complicated and has some resource cost to it. For example, we have beefed up our presence up on the Banks since the 12th of December, when those areas were closed.

As far as quotas, I do not know that we have a position on quotas. I think that is clearly a management question, but it certainly has some enforcement elements to it. For example, as the Chairman knows, it can change the length of seasons. We used to have two 24-hour halibut days in the State of Alaska or Gulf of Alaska. Now the season, since quotas, is about 8 months. So some of these things do have enforcement impacts. We are going to have to see what they are as these quota systems and new regulations are developed.

And, by the way, we have to, as we always do, provide counsel to the management council as to how to craft these things to ensure that they are enforceable at sea or else make it clear that they are not.

Senator KERRY. I understand the difficulty you are suggesting, because you do not have the final say in the budget. You have to carry out your responsibilities out, and it is very difficult for you to sit here and say you do not have enough resources. You obviously cannot be put in the position of suggesting that what you do have, where others have suggested it is enough, is not adequate to get the job done. So it is difficult.

As I understand, reading between the lines of what you said, depending on what we come out with in the Magnuson reauthorization and depending on what regulatory scheme is put in place, you clearly may have additional demands for enforcement that are going to require increased resources. Is that fair?

Admiral LINNON. Yes, sir.

Senator KERRY. That is the bottom line?

Admiral LINNON. That follows, that there would be resource impacts.

Senator KERRY. So we cannot just pass something and not provide adequate resources and expect it to work?

Admiral LINNON. Yes, sir, that is correct.

Senator KERRY. Now, Mr. Coates and Ms. Alden, let me just ask you the only other question I want to ask jointly. At the hearing we had in Boston earlier, there was an interesting juxtaposition,

frankly, of the effectiveness of the New England Fishery Council with that of other regional councils—and I do not ask this question at all antagonistically but just trying to get your views of this publicly now as we wrestle with how to strengthen the management structure.

Alaska has zero species at risk at this point. They have closed whole areas. The Pacific Council has addressed problems between Washington and Oregon and California for trans-boundary fishing. Effectively, the bottom line, I think the Senator would tell you, is the councils made these choices. We, on the other hand, have been taken to court and we are still struggling. And one of the reasons in 1990 we had to strengthen Magnuson was the very fact that we could not seem to get final decisions.

So could you both share with us your perspective, as council members? Is what is in this Act now sufficient to guarantee conservation? Are we still missing the mark, or is there something special to the structure of the council in New England that has helped engender this current predicament?

Mr. COATES. That is a good question. I would say that, first of all, I think that the folks in Alaska learned from our mistakes, and that doesn't only go back to the inception of the Magnuson Act but, as somebody pointed out, we've been fishing off New England since probably before the arrival of the pilgrims. And, as a result, a lot of traditional fishing practices have developed over the years, over the centuries.

But I think the difference between Alaska and New England is you could just take a look at the character of the fisheries, and one of the problems, as it were, in dealing with the character of the New England fisheries is that a lot of the fisheries here are owner-operated, small-scale operations which lend themselves to a lot of differences in terms of an individual's way of fishing, his own particular method of fishing, style of fishing, versus what seems to be a much larger scale operation in many of the fisheries in Alaska.

Senator STEVENS. Only within the last 5 years, Mr. Coates.

Mr. COATES. The ground fisheries in Alaska?

Senator STEVENS. Only within the last 5 years have we seen really invested-owned activity in our fisheries.

Mr. COATES. Well, I stand corrected on that. But I do know on the scale of things, I do know it's bigger water and you need bigger boats and things like that.

But, to go back, I think if somebody chronicles the history of fishing in New England under the Magnuson Act and the decline of groundfish, the current decline—and they're going to come back; we're going to bring them back—I think you will find that there's a series of events here that came together in such a way that it was virtually impossible for anybody to effectively manage the situation.

I talk about basically the elimination of foreign fishing, the general perception by our fishermen that the substitution of the foreign effort by their effort was just not even close to being an equation. There was no way that we could ever match that effort.

The inability initially to effectively enforce a lot of the rules that the council put in place, the explosion of capital and technology that occurred in the late 1970's and 1980's, the development or ex-

pansion of fisheries, like, for example, the gillnet fishery, which virtually exploded, made the control of fishing mortality very, very difficult.

And by the time the council finally began to realize and we went through a series of very rigorous controls at the outset—quotas, trip limits, all the things that sounded good in terms of fishery management—and then I think the council made a severe mistake because they abandoned everything and created basically a 4-year hiatus while they attempted to come up with a new management program.

And at that time we were probably peaking in terms of the growth of the fleet, the explosion in fishing effort, but the damage had been done. In fact, I remember authoring a paper for our little newsletter back in 1982 expressing concern about the explosion of the fishing effort and the fact that we were starting to see a decline.

So it is not something the council has not tried to address, but it is something dealing with a huge number of fishermen, the scale of operations, and dealing with the ability of fishermen to adjust and accommodate changes, and basically, I think, in trying to deal with things on an expedited basis when, as Robin indicated, some of the process just held us up and frustrated us. I think these all came together to create the current situation.

We have learned a lot, and I think all of the elements in the current Act are there for us to effectively manage the resources. Obviously there is a need for some adjustments, and we look forward to working with you on making those.

Senator KERRY. Ms. Alden?

Ms. ALDEN. I would say that the tools have always been in the Act, basically from the beginning, to do the job. And I am not sure that the changes that have been made and that are proposed now will significantly change the situation. I think that the problems are on the ground with actually carrying them out, and that it's very difficult in terms of writing legislation to fix the problem. So that is the first thing.

Senator KERRY. Is the problem a crisis of willpower?

Ms. ALDEN. Let me add one other element which has gone into this. There has been a difference of opinion between National Marine Fisheries Service and many people, both on the council and in the industry—and I am saying on the council, not necessarily just industry representatives—about what are the important measures to put in order to protect the stocks.

That battleground has ended up playing out in the process of advice and decision that has gone on between the scientific community and the council. So that often when suggestions are put forward the response from the scientific community has been we can't quantify what you are suggesting and therefore we cannot tell you that you can do that, or that you can do it if you want, but we won't tell you that it will help. You also have to do these other things.

And that has been a very divisive process in the New England council. I think it is unfortunate, and some of what I am saying about these incremental steps that I think are important in fishery management I would point to Massachusetts, the regulation of in-

shore Massachusetts waters. Phil Coates and his advisory council have repeatedly put on rules over the last 10, 15 years that have closed this area, regulated here, so forth and so on in a way that I think is very responsible.

That has not been possible. When those types of suggestions have surfaced in the New England Council, those are suggestions which would have had widespread industry support or could have been negotiated to a point where they would have been supported by the industry. Those have never been accepted as enough and therefore they haven't been able to go through. And the council has kind of been locked into a paralysis as a result.

Senator KERRY. Well, I recognize that. I do not want to tie this up. But that is the problem. If you have a body of evidence in the scientific community suggesting that it is not enough and the trend line is continuing down while the council cannot decide, clearly someone has to make a decision.

Ms. ALDEN. And, if I may, I think it is unfortunate that it hasn't been possible to put some of those measures in—closures, mesh size, things which are intuitively probably not damaging to the stock. It has been impossible to do those things and, as a result, the whole community has become frustrated and clearly the industry has become more alienated from the management process than they would have been if their suggestions had been able to be taken and implemented.

Senator KERRY. Thank you, Mr. Chairman.

Senator STEVENS. Senator SNOWE.

Senator SNOWE. To follow up on Ms. Alden, what do you think about the idea—and this is something that is in the reauthorization of the Magnuson Act—about having interim measures that could be established? Because I know a number of the fishermen have told me in the past and have expressed this concern that until the council comes up with a very comprehensive plan, the worst occurs, rather than developing some interim or incremental approaches to the problem.

Oftentimes, their recommendations have been ignored in the interim, while waiting for a comprehensive plan to be completed.

Ms. ALDEN. That would be one of the most constructive things that could happen. I have always looked at it as a former business owner. I never waited to make business decisions until I had a complete plan in place. I made a series of plans, adjusting to new information along the way. And to me the fisheries ecosystem is so dynamic, the market is so dynamic, that to be effective I believe that fishery conservation has got to be operated that way.

Senator SNOWE. Mr. Coates, last fall when the council was meeting on the partial closure of Georges Bank, I sent a letter recommending that the council consider displacement measures for the fishermen. How come the council did not consider any of those issues before they made a move, a partial closure of the Bank?

Mr. COATES. Well, we are attempting to address displacement. It is very difficult to predict where a fisherman is going to go and, as a consequence of the depletion of the stocks that have occurred prior to the inception of any management regulations, a lot of people are exploring new fisheries and getting into areas where they

probably shouldn't be interacting and creating a lot of conflicts right now out on the water.

The mechanisms that the council put in place or recommended last year were a group of emergency actions that were designed to create a stop-gap measure until we can get our full amendment in place. And we do have a tool. When you mentioned earlier the idea of an expedited mechanism for implementing regulations and change, the current plan in place, which interestingly enough (amendment 5) would probably work, it's an effort reduction program, would probably work had we had some help from the codfish. The stocks of cod have not been responding in terms of their reproductive capacity and, as a consequence, we have had three very poor year classes, which adds to the decline of the resource.

But had we had that support we probably wouldn't even have been looking at frameworks and emergencies or anything else because amendment 5 would have started to work and I think we would have seen some positive results from it. But we were forced to take very dramatic actions under the emergency rule and then use the frameworks to back them up, which are now going through the process and will be submitted by the council to the Federal Government.

They are creating a lot of displacement right now. But again the same mechanisms for us to address displacement are the kind of things that probably need to be in the Act, like a buyout, a buyback. It would be ideal if we had a buyback in place at the time we said we have now got to close these three areas, we have now got to implement large mesh only in a huge part of the Gulf of Maine and southern New England.

We didn't have them in place, and our major goal right now is to try and prevent further depletion of the stock. We would love to have mechanisms to deal with displacement, but a lot of them are tricky. You just cannot tell a fisherman, because you have been fishing on Georges Bank we are not going to let you fish in the Gulf of Maine. I mean, take a look at the legal implications of that. It's not an easy thing to sort out and try and avoid.

Senator SNOWE. But do you not think you have the authority to consider displacement regulations?

Mr. COATES. I do not think we would have the authority to make those kinds of decisions. We might not have the information to be able to precisely say because you are a big boat fishing on Georges Bank you now can't go fish in the Gulf of Maine.

Senator KERRY. Why do you think you do not have the authority, if you would yield?

Mr. COATES. Well, I think to get into that kind of rulemaking under the current plan, we don't have that capability under the frameworking mechanism in the current plan, for one thing. And I think it deals with things like—well, it deals with legal issues that I think we need guidance on by NOAA general counsel. It is certainly something we could pose when we go back, but I think if we put a vessel size limit in, for example, that would discriminate against vessels currently fishing in the Gulf of Maine, that are larger vessels that have traditionally fished there.

So there were no easy mechanisms to deal with a guy in a big boat wanting to go from here to there as he sought some alter-

native and continued to fish, except the direct removal of effort through something like a buyout or a buyback or temporary retirement or some kind of a subsidization program, all of which the Canadians use, I might add, in dealing with their crisis up in Newfoundland and now the Scotian shelf.

Senator SNOWE. Thank you. Admiral Linnon, a couple of questions. Many have said to me in the fishing industry that as fishery management plans become more complex they are more difficult to enforce. Have you found that to be true?

Admiral LINNON. Of course. But we have tried to do a couple of things, and one is to build some guidance for our boarding officers that is certainly more clearly worded than some of the regulations themselves.

Part 2, as I mentioned in the statement, we have changed the focus of the little school we had down at Otis to be directed at teaching boarding officers how to apply these regulations and how to enforce them. We not only teach it with our own people; we teach it with NMFS agents, with NMFS scientists, and with fishermen. And we not only include our own people as students but also State enforcement folks and others.

So we acknowledge that as this gets more complicated it gets more difficult to enforce, but we think we have addressed that question and will come out of it OK.

Senator SNOWE. Are you familiar with the Coast Guard's proposal to close the Eastport Coast Guard station?

Admiral LINNON. Yes, ma'am.

Senator SNOWE. Can you tell me what the impact would be on the fishing industry? That has been critical in an area that is remote and in fact has saved lives of fishermen in the past just in recent years.

Admiral LINNON. As you may know, that is part of a service-wide consolidation of coastal stations that in part is driven by the budget, of course, and it is the outcome of a study that was done a couple of years ago that looked at where the work was and where the resources were. It recognizes that when we built these stations we used to row out to people and now we can get there at 25 knots.

And there are resource changes up and down the coast that would add people and boats to other stations that should be able to pick up the workload of Eastport.

Senator SNOWE. Thank you.

Admiral LINNON. You are welcome.

Senator STEVENS. Senator Cohen.

Senator COHEN. Mr. Chairman, I think just for the record I would point out that Governor King, I believe, is still sitting in the audience. He addressed the forum today and he has remained here to show his interest, and I just wanted to acknowledge his presence here.

If I could follow up on what Senator Snowe was saying, I gathered, Mr. Coates, that the implication was that while we welcome Massachusetts leaders to Maine we are not so hospitable to Massachusetts fleets coming into the Gulf of Maine, and are looking for ways in which we might deal with that.

I understand that the council has not taken a formal position on a buyout proposal; is that right?

Mr. COATES. The council may not have taken a formal position, but I think if you polled the council you would find that the majority of them support some means of rapidly taking effort out of the fishery, and the obvious or popular choice at this time seems to be a buyout.

Senator COHEN. Well, I would like to turn to Ms. Alden. You have gone from the world of journalism now to the world of realism in government management. [Laughter.]

Senator COHEN. Do you foresee the State being able to come up with money that would be necessary for buyout? Now we have heard a lot of numbers tossed about, anywhere from \$200 million to \$400 million. Even cutting that in half to \$100 million—and the bill that has been introduced by Senator Kerry and Senator Stevens would call for 50 percent Federal participation—we are still looking at a lot of State dollars and other dollars.

Do you foresee the State being in any position to contribute to such a buyout?

Ms. ALDEN. With deference, my boss is in the back of the room. [Laughter.]

Senator STEVENS. Governor King, would you like to join us up here?

Senator KERRY. I think the Governor wants to stay back there.

Governor King: The answer is no. [Laughter.]

Senator COHEN. Well, that takes care of that.

Would you agree, both Mr. Coates and Ms. Alden, that you would probably have to have some sort of strict limited entry in order to make this effective? If so, how long would such a strict limited entry have to be in place? My understanding is that the Maine industry has been opposed to such a concept in the past, so where does that leave us?

Ms. ALDEN. That is right. That is one of the major issues about a buyout program, and in the discussions that I have been aware of in the industry people have basically tried to weigh two things. I think with reference to the pilot program that has been announced one of the excellent things about having the opportunity to think this through in reality in a pilot is a chance to try to define those issues, and I think you have hit on one of the most important issues of all.

One of the things that people forget about is that if all of this works we may also have a lot of fish at some point, and we need to plan, at the same time that we're thinking about shrinking the industry, we need to figure out what mechanism we're going to use to be able to allow the industry to adjust to increased stocks in the long run. And that is a big job.

Senator COHEN. Well, the point is we have got a lot of examination to conduct in terms of exactly how such a buyout is going to be structured, assuming, No. 1, the money is going to be there, No. 2, how can you make it really effective so you do not just buy out some boats and those boats go elsewhere, or you see a situation where they are simply replenished by others coming in. Then the question becomes, those who remain who have access to replenished stocks, what sort of compensatory obligation would they have, if any.

I think all of those have to be addressed before there is a full-fledged commitment to the buyout concept. We have to raise these issues, and I think really answer them, before we can all go on record as being strongly in favor of it.

Ms. ALDEN. If I may, I agree with you completely. People have been talking to me all weekend about these various issues, and the Governor and I have discussed the fact that we need to continue to examine this, and those are the issues that are on the table.

Senator COHEN. That is all I have, Mr. Chairman. Thank you.

Senator STEVENS. Congressman, do you have a question?

Mr. LONGLEY. Yes. Ms. Alden, your testimony argues for the fact that there are apparent limits to language and process and even science in terms of our ability to measure the problem, and you seem to suggest that we need to provide for a more intuitive ability to act based on the problem. Could you comment on that? Is that a fair characterization?

Ms. ALDEN. That is a fair characterization of where I wish we could be, because I don't believe that we right now know enough to be able to fine-tune this ecosystem and match precisely effort to where the fish stocks are and so forth.

I think Senator Cohen's comment about me joining the real world of fisheries management, I'm aware that we have a legal structure which requires that we be fair and allows people recourse and so forth and recognize that any government action requires a tremendous amount of justification in order to be sure that it's appropriate for all of the constituents.

However, I would agree that I would be arguing that rather than adding additional—rather than from the top trying to suggest through the Magnuson Act that there is an additional checklist of things that have to be proved in order to make sure that this, as Senator Kerry said, that there isn't a crisis of willpower and that the councils do in fact act, I would rather see there be a lessening of the strict requirements so that the council is able to do some things which don't promise to do everything but are able to be constructive toward conservation.

Mr. LONGLEY. Just to follow up, and I want to touch for a minute on the issues that relate to the buyout, I want to be honest with the people in this room, and I think we all understand that Washington has some serious money problems, and that coming up with the money for a buyout in Washington may elicit the same answer that is has just elicited from Augusta.

On that line, are there other measures that we should be acting on immediately designed either to develop a form of a moratorium or cap or somehow or other begin to identify those who are currently participating in the fishery, to at least try to conserve effort on the basis of perhaps restricting entry to it on some temporary basis? Or are there other measures that you might think would be appropriate?

Ms. ALDEN. I think I would love to defer to Mr. Coates, who has been leading the groundfish effort in the council on that, because there are a number of things that are in place right now, and the council is struggling right now with the fact that any additional adjustment to the groundfish plan beyond the frameworiking process is over a year away.

Mr. LONGLEY. I might just interject part of the reason for my question is that many of the issues that I am hearing discussed are, frankly, the same issues I heard discussed over a year ago, and I am very sensitive to the suggestion that we seem to be caught up in process and procedure and not getting the actions taken that we need to protect the resource.

Mr. COATES. With regard to the specific question about moratoria—and I heard somebody mention limited entry earlier, one of the Senators—there are within the two major plans that the council has under its responsibility moratoriums already implemented, for both the sea scallop and the groundfish plan.

The groundfish plan has some exceptions and the scallop plan has exceptions, but they apply mostly to small-scale vessels, I think vessels under 45 feet, and vessels using hooks in the groundfish plan, and people fishing for less than 400 pounds of scallop meat in the scallop plan. So those moratoriums are already in place, and there are moratoriums proposed for the lobster plan, again in Federal waters—I want to make that clear, since we are in Maine—and also some of the Mid-Atlantic council plans are proposing moratoriums and limited access.

The surf clam ocean fishery, as you well know, has been privatized essentially. The resource has been allocated to the users. And the scallop plan seems to be going in that direction. At least we are going out with scoping hearings looking at a variety of alternatives, ranging from consolidation of permits, days at sea, to ITQs. So a lot has been done to control the amount of participation already through the moratoria, and I am sure as the plans evolve they are going to become even more restrictive.

In fact, one of the alternatives to the current amendment that is being developed for the groundfish would basically take amendment 5 and eliminate all the exemptions in terms of participation so nobody could fish for groundfish except recreational fishermen without some kind of an access permit.

Mr. LONGLEY. Thank you, Mr. Chairman.

Senator STEVENS. The testimony we had in Boston this morning was to the effect that if the buyout took place, there would be just a substitution of increased efficiency and technology in the remaining vessels, and the problem would be the same. Do you have the same feeling here?

Mr. COATES. I would say again in the groundfish plan the nature of the moratorium puts limitations on certain aspects of the capacity of a vessel. They can't increase their overall length, horsepower, and I think there are some other parameters, more than 10 percent. There is a similar capacity restriction in terms of replacement or substitution in the scallop plan.

Beyond that, there is certainly potential for fishermen to recoup days. This is one of our major concerns. Rather than go to the direct limit of fishing activities through quotas, we have backed off of it and said days at sea are the equivalent of a direct catch quota. So that is what we regulate. We know there is a lot of potential for recoupment and readjustment by fishermen. But we have taken care of the major capability of a small boat being substituted by a big boat.

Senator STEVENS. Admiral, I will not question you about it, but I would urge that you ask your people to give some assistance on your statement where you say, "I believe the fishing industry would be better served by standards of simple negligence with respect to damage." I think it would be helpful if you would give us some idea as to how you think we could deal with that, because we had a similar comment too on that in Boston. We will be trying to follow through on it.

I would just say to this panel, rather than ask any further questions, I introduced the first 200-mile limit bill because of a flight that I took with the Coast Guard from Kodiak to the Pribilof Islands and encountered over 100 factory trawlers from Japan vacuum-cleaning the bottom of our sea. It took us a while to get the bill passed. I was in the minority, and my good friend who was the chairman of the Committee, Senator Magnuson, gave me permission to hold hearings all over the country and all over Alaska and assigned me his staff. As a matter of fact, the majority staff worked with me for a period of time.

I felt indebted to him and was the one who named the Act after him. It became the Magnuson Act. I only say this. The Act was designed to protect the species. We took on, at the Federal level, the duty of protecting the reproductive capability of our fisheries within the 200-mile limit. We assigned to regional councils a portion of the Federal authority, asked the States to delegate part of their authority to the regional councils, and in effect created a new level of government to try and protect the intersection between users and States and, particularly, to protect fishermen or anyone else that had an interest in the fisheries.

The mandate from the Federal Government was that the species, the product, and the capability of reproduction was of Federal interest, had Federal interest, and that was that our real main goal with the 200-mile limit bill, the Magnuson Act.

I think I am not going to comment, as someone not from this area, about the adequacy of our council vis-a-vis yours, but I do think that the problem really is that it is too bad we do not have our old friend Senator Hollings here. He said, well, you knew your enemy then, but you do not know who your enemy is now. It is us.

I think we had better find a way to find the solutions to some of these problems within the existing system, because even if we move at the pace we think we can move, we will not have this bill for you until October. So you are going to have to proceed under the existing law to meet your problems now, and I urge you to do so.

I want to thank the witnesses. I appreciate it very much.

Yes, Senator Kerry.

Senator KERRY. I just wanted to make one comment. As we talk about the buyback and where we are going here, Senator Cohen is right. There are questions, and that is why John Bullard is sitting here. He is meeting with people during the course of the weekend. And we are going to be trying to find out exactly what the real demand for this buyout is, how you can implement it fairly, and where we go from here.

But we have got to recognize some hard realities here. It is our job to try to do that, all of us. Scientists tell us that the oceans can

support about 100 million tons of fish product being taken out of them. We are at that level now. And I am told that, at the current rate of population increase, the demand for increased fish products will jump in the next 10 or 15 years—possibly double.

Clearly if boats continue to act as if this is just the normal free enterprise system, where you can go out and treat seafood as the normal product that you can sell to meet demand, we are in trouble. Those days are gone. They are absolutely gone.

Now, if we are going to treat this industry with the notion that we want it to survive, we want fishing to be here in 10 or 15 years, we have got to recognize what has happened. When Ted Stevens and Gerry Studds and others worked to get the 200-mile limit, we got rid of the Russians and Japanese, but we rushed in, and you had an enormous period of capitalization.

So the truth is that the fishing industry is not what the fishing industry has been for the last 10 or 15 years. And the traditional fishing industry of the past 300 years is even further away than that. What we need to do is think about how to get back to a sustainable fishery. You are not going to have a sustainable fishery if all you do is think you can bring the stock back and then everybody who has a boat today is going to go back and fish at the same level they were before. It is not possible.

And the price of fish, obviously, will affect this. I mean, how many boats are going to survive is going to depend to a degree on the demand you have and what the price of fish is. But I think you are going to need the buyout in order to bring you down to the level where you can manage sufficiently the future of the industry—recognizing that even with increased technology on those fewer boats you have the ability to bring back probably just as many fish or close to it.

And that is why the management is going to be so key. But the price will go up and it will go up sufficiently that fewer fisherpeople will be able to bring in less fish and still make adequate money to pay those boats and have a decent living. But they will not be able to do it if the same number of fishermen are chasing fewer fish under a stricter regiment. That is where we are.

Now there are things we can do to maybe augment fish supplies by offshore aquaculture to a degree. But we have got to remember that, if whatever farming you do offshore relies on the natural habitat, then the marine ecosystem is not necessarily going to support that increase of fish. So you come back to this vicious cycle.

This is not whiskey we are selling. This is not something that we can make with an endless supply of water and mix with other ingredients. This is a life cycle. And so the whole ecosystem is dependent on whatever happens to the eel grass that feeds it. There are biological limits, and we have lived as if there were no limits.

So I think we are going to have to think about this in terms of a national disaster, frankly, and push for a one-time buyout. The United States has spent hundreds of billions of dollars sustaining farmers who are not farming. We are not asking for that. We are asking that people not face the hardship of losing their homes and their families, that they are able to make a difference here in what is now going to be a very different world. And that is why I think

State, local, and Federal governments have got to think about how to put that program together.

Senator STEVENS. Thank you very much. Thank you.

I will now call the next panel and, if I may, ask Ms. Angela Sanfilippo to join it. We have Jeff Kaelin, Dennis Frappier, Brad Burns, Jennifer Atkinson, and Philip Conkling.

I am certain it is very frustrating to have us come this far and then turn a red light on you. But this time around we are not only going to turn the red light on you, but we are going to turn it on ourselves. So we are going to limit you to 5 minutes, and then we are going to limit each of us to 3 minutes in asking questions of you so we can get on with the hearing. Mr. Kaelin?

**STATEMENT OF JEFFREY H. KAELIN, EXECUTIVE DIRECTOR,
MAINE SARDINE COUNCIL**

Mr. KAELIN. Nice to see you again, Senator Stevens.

Senator STEVENS. Nice to see you.

Mr. KAELIN. Senator Stevens, Senator Kerry, Senator Cohen, Senator Snowe, and Congressman Longley, I am Jeff Kaelin, the Executive Director of the Maine Sardine Council. I thank you very much for coming to the Maine Fishermens Forum to hold this hearing on the Sustainable Fisheries Act today.

The Maine Sardine Council is an association of the four companies which produce sardines and other canned herring products here in Maine. These 4 companies operate 6 canneries and employ 1,000 people in an industry which began here more than 120 years ago. Maine is the only State in the Nation producing canned sardines.

Our industry uses some 35,000 metric tons of Atlantic herring to produce almost \$50 million in canned herring products. The fish that our canneries depend upon are harvested by fishermen, mostly independents, from New Jersey to New Brunswick. Maine's lobster industry also uses about 20,000 metric tons of Atlantic herring for bait, much of this coming from cuttings generated by sardine processing plants.

Our sardine industry has been able to survive the heavy foreign fishing pressure on the Georges Bank and Gulf of Maine herring stocks which took place before the establishment of the FCMA, the Magnuson Act, nearly 20 years ago. During that time, however, our industry has become considerably smaller and has lost substantial domestic market share to more than 40 exporting nations. Growth in our industry is again taking place, with a new focus on developing markets in some 30 different areas of the world.

Today the region's Atlantic herring resource is believed to be in good condition, although no Federal fisheries management plan is in place and no stock assessment work is ongoing. Spawning area closures, the only management measure in place, are enforced by the States organized within the Atlantic States Marine Fisheries Commission.

In part, because our regional council is unable to elevate herring management to a higher priority, given its ongoing responsibilities to manage a host of other fisheries, we are concerned that Federal policies designed to shift groundfish fishing effort into some "underutilized species," particularly in the Gulf of Maine, could

have a serious negative impact on our industry's sustainability. We believe it is time to be cautious about attracting new entrants into the Gulf of Maine herring fishery.

While there are some changes to S. 39 which we would like to see made, there are many provisions in it which we support. On balance, I think that the bill represents a strong statement in support of the council management system, and provides for a greater role for the fishing industry in the management of its own future.

Rather than seeking to assess blame for the fisheries management system's failures by sanctioning one group or another, the bill establishes some new ideas and opportunities which we believe can be enhanced to help all of us to eventually realized our shared goal—that sustainable fisheries based upon innovative, true ecosystem approaches to management will come about as a result of our collective efforts.

In truth, we know little about how to manage our oceans and produce a sustainable supply of seafood. Marine fisheries management is an inexact evolving process that needs our commitment and interest, initiative, investment, and ideas to be successful.

Because of the complexity of the issues involved in S. 39 and because of the limits of time, I am unable to state for you all of our views, but I do have a written statement that I know will be placed into the record. I do want to take a couple of minutes to comment on a few provisions in the bill before I close.

We support the establishment of the authority for the councils to utilize negotiation panels to work toward consensus on difficult management measures. This provision works to empower the fishing industry as an ally with the Federal Government in working toward sustainable management policies. We commend the committee for rejecting the advice of some critics who have maintained that industry cannot be trusted in responsibly managing the resources that it depends upon.

We support the concept of a buyout of excess fishing capacity in fisheries where resource emergencies have occurred. We agree with many others and we want to thank you, Senator Cohen and Senator Snowe, for your support for developing this concept here in Maine. Buyout assistance is needed today not only to reduce the shock of adjusting to New England's groundfish crisis in the human terms of families potentially being displaced from homes tied up in boat mortgages, but to avoid the rapid potential overcapitalization of other fisheries in the region which may be fully utilized or close to it.

We strongly support the statutory clarification that U.S. fish processors may be holders of an ITQ. We concur with your comments, Senator Stevens, in the Congressional Record of January 4, that this bill simply clarifies that the councils have this tool to use at their discretion and does not require its use.

We strongly support the identification of essential fisheries habitat by the Secretary and the councils but believe the bill needs to be strengthened to require that councils comment on any Federal or State activities which may have an adverse impact on each fishery in its jurisdiction. The bill's requirement that councils must comment only on activities affecting anadromous fish does not go far enough.

The ecosystem management section of the bill should be expanded so that fishery mortality by animal predators can be assessed, along with an assessment of fishing mortality, in the annual report to Congress which the bill would require.

And, finally, we are in strong support of the bill's moratorium on the directed foreign harvest of Atlantic herring and mackerel to allow for the maximum domestic regional development of these resources. This provision would not impede over-the-side sales of these species to foreign processors in order to provide additional markets for area fishermen. During the past 5 or 6 years, it is clear that a directed fishing allocation is not necessary in order to establish JVs in this region.

Senator Snowe, thank you very much for your work this week in seeking to have this provision attached to the foreign fishing bill which the subcommittee is seeking to move. The opposition to this provision that surfaced this week points out precisely why this amendment is necessary. The situation on this coast that we are seeking to secure represents the same problem that you, Senator Stevens, worked against and were successful within Alaska more than 10 years ago. We need the time to allow our fishermen and processors to develop these resources without the interference of those who would give away our fish for personal gain in other areas of the world.

Ocean Trawl's objection to this provision would trade east coast mackerel and herring for the opportunity for their Norwegian-built factory vessels to fish in the Soviet zone. We cannot allow this kind of situation to interfere with our attempts to create sustainable fisheries in this region. A healthy herring stock is not only important to Maine's sardine and lobster industries, but is vital to the needs of the groundfish resources which we are spending millions of dollars to restore.

On behalf of our industry, I want to thank you again for being here and for giving me the opportunity to talk with you about this bill. I look forward to working with you and your staffs over the next few weeks and months as you develop it further, and I hope that I can answer any questions that you may have for me.

[The prepared statement of Mr. Kaelin follows:]



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STATEMENT OF JEFFREY H. KAELIN
EXECUTIVE DIRECTOR, MAINE SARDINE COUNCIL
BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON OCEANS AND FISHERIES
CONCERNING S.39
"THE SUSTAINABLE FISHERIES ACT"

SATURDAY, MARCH 4, 1995
MAINE FISHERMEN'S FORUM
ROCKPORT, MAINE



Packed under exacting quality standards established by the State of Maine



Subcommittee on Oceans and Fisheries, Page 1
Jeff Kaelin, Maine Sardine Council

Senator Stevens, Senator Cohen, Senator Snowe, Senator Kerry, I am Jeff Kaelin, the Executive Director of the Maine Sardine Council. Thank you for coming to our Maine Fishermen's Forum to hold this hearing of the Subcommittee to solicit our views on S. 39, the Sustainable Fisheries Act.

The Maine Sardine Council is an association of the four companies which produce sardines, and other canned herring products, here in Maine. These four companies operate six canneries - located between Bath and Lubec, Maine - and employ 1000 people in an industry which began in Maine more than 120 years ago. Maine is the only state in the nation producing canned sardines.

Our industry's annual payroll approaches \$10 million. In 1993, our industry utilized nearly 35,000 metric tons of Atlantic herring to produce more than \$45 million in canned herring products. The fish that our canneries depend upon are harvested by fishermen from New Jersey to New Brunswick. Maine's lobster industry also utilized 17,000 metric tons of Atlantic herring for most of its bait demand in 1993.

Maine's sardine industry has been able to survive the heavy foreign fishing pressure on the Georges Bank and Gulf of Maine herring stocks which took place before the establishment of the Fishery Conservation and Management Act nearly 20 years ago. During that time, however, our industry has lost substantial domestic market share to more than 40 exporting nations. Growth in our industry is again taking place with a new focus on developing markets in some 30 different areas of the world.

Today, the region's Atlantic herring resource is believed to be in good condition although no federal fisheries management plan is in place and no stock assessment work is ongoing. Because our regional council is unable to elevate herring management to a higher priority - given its ongoing responsibilities to manage a host of other fisheries - we are concerned that federal policies designed to shift groundfish fishing effort onto "underutilized species" - particularly in the Gulf of Maine - could have a serious negative impact on our industry's sustainability.

While there are some changes to S.39 which we would like to see made, there are many provisions in it which we support. On balance, we think that the bill represents a strong statement in support of the Council management system and provides for a greater role for the fishing industry in the management of its own future.

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Jeff Kaelin, Maine Sardine Council

Rather than seeking to assess blame for our fisheries management system's failures by sanctioning one group or another, the bill establishes some new ideas and opportunities which we believe will help all of us to eventually realize our shared goal that sustainable fisheries - based upon innovative ecosystem approaches to ocean management - will truly come about as a result of our collective efforts.

In truth, we know little about how to manage our oceans to produce a sustainable supply of seafood. Marine fisheries management is an inexact, evolving process that needs the commitment of all of our initiative, interest, investment, and ideas. In behalf of Maine's Sardine Industry, I want to thank each of you for your efforts in developing this legislation and continuing to support our seafood industry. We look forward to continuing to work with you and your staffs on further developing this legislation during the next few weeks and months. Our comments on specific portions of S. 39 appear below.

SEC. 102. FINDINGS; PURPOSES; POLICY.

We support adding the recognition that habitat loss has contributed to a reduction in fishing opportunities to this section of the Act.

SEC. 103. DEFINITIONS.

We strongly support the definition of "individual transferrable quota" to include a quantity of fish authorized to be processed.

SEC. 107. PERMITS FOR FOREIGN FISHING.

We strongly support the moratorium on the directed foreign harvest of Atlantic herring through December 1, 1999 - to allow for the maximum domestic development of this resource.

SEC. 109. NATIONAL STANDARDS.

While we support the addition of the goal of rebuilding stocks in the development of conservation and management measures, we are strongly opposed to the removal of the language, "for the United States fishing industry" in National Standard 1. This change is inconsistent with the bill's own concern for the potential displacement of the industry when developing sustainable development strategies and is in opposition to one of the primary purposes of the Act - "to promote domestic commercial and recreational fishing under sound conservation and management principles."

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Jeff Kaelin, Maine Sardine Council

SEC. 110. REGIONAL FISHERY MANAGEMENT COUNCILS.

We support the establishment of the authority for the Councils to utilize negotiation panels to work towards consensus on difficult management measures. The notification process that the bill requires for establishing negotiation panels is very lengthy, however. Establishment within 30 days should not be difficult given the attention that every fishing industry sector gives to the Council process today. This provision works to empower the fishing industry - enlisting the industry as an ally in working towards managing sustainable fisheries. We commend the Committee for rejecting the advice of some critics of the fisheries management process who maintain that industry can not be trusted in managing the resources that it depends upon, in partnership with the federal government.

We do not believe that conflicts of interest are of great concern within the New England Fishery Management Council although we recognize that this issue has taken on a national focus. We can support the approach taken in the bill - which requires the Secretary to consult with the Council's before developing guidelines on recusing policies - although we would prefer that each Council develop their own guidelines based upon regional sensibilities.

Some areas of Council reform suggested in the bill represent regulatory overkill. Examples are; the development of criteria for written and oral statements made to Councils, the requirement that Council chairmen formally submit minutes of Council meetings to the Secretary, and the requirement that a Council member who recused him or herself from a vote must state for the record how they would have voted.

SEC. 111. FISHERY MANAGEMENT PLANS.

We strongly support the identification of essential fish habitat in plans and the requirement that Federal actions, which should be considered to promote the long-term protection of essential fish habitat, should be identified.

While we support the Councils' working with the Secretary to develop guidelines for the allocation of individual transferable quotas (ITQ's), we are opposed to these being promulgated as "mandatory guidelines" and suggest that the nature of guidelines is that they are not intended to be mandatory.

In addition to asking the Secretary to establish ITQ guidelines, the National Marine Fisheries Service (NMFS) should also be required by Congress to develop administrative cost estimates for ITQ fisheries.

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The 4 - 5% cap suggested for ITQ fishery fees contained in the bill seems high and premature until administrative cost estimates can be developed. We would also like to see the bill amended so that these fees would be retained in regional, dedicated funds to support regional fishery management needs.

We support the establishment of an advisory panel on ITQ's. This mechanism will allow those who may be affected by the implementation of this management tool to help develop a better understanding of the implications of its use.

We strongly support the bill's statutory clarification that U.S. fish processors may be holders of an ITQ. We concur with Chairman Steven's statement in the Congressional Record of January 4, 1995 that, "(o)ur bill simply clarifies that the Councils have this tool to use at their discretion - it does not require their use." Not providing this tool, now that it is clear that the National Oceanic and Atmospheric Administration's (NOAA) general counsel's office believes that the Act does not allow fisheries allocations to processors, would create a bias against the importance of the investments in fisheries which the shoreside processing sector has made throughout the nation since the establishment of the Act.

SEC. 113. ECOSYSTEM MANAGEMENT.

The proposed annual report to Congress on the status of fisheries within the Councils' jurisdictions - by only focusing on fishing mortality - does not represent a real move towards ecosystem management. These reports should also include an essential habitat assessment for these fisheries, in addition to an assessment of marine mammal and other predator impacts. Marine mammal predator impacts should be accompanied by an assessment of whether or not these populations are at or are approaching their optimum sustainable size (OSP). Until OSP thresholds are identified, so that animal predators may be controlled if appropriate, true ocean ecosystem management can not be realized and states will be unable to manage predator problems occurring in their waters.

We strongly support the identification of essential fisheries habitat by the Secretary and the Councils but the bill needs to be strengthened to require that Councils comment on any Federal or State activities which may have an adverse impact on each fishery in its jurisdiction. The bill's requirement that Council's must comment only on activities affecting anadromous fish does not go far enough.

Federal and State agency responses to Council concerns about activities which may have an adverse impact on essential

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fisheries habitat should be required to be published by the Councils, or the Secretary, so that the public can understand those responses and react accordingly.

We are opposed to the provision that would give the Secretary the authority to impose an emergency action without consulting with the appropriate Council.

We support the provision that would allow the Secretary and the Councils to quickly act together to establish necessary closures or other actions by limiting existing requirements for extensive public notice and comment. The New England Council has been frequently frustrated in attempting to establish emergency closures to protect concentrations of juvenile groundfish due to these requirements, imposed by NOAA lawyers.

SEC. 114. STATE JURISDICTION.

We support the requirement that internal waters processing vessels submit reports on fish received from U.S. vessels.

SEC. 117. ENFORCEMENT.

We support the requirement that the Secretary and the Coast Guard, in consultation with the Councils, make an annual report on the adequacy of federal enforcement capabilities with recommendations for improving the enforcement of fisheries violations.

We support the concept of the development of "Fishermen's Information Networks" to help improve the success of fisheries enforcement activities and strongly recommend that this kind of a mechanism be expanded to include fishermen's (and fish processors') input in improving fisheries research capabilities, within the jurisdictions of the individual Councils.

SEC. 119. TRANSITION TO SUSTAINABLE FISHERIES.

We support the authorization for cooperative efforts to create sustainable development strategies for fisheries classified as overfished.

We support the concept of a buy-out of excess fishing capacity in fisheries where resource emergencies have occurred. Time, however, is not on our side unless this authorization can be quickly enacted. The development of a widely accepted buy-out program will take a significant amount of time. Buy-out assistance is needed today - not only to reduce the shock of adjusting to New England's groundfish crisis, in the human terms of families potentially being displaced from homes tied up in

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boat mortgages - but to avoid the potential rapid overcapitalization of other fisheries in the region which may already be fully utilized.

We agree with the subcommittee that a limited entry scheme has to be in place in order for a buy-out program to accomplish the desired goal of reducing fishing capacity, at least until the resource recovers. We disagree that a vessel purchased through a buy-out program should be utilized in any other U.S. fishery - particularly in the New England region given the huge amount of fishing capacity already existing here.

Rather than attempting to create a buy-out program's parameters in the bill, the Committee should consider requiring the Secretary to immediately create the proposed buy-out task force so that criteria for a New England buy-out program can begin to be created. Establish the criteria through a task force first, get Council approval to move ahead, and find the funds.

Because a buy-out program is being considered due to a natural resource disaster, federal funds are appropriate. If the political will can be developed, the money can be found. California earthquakes, Florida hurricanes, and Mexican peso devaluations have produced similar responses in recent history. The New England fishing industry is not looking for long term subsidization - only a one time helping of assistance to avoid making the economic situation in some sectors of the region's fishing industry worse.

It is unrealistic to think that other regional fisheries will pay fees to support a groundfish buy-out program. The region's groundfish industry would be extremely hard pressed to pay the bill. Some have suggested a promissory note from those who remain in a limited entry groundfishery - with repayment over time when the resource recovers. Others have suggested the use of foreign aid programs and funds to make a buy-out work. Again, it seems most logical for a task force to begin work immediately - with the Council, the NMFS, and the Congress working with the industry to continue to try to develop a plan that is realistic and widely acceptable. To delay this start may only have the result of raising false hopes and delaying other market-based decisions which might otherwise be made.

We support the concept of the establishment of an Ocean Conservation Trust Fund but only if its purpose is to support fisheries management goals - on a regional basis - to the extent the fund receives income from the region. Fines for fisheries violations should be invested back into the region where the fish were harvested. The fund should be expanded so that it could accept contributions from fishermen and fish processors to

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support marine or gear research or observer programs in the region where the contributions were made. Dedicating the revenue is the only way a program like this would work, in our view.

SEC. 205. FISHERIES RESEARCH.

We strongly support the requirement that the Secretary prepare a strategic fisheries research plan. We note that this Congressional mandate - originally established by the Fishery Conservation Amendments of 1990 - has been ignored by the NMFS to date.

We commend the Subcommittee for attempting again to create a specific role in federal marine research for fishermen with this proposal. Please expand this role to include the support of fish processors. Our industry, for example, has historically supported and participated in fisheries research when the opportunity has presented itself. We are certain that other processors would do - and have done - the same. Public faith in fisheries science, and the regulations that are developed from it, will improve if industry can become a true partner with the NMFS and the States.

Areas of research enumerated by the bill in this section should be expanded to include fisheries impacts by animal predators.

Again, we appreciate your efforts in support of the sustainability of our industry. If I can provide you with any additional information or answer any questions that you may have for me, I will attempt to do so.

Senator STEVENS. Thank you very much. Mr. Frappier, I understand you do not have the written statement, but we would appreciate it very much if you will send it to us when you are through.

**STATEMENT OF DENNIS FRAPPIER, GENERAL MANAGER,
PORTLAND FISH EXCHANGE**

Mr. FRAPPIER. Mr. Chairman, members of the subcommittee, thank you very much for coming here and listening and allowing me the opportunity to speak to the reauthorization of the Magnuson Fisheries Conservation and Management Act. The comments that I make today are not on behalf of the Portland Fish Exchange but on my own, based upon 20 years of experience in the industry, which have included most aspects of the industry, including building fishing gear, to buying and selling fish.

In the last 9 years I have been privileged to be associated with the Portland Fish Exchange, which is a nonprofit, quasi-public corporation which provides service to approximately 300 sellers and 28 buyers. Last year we handled 28 million pounds of fish, which was down 7 percent from our peak in 1992 and 1993 of 31 million pounds of groundfish.

The Portland Fish Exchange is a unique organization. It is managed by industry people, both buyers and sellers alike, and it is owned by the city of Portland. It has lots of accountability built into the organization. People who don't carry their weight don't keep their jobs.

I don't pretend to have the answers, and my comments in general are more general to the problems that I've seen rather than specific to S. 39. But in my opinion the problem is obviously the result of too many fishing vessels in too small an area, with inadequate understanding of the marine environment, with pathetic management.

I'd like to clarify each one of these items. Too many vessels in too small an area requires reducing the number of vessels, since the area can't easily be increased. The government asked and encouraged the buildup of fishing vessels with investment tax credits and fishery obligation guarantee loans when the foreigners were put out of our 200-mile limit.

Although I don't encourage Federal giveaways and Maine people in general are very frugal in what they do and what their government does, I do want to encourage you to let people out of this situation that they have been encouraged to get into by the government, so that they can do so without losing their homes and their families. This must be done very carefully so tax dollars aren't wasted and aren't used to build return on investments of people who are in the industry now.

The only way to do this is with an industry review panel which would determine how much each owner receives. This buyback, not a buyout, which might more strategically be called a fishing vessel reduction without devastation program, is very important and very necessary and the No. 1 thing that you should be considering.

Inadequate understanding of marine resources is huge issue which I don't have time to go into very much, but I'd like to just summarize by saying that this complex, dynamic ecosystem isn't understood, and there is an economic need and opportunity to bet-

ter understand how to maximize the capacity of the northwest Atlantic. Research is a priority and has to happen. I recommend private contracted research on specific issues, not government general research, which would give us the most bang for the buck.

The last area of pathetic management is the most pertinent to the reauthorization of the bill. My intent is not to criticize people, but the system that has yielded unacceptable results. The fundamentals must be changed, and there must be accountability at all levels of the fishing industry. I would suggest removing the crippling aspects that I see at the council and the groundfish committee levels, where lawyers run the meeting and every single comment goes through a lawyer instead of listening to experts. I think that is the single biggest problem that is crippling the management tool right now.

The National Marine Fisheries Service is the manager, and every good manager knows that they cannot manage without the willing cooperation of those they manage. The carry a big stick approach the government uses has and will not be effective in this industry. I would recommend the fishing industry manager be required to have fishing experience and be required to have management experience. I would also recommend retired fishermen be recruited for key positions, especially in regard to strategic planning, selectivity of fishing gear and effort, and enforcement of regulations.

I suspect this concept would bring rude remarks from the National Marine Fisheries Service staff that would be synonymous to letting the fox guard the henhouse. The problem is exacerbated because bureaucrats just continue in the system and their success has nothing to do with their successful fishery management.

More specifically, one item that is very obvious and needs to be changed is the size of the management area that the New England council is in charge of. The Gulf of Maine and southern New England have absolutely nothing in common other than that they border the New England States. The Gulf of Maine must be managed independently of the rest of the New England area.

Also, the current philosophy on management that forces fishermen to throw dead fish overboard to reduce landings so bureaucrats think their goals and objectives are being accomplished is criminal. There should be laws prohibiting fishermen from throwing anything overboard that is caught in their nets. Net selectivity and closed areas are the proper ways to reduce the mortality on our fishing industry.

Please realize that I operate within a very unique environment at the Portland Fish Exchange. We are quasi-public. We do everything on the up and up, and we have impeccable records and we are open to any public investigation of anything. So everything is honest and open there. Our landings information is available and immediately discloses trends in the industry.

Senator STEVENS. If we are going to get through, we are going to have to proceed along now, please.

Mr. FRAPPIER. OK. Let me wrap it up. We are in a complex situation and I think if we had auctions throughout the region we would have information flowing and enforcement that would be extremely simplified and be much more effective, as we have seen in Portland

to date. Maybe that is why European countries require vessels to go to the auction only when they are unloading fish.

In closing, please separate the Gulf of Maine from New England, leave flexibility between fisheries so fishermen can survive, and provide mechanisms so that the most experienced and capable people in the industry can have the capacity to frame ways of conserving the resource.

Thank you.

Senator STEVENS. Thank you, sir.

[The prepared statement of Mr. Frappier follows:]



PORTLAND
FISH EXCHANGE, INC.

1000 Commercial Street
Portland, ME 04101

March 7, 1995

Chairman Ted Stevens:
Sub-committee on Oceans & Fisheries of the
Committee on Commerce, Science and Transportation.

Mr. Chairman Members of the Subcommittee:

Thank you for the opportunity to testify at this hearing on the re-authorization of the Magnuson Fishery Conservation and Management Act. The comments I make today are not on behalf of the Portland Fish Exchange but are my own, based upon 20 years experience in this industry which have included most aspects of the industry from building fishing gear to buying and selling fish. For the last nine years I have been in management at the Portland Fish Exchange a non-profit, quasi public, service oriented company, serving approximately 300 sellers and 28 buyers, auctioning 28 million pounds in 1994. This volume is down 7% from 2 peak years at 31 million pounds. The PFE is managed by industry people harvesters and buyers alike, and owned by the City of Portland. It also has lots of accountability built into the organization. People who don't carry their weight don't get to keep their jobs.

I do not pretend that I have any astute comments that will solve all of this industries problems, although I believe it is important to briefly clarify the nature of the obvious problems so better minds can frame the legislature. **In my opinion the problem is obviously the result of too many vessels fishing in too small an area with an inadequate understanding of the marine ecosystem under pathetic management.**

I'll clarify these three points one at a time: Too many vessels in too small an area" requires reducing the number of vessels since the area can't easily be increased. The government asked and encouraged the build up of vessels with investment tax credits and fishery obligations guarantee (FOG) loans when the foreigners were put out of our 200 mile limit. Instead of letting economics naturally weed out the weak we up to this day, continue with financial assistance to keep vessels in business. Although I don't encourage federal give-aways it is only responsible to help let fisherman who did what they were encouraged to do, get out of their mortgages without losing their homes. This has to be done carefully so that tax dollars aren't being given away building or maintaining company ROI's. The only way to do this is with an industry review

panel to decide how much each owner receives. This is a "Buy Back" not a "Buy Out", which might more strategically be called a "**Fishing Vessel Reduction with out Devastation Program**".

Inadequate understanding of Marine Resources is a huge issue that will not receive it's due emphasis. Commercial fisherman are not the only factor which contribute to the decline of market size fish in the ecosystem, for example why are there so few fish in our estuaries and coastal spawning areas? What effect does population growth have on the fishes ability to have their eggs that become adult fish? Can we intervene to facilitate this recruitment? We have seen the collapse of groundfish species in the past that had nothing to do with our extremely sophisticated harvesting capacity today. Please don't interpret this as a denial of the problem, the negative impact our large fleet is having on the resource must be changed. Their is a economic need and opportunity to better understand how to maximize the capacity of the Northwest Atlantic. Research is a priority without a doubt. I recommend private contracted research on specific issues not government fishery research in order to get the most bang for the buck.

The last area "Pathetic Management" is the most pertinent to the re-authorization of the Bill. My intent is not to criticize people but the system that has yielded unacceptable results. The fundamentals must be changed. There must be **accountability** at all levels of "fishing industry management" Regional Council Members need to be personally responsible for accomplishing the objectives of the management plan. Remove the crippling aspects of Ground Fish council and Committee meetings by getting rid of the legal counsel which usually predominate the discussion at the meetings. The staff of the councils need to be personally responsible to accomplish their objectives as set out by the Regional Council. The NMFS who is responsible for the administration, science and enforcement also need to be accountable to accomplish their objectives. The NMFS is the manager and every good manager knows that you cannot manage without the willing cooperation of those you manage. The "carry a big stick" approach that government uses had and will not be effective in this industry. I would recommend a requirement for the " fishing industry manager's" be required to have fishing experience and management experience. I would also recommend that retired fisherman be recruited for key positions especially in regard to strategic planning, selectivity of fishing gear and effort and in enforcement of regulations.

I suspect that this concept would bring remarks from NMFS staff that this would be synonymous to letting the fox guard the hen house. This is exactly what the underlying problem is fisherman and bureaucrats are as opposite and polarized as they could be. What industry recommends to conserve the resource the bureaucracy has refused and sometimes does the opposite of industry recommendations. The problem is exasperated because bureaucrats just continue in the system and their success has nothing to do with fishery resources or accomplishing the objectives that fisherman rely on to feed and cloth their families. (I do not believe the NMFS is capable of making these drastic changes therefore I propose that a nonprofit corporation be

commissioned with the sole purpose of administering and enforcing regulations.)

More specifically one item that very obviously needs to be changed is the size of the management area that the NE council is given charge of. The Gulf of Maine and Southern N.E. have nothing in common except that they border N.E. The Gulf of Maine must be managed independently from the rest of N.E.

Also, the current philosophy of management that forces fishermen to throw dead fish overboard to reduce landings so bureaucrats think they're accomplishing their objectives is criminal, **quotas don't work**. There should be laws prohibiting fishermen from throwing any fish overboard that is caught. Net selectivity must like wise be increased to protect our valuable resources. If juvenile fish or one species is being over-fished the area should be closed to all fishing for a period. We currently classify a specific fishery as 0 or 5% by-catch and make fishermen waste resources hide or cheat on their by catch. Then the inaccurate assumption is made about the conservation of fish.

Please realize that I exist within a unique environment at the P.F.E. because the fish is put on the auction which facilitates extremely easy and effective enforcement, and excellent statistical information. Landings information is always available to immediately disclose trends in the industry. **A requirement that all fish go to an auction for unloading may be simpler and less expensive.** Maybe that's why many European countries require all vessels to use to the auction only, for the sale of fish.

I would recommend also that improvements be made in "management information systems" and in enforcement.

In closing separate the Gulf of Maine from New England so conservation can be accomplished. Leave flexibility so that vessels can change from one species to another and remain viable. Provide mechanisms so fishermen can be heard and their expertise can be used to conserve the resources. Thank you for your attention.

Sincerely,



Dennis A. Frappier

cc Sen. Olympia Snowe
Sen. William Cohen
Rep. James Longley
Sen. John Kerry

Sentaor STEVENS. Mr. Burns is the president of the Maine Chapter of the New England Coastal Conservation Association.

STATEMENT OF BRADFORD E. BURNS, CHAIRMAN, NEW ENGLAND COAST CONSERVATION ASSOCIATE, MAIN CHAPTER

Mr. BURNS. Thank you, Senator Stevens and members of the panel. This testimony is from the Maine Chapter of the New England Coast Conservation Association.

Senator STEVENS. Would you pull that mike up a little bit, please? Thank you.

Mr. BURNS. No. 1, by-catch. Fishing methodologies and gear types that result in high by-catch of undersized fish, non-targeted species or other economic discards should be eliminated in favor of more selective methods and/or methods that allow live release of by-catch. Unavoidable by-catch should be kept, utilized and calculated into mortality and harvest models.

Two, overfishing. Clear definitions of what constitutes a restored stock should be developed and a timetable for all fisheries to reach these restored levels should be spelled out. Acceptable mortality rates that include adequate conservation buffers should be adhered to along with a requirement for immediate adjustment of fishing mortality should the acceptable rates be exceeded. NECCA believes that eliminating overfishing is the single highest priority.

Three, council makeup. We believe that the premise that industry should have control over the regulatory process is invalid. The regulatory process needs input from all user groups, including commercial fishing interests. In our view, however, the decline of our fisheries is largely due to the understandable reluctance of commercial fishers to regulate sufficiently their own efforts and practices. At least fifty percent of the council membership should be comprised of non-commercial fishing interests. Council members with conflict of interest should be recused from voting on pertinent regulations. Because of these opinions, we therefore oppose mandatory negotiated rulemaking.

Financial aid. In general, NECCA is opposed to a government-financed bailout of areas within the commercial fishing industry. Sustainable yield can be compared to market limitations in other businesses where failure as well as success are possible. The current situation in the northeast is, however, caused at least in part by the government's encouragement of overcapitalization. This may justify buyouts, not bailouts, conservatively applied to prevent debt default and encourage retraining and related programs. Fishery dependent communities. The answer for these communities will have to be new directions as well as adjustment to the realities of sustainable harvest levels. Modern fishing technologies cannot be denied and, as in all business, there will be personal dislocation. It will be folly for the Federal Government to involve itself excessively in this issue.

Seven, habitat protection. NECCA supports the concept of habitat protection and the inclusion of some language to describe this priority. We believe, however, that the real answer in terms of habitat protection is a consistent environmental policy applied to all levels of our completely interdependent ecosystems.

ITQs. NECCA is against the concept of privatizing a public resource. While we believe that catch and methodology must be carefully regulated, individual access to all aspects of our marine resources is a cornerstone of NECCA's beliefs.

Other considerations. Public access. NECCA believes that personal use fishing should not be exempt from regulations like reasonable bag limits or gear restrictions. We do, however, feel that unrestricted access to fish and fishing grounds for personal use fishing should be specifically guaranteed in this reauthorization.

Second, personal use species. Constantly expanding coastal populations have already reached a point where some inshore species can easily be over-harvested by personal use anglers alone. In many cases, this harvest is accompanied by a large and diverse recreational industry that has extraordinary value-added considerations. Included in these is the incalculable value of quality outdoor experiences so hard to find for many urban residents.

These concepts have long been understood in regard to our freshwater fish, wild land animals and bird life. It is time to assign Federal personal use only status to some of our inshore species, which have proven to be worth much more alive than dead. Fish like redfish and striped bass are managed by a patchwork of conflicting State regulations. Since fish know no State boundaries, only Federal designation will be effective.

NECCA suggests a Federal fishing stamp to fish for these proposed personal use species and to fish in the EEZ. A law similar to the migratory bird act could protect personal use species from commercial harvest. The sales of the stamp would generate enormous revenues which, in addition to funding scientific work, habitat restoration and procurement of public access, could create a cash-flow to buy out commercial fishers dead-ended in obsolete commercial fisheries.

In an immediate sense the revenues could be used to buy out the over-capacity in the northeast and to fund a recovery program. Striped bass, the one bright spot for recreational anglers on the northeast coast, are the perfect place to start.

Last, fees. The management of our fisheries should not be an expense of the general public. Commercial and recreational users should pay for the management needs caused by their utilization of this public resource. The public will pay its share of these costs passed on in the fish they consume. This is the way it is in many other businesses.

Thank you very much for the opportunity to express our views.
[The prepared statement of Mr. Burns follows:]



New England Coast Conservation
Association — Maine Chapter

P.O. Box 552
Boothbay Harbor, Maine 04538
Tel: 633-3815 FAX: 633-7079

March 1, 1995

Senator Larry Pressler
Committee on Commerce
Science and Transportation
Washington, DC 20510-6125

Dear Senator Pressler,

This testimony is from the Maine Chapter of the New England Coast Conservation Association in Boothbay Harbor, Maine.

- 1) By Catch - Fishing methodologies and gear types that result in high by-catch of undersized fish, non-targeted species or other economic discards should be eliminated in favor of more selective methods and or methods that allow live release of by-catch. Unavoidable by-catch should be kept, utilized and calculated into mortality and harvest models.
- 2) Overfishing - Clear definitions of what constitutes a restored stock should be developed and a time table for all fisheries to reach these restored levels spelled out. Acceptable mortality rates that include adequate conservation buffers should be adhered to along with a requirement for immediate adjustment of fishing mortality should the acceptable rates be exceeded. NECCA believes that eliminating overfishing is the single highest priority.
- 3) Council Makeup - We believe that the premise that industry should have control over the regulatory process is invalid. The regulatory process needs input from all user groups including commercial fishing interests. In our view, however, the decline of our fisheries is largely due to the understandable reluctance of commercial fishers to regulate sufficiently their own efforts and practices. At least fifty percent of the council membership should be comprised of non-commercial fishing interests. Council members with conflict of interests should be recused from voting on pertinent regulations. Because of these opinions, we therefore oppose mandatory negotiated rule making.
- 4),5) Financial Aid - In general NECCA is opposed to a government financed bailout of areas within the commercial fishing industry. Sustainable yield can be compared to market limitations in other businesses where failure as well as success are possible. The current situation in the northeast is, however, caused at least in part by the governments encouragement of over capitalization. This may justify buyouts not bailouts conservatively applied to prevent debt default and encourage retraining and related programs.

6) Fishery Dependent Communities - The answer for these communities will have to be new directions as well as adjustment to the realities of sustainable harvest levels. Modern fishing technologies cannot be denied and as in all business there will be personal dislocation. It will be folly for the federal government to involve itself excessively in this issue.

7) Habitat Protection - NECCA supports the concept of habitat protection and the inclusion of some language to describe this priority. We believe, however, that the real answer is a consistent environmental policy applied to all levels of our completely interdependent eco-systems.

8) ITQ - NECCA is against the concept of privatizing a public resource. While we believe that catch and methodology must be carefully regulated individual access to all aspects of our marine resources is a cornerstone of NECCA's beliefs.

9) Other Consideration

A) Public Access - NECCA believes that personal use fishing should not be exempt from regulations like reasonable bag limits or gear restrictions. We do, however, feel that unrestricted access to fish and fishing grounds for personal use fishing should specifically guaranteed in this reauthorization.

B) Personal Use Species - Constantly expanding coastal populations have already reached a point where some inshore species can easily be over harvested by personal use anglers. In many cases this harvest is accompanied by a large and diverse recreational industry that has extraordinary value added considerations. Included in these is the incalculable value of quality outdoor experiences so hard to find for many urban residents. These concepts have long been understood in regard to our fresh water fish, wild land animals and bird life. It is time to assign federal personal use only status to some of these species, which have proven to be worth much more alive than dead. Fish like red fish and striped bass are managed by a patchwork of conflicting state regulation. Since fish know no state boundaries only federal designation will be effective. NECCA suggests a federal fishing stamp to fish for these proposed personal use species and to fish in the E.E.Z. A law similar to the migratory bird act could protect personal use species from commercial harvest. The sales of the stamp would generate enormous revenues which in addition to funding scientific work, habitat restoration and procurement of public access could create a cash flow to buy out commercial fishers dead ended in obsolete commercial fisheries. In an immediate sense the revenues could be used to buy out the over capacity in the northeast and to fund a recovery program. Striped bass, the one bright spot for recreational anglers on the northeast coast are the perfect place to start.

C) Fees - The management of our fisheries should not be an expense of the general public. Commercial and recreational users should pay for the management needs caused by their utilization of this public resource. The public will pay its share of these costs passed on in the fish they consume. This is the way it is in many other businesses.

Thank you for the opportunity to express our views.



Bradford E. Burns
Chairman

Senator STEVENS. Thank you, Mr. Burns. Mrs. Sanfilippo. Ms. Sanfilippo is President of the Gloucester Fishermen's Wives Association of Gloucester, Massachusetts.

**STATEMENT OF ANGELA SANFILIPPO, PRESIDENT,
GLOUCESTER FISHERMEN'S WIVES ASSOCIATION**

Ms. SANFILIPPO. Good afternoon. My name is Angela Sanfilippo. I am the president of the Gloucester Fishermen's Wives Association. It is my privilege for me to be here today to testify.

Senator STEVENS. Ms. Sanfilippo, I am sorry to tell you you have to pull that right up toward you, that microphone—all the way up. Thank you.

Ms. SANFILIPPO. I want to thank you very much for inviting me.

The main point that I would like to make is that one thing that we must do that is more important than reauthorization of the Magnuson Act is to honor it and follow it as it was originally intended. I am proud to be able to say that the very idea of conserving of our nation's fishery by laws such as the Magnuson Act was born in Gloucester, Massachusetts, and our organization was founded in 1969 to promote this concept.

Many groups representing many different interests will appear before you as you consider this legislation. Who among them has the most to lose should the Magnuson Act become corrupt and fail in its mission? My organization represents a long tradition of small-scale family fishermen. Like small-scale family fishermen all around the nation, our people do not have money to spend on lobbying and orchestrating public relations campaigns. We fish. We fish with small vessels. We depend on the bounty of the local waters.

If these fisheries become extinct, we stop fishing. On the other hand, big corporate factory ships are not tied to any local resources, not berthed beside any living tradition except greed. They rove the planet in search of profits, not fish. They will manipulate the conservation debate to their own ends.

One of their key strategies is the individual transferable quotas or ITQs. In New England, ITQs also go by another name. ITQs are also called consolidation. Schemes to consolidate fishing effort through ITQS are any other method exist for one overriding purposes, to concentrate fishing rights into the hands of an elite group of large-scale fishing interests so that they can grab more profits.

Conservation is not important to their agenda. After they have depleted the fishery, they can move their ships across the oceans to exploit another and wipe out the economic base of more coastal communities. Then taxpayers have to step in to prop up such communities. We do not want to see this happen in New England.

We have always said that boats that cannot go fishing for whatever reason should not be able to sell their quota, so that someone else will take that fish. This is conservation. ITQs simply do not advance the goal of the Magnuson Act.

Our fishermen are frustrated and confused by the way regulations are forcing the destruction of fishery resources in New England. Discards of dead fish caused by regulations and lack of markets for perfectly nutritious fish are immoral and unbelievably foolish. How could a nation with such technological genius tolerate the

wanton destruction of our future fish stocks, and then have the outrageous nerve to call it conservation? We must demand an end to this practice. There is a better way.

In Gloucester we are bringing many different people together to chart a better way. This group includes working fishermen and fishermen's wives, conservationists, shore-side processors and business leaders, bankers, educators, historians, academics and clergy, city and State officials and representatives and many other leaders. The group is known as the Gloucester Vision for the Year 2020, was convened by the Gloucester Fishermen's Wives Association in alliance with Gloucester United, the Conservation Law Foundation, and the Archdiocese of Boston.

The group began meeting in September. When people ask me what is in the Vision, my short answer is that the vision is a process, a way to manage meetings and grow coalition. We hope to share this process with the council and National Marine Fisheries Service because we all share the same agenda.

One of the areas where the consensus is strong in our group is on the need for more, better, and accessible science. Another area where there is strong consensus in our group concerns the need to aggressively develop new added-value products and to develop marketing strategies for these higher value products. We envision that new methods of catching and processing fish can increase the return to fishermen and lower the volume they need to harvest in order to conduct economically viable businesses.

By linking economic development strategy with fishery and habitat conservation strategy we could achieve conservation goals while promoting the economies of the coastal community.

A key flaw, in our view, of the way we are trying to manage our fisheries is our failure to work more closely with the impacted community to create short-term and long-term conservation strategies that link with local economic planning and development. We believe it can be done, and this approach would produce far more sustainable fishing practices a lot sooner.

This brings me to the issue of conflict of interest. The idea that an active fisherman operating a family vessel would be in conflict with a conservation measure that is designed to promote his own future interests is absurd. Conflicts of interest with regards to fishery conservation do not come from the active small-scale family fishermen in spite of propaganda that confuses the issue.

On the contrary, active fishermen are exactly the people who should have a stronger voice on the councils because they have the greatest stake in good fishery management. We propose that 50 percent of the management council members be current active fishermen. By requiring the membership of every fishery management council be made up of at least 50 percent active fishermen, councils would be greatly diluted of hidden conflicts of interest and ignorance of the present industry.

This proposal is in complete accord with the original intent of the council system which gave input to the citizens with the most to lose by bad fishery management and the most to gain by sound conservation.

Senator STEVENS. We are going to have to ask you to finish soon, Ms. Sanfilippo.

Ms. SANFILIPPO. I am almost done.

Senator STEVENS. Thank you.

Ms. SANFILIPPO. A voluntary boat buyout is supported by the Gloucester vision long-term planning group, but we have concerns that a boat buyout which reduces current effort may also curtail our community from returning to fish after stocks rebuild. Permits must be retired through a boat buyout, but it is feared that this would infringe on our future fishing rights.

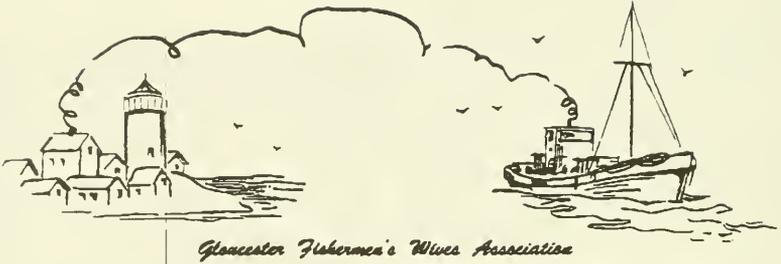
Who will acquire these permits and fishing rights as they may be returned to the fishery in the future? A provision that would give first refusal to fishermen in ports giving up permits through a boat buyout program could accomplish both lowering the number of permitted vessels fishing today while protecting future fishing rights of local fishermen.

We believe that provision must be made to stop Federal agencies or any private entity from destroying or endangering habitat. We do not understand how it is possible to build and maintain healthy fish stock and habitats without provision to stop destruction of these habitats. We would like to see a permanent ban on oil drilling and ocean dumping on Georges Bank, for example.

Likewise, we oppose the privatization of the ocean in any way. We are always wondering about what kinds of industrial exploitation and destruction would take place on our fishing grounds if independent fishermen were no longer out there to see what is going on.

Thank you very much.

[The prepared statement of Ms. Sanfilippo follows:]



Testimony of
Angela Sanfilippo
President
GLOUCESTER FISHERMEN'S WIVES ASSOCIATION

before the
Subcommittee on Oceans and Fisheries
of the
Committee on Commerce, Science, and Transportation
United States Senate
on
SENATE BILL S. 39
to reauthorize the
MAGNUSON FISHERY AND CONSERVATION
MANAGEMENT ACT

MARCH 4, 1995

My name is Angela Sanfilippo. I am President of the Gloucester Fishermen's Wives Association. It is a privilege for me to be here to testify today. Thank you for inviting me to share our views on S. 39.

The Gloucester Fishermen's Wives Association has been an active supporter of the Magnuson Fishery & Conservation Management Act since the beginning. Established in 1969, our organization was the first of its kind in the industry and continues to play an active role. Other organizations have come and gone in Gloucester to advocate for the fishing industry, but the Fishermen's Wives in solidarity with our community continue to work directly with the people who actively fish and fight with them for the good of the people and the good of the ocean. We know these two things are the same.

I am proud to be able to say that the very idea of conserving our nation's fisheries by a law such as the Magnuson Act was born in Gloucester, Massachusetts, and our organization was founded to promote this concept to our congressional legislators. After years of hard work by us and others, the Magnuson Act became law in 1976. Through the years we have diligently fought to make this law work to protect our precious fisheries resources for us, our children, and our nation.

As I appear before you today I am compelled to ask you to consider the purpose of this law and most especially to consider who has the most at stake in ensuring that the Magnuson Act is allowed to achieve the original goals set out for it. Many groups representing many different interests will appear before you as you consider this most important legislation. Who among them has most to lose should the Magnuson Act become corrupted and fail in its mission?

My organization represents a long tradition of small-scale family fishermen. We are a people whose fishing roots vanish in the rich soil of our cultural memory. Like small-scale family fishermen all around our nation from the Cajuns of Accadiana to the hookers and small druggers of Alaska, our people do not have money to spend on lobbying and orchestrating public relations propaganda campaigns. We fish. We fish with small vessels. We provide for our families. We depend on the bounty of local waters. In New England these local waters are the Gulf of Maine, Massachusetts Bay, and the American side of Georges Bank. If

these fisheries become extinct, we stop fishing. We don't just loose our jobs; we loose who we are as a culture. On the other hand, big corporate factory ships are not tied to any local resource, not berthed beside any living tradition except greed. They rove the planet in search of profits - not fish. Their appetite and capacity know no bounds. And they will use every creative strategy conceivable to reserve more and more fishery resources for their exclusive exploitation.

Large-scale fishing interests which operate the factory trawlers have money and vision to plan ahead too. They know that - in spite of present declines in groundfish - Georges Bank is still one of the world's richest generators of fish. They know that Georges Bank can still yield a good harvest, and they want it. And they will strategize to get it. They will manipulate the conservation debate to their own ends. One of their key strategies is the "Individual Transferable Quota" or "ITQ".

In New England ITQs also go by another name; ITQs are also called "consolidation." Schemes to consolidate fishing effort through ITQs or any other method exist for one overriding purpose: to concentrate fishing rights into the hands of an elite group of large scale fishing interests so that they can grab more profit. Conservation is not important on their agenda. After they have depleted a fishery, they can move their ships across oceans to exploit another, ruin the lives of more small-scale family fishermen, and wipe out the economic base of more coastal communities. Then tax payers have to step in to prop up such communities - essentially subsidizing these corporations by absorbing their externalized costs caused by their exploitive practices. We do not want to see this happen in New England. Please do not let it happen!

We have always said that boats that cannot go fishing for whatever reason should not be able to sell their "quota" so that someone else will take that fish. This is conservation. With ITQs, any vessel owner who does not go fishing for whatever reason can just pass his fishing rights on for someone else to fish. How is this reducing fishing mortality?

National Marine Fisheries Service is supporting ITQ provisions in S. 39. Some look favorably on ITQs as presently proposed since both H.R. 39 and S. 39 provide monies through ITQ associated fees for operations, but the cost to our fishery resources is too great. ITQs simply do not

advance the goals of the Magnuson Act.

If we could permanently remove the possibility of ITQs in New England, management of our fisheries would have a better chance of achieving conservation by removing at least one dimension of political intrigue from the debate.

Our fishermen are frustrated and confused by the way regulations are forcing the destruction of fishery resources in New England. Discards of dead fish caused by regulations and lack of markets for perfectly nutritious fish are immoral and unbelievably foolish. How could a nation with such technological genius tolerate the wanton destruction of our future fish stocks - and then have the outrageous nerve to call it "conservation"? We must demand an end to this practice. There is a better way.

In my home Port of Gloucester we are bringing many, many different people and interests together to chart a better way. This group includes working fishermen and fishermen's wives, conservationists, shore-side processors and business leaders, bankers, educators, historians, academics, clergy, city and state officials and representatives, and other community leaders. The group, known as the Gloucester Vision for the year 2020, was convened by the Gloucester Fishermen's Wives Association in alliance with Gloucester United, the Conservation Law Foundation, and the Archdiocese of Boston. The Group began meeting in September after Bernard Cardinal Law, Archbishop of Boston, had met with fishermen in Gloucester on August 16th to encourage this kind of process, and I had attended two meetings of the Northwest Atlantic Group last summer to consider the need to develop a future vision of the Northwest Atlantic fishing industry. I can provide you with documentation regarding the work of the Gloucester Vision Process. When people ask me what the vision is, my short answer is that the vision is a process, a way to manage meetings and grow coalition. We hope to share this process with the Council and National Marine Fisheries Service because we all share the same goals. There is no reason for us not to work together.

One of the areas where consensus is strong in our group focuses on the need for more, better, and accessible science. We urge you to

consider even beyond the scope of this legislation how we can improve our scientific understanding of fishery ecosystems as well as advance data collection and analysis. Our group is calling to open up the science, to bring active fishermen into the process so that they can both learn from the scientists and teach them about what they know from experience. Imagine the joy that would come to a fishermen who could share his cherished fishing heritage with his son or daughter by having them make a trip to study, to teach and do science. We need the science. We need to make the investment in the science. Why not employ fishing vessels and fishing students to participate in this necessary research?

Another area where there is strong consensus in our group concerns the need to aggressively develop new added-value products and to develop marketing strategies for these higher value products. We envision that new methods of catching and processing fish can increase the return to fishermen and lower the volume they need to harvest in order to conduct economically viable businesses. By linking economic development strategies with fishery and habitat conservation strategies in such manner, we could achieve conservation goals while promoting the economies of coastal communities for both short-term as well as long-term benefits. A key flaw in our view of the way we are trying to manage our fisheries has to do with our failure to work more closely with the impacted communities to create short-term and long-term conservation strategies that link with local economic planning and development. We believe it can be done, and this approach would produce far more sustainable fishing practices a lot sooner.

This brings me to the issue of conflict of interest. The idea that an active fishermen operating a family vessel would be in conflict with a conservation measure that is designed to protect his own future interests is absurd. Conflicts of interest with regards to fishery conservation do not come from the active small-scale family fishermen in spite of propaganda that confuses the issue. On the contrary, active fishermen are exactly the people who should have a stronger voice on the Councils because they have the greatest stake in good fishery management. Fishermen who serve on the Councils who have not fished in 10 or more years do not have knowledge or experience of the present reality. Such people may not feel the urgency to take a step towards conservation, not

from a conflict of interest but rather from ignorance. Therefore, we propose that 50% of Management Council members be currently active fishermen. By requiring that membership of every Fishery Management Council be made up of at least 50% active fishermen, Councils would be greatly diluted of hidden conflicts of interest and ignorance of the present industry which plague the Councils today. Such a reform would do more for conservation than any other. This proposal is in complete accord with the original intent of the Council system which gave input to the citizens with the most to lose by bad fishery management and the most to gain by sound conservation.

A voluntary boat buy-out is supported by the Gloucester Vision Long-Term Planning Group, but we have concerns that a boat buy-out which reduces current effort may also curtail our community from returning to fish after stocks rebuild. Permits must be retired through a boat-buy out, but it is feared that this would infringe on our future fishing rights. Who will acquire these permits and fishing rights as they may be returned to the fishery in the future? A provision that would give first refusal to fishermen in ports giving up permits through a boat buy-out program could accomplish both lowering the number of permitted vessels fishing today while protecting future fishing rights of local fishermen. A voluntary boat buy-out is probably the best solution for many vessel owners who are 50 or 60 years of age. Yet there are still crew members who would not necessarily benefit from a boat buy-out.

Returning again to the original purpose of the Magnuson Act to conserve our fisheries and protect our fishermen, I would like to touch upon another very important area of concern, that is habitat protection. The health of rivers, the conservation of coastal wetlands, the ecologically sound management and processing of effluent from industry, cities and towns all impact coastal, ocean and fishery habitat, and these are all of vital importance to healthy fisheries. We believe that provision must be made to stop federal agencies or any private entity from destroying or endangering habitat. We do not understand how it is possible to build and maintain healthy fish stocks and habitats without provision to stop destruction of these habitats. We would like to see a permanent ban on oil drilling and ocean dumping on Georges Bank for example. Likewise we oppose the privatization of the ocean in any way. We are always wondering about what kinds of industrial exploitation and destruction

would take place on our fishing grounds if independent fishermen were no longer out there to see what is going on.

In conclusion, I would like to say what I really think of the reauthorization of the Magnuson Act. The Magnuson Act is a beautiful law. Gloucester fought hard for this law, and we believe in it. But if the Magnuson Act and all its National Standards had been honored and followed these past 19 years, we would not be experiencing the troubles we are today in our nation's fisheries. There is only one thing that we must do that is more important than reauthorizing the Magnuson Act, we must honor it and follow it as it was originally intended.

Thank you.

Senator STEVENS. Thank you very much.

Now we will turn to Mr. Conkling. Mr. Conkling is President of the Island Institute of Rockland, Massachusetts.

**STATEMENT OF PHILIP CONKLING, PRESIDENT, ISLAND
INSTITUTE, ROCKLAND, MAINE**

Mr. CONKLING. Rockland, Maine.

Senator STEVENS. I have made two mistakes today. Thank you. Let me say goodbye to Senator Kerry. We wish your daughter well in the soccer game.

Senator KERRY. Hockey. [Laughter.]

Senator STEVENS. Mine is a soccer player. You can have the hockey.

Go ahead, Mr. Conkling.

Mr. CONKLING. In addition to my work with the Island Institute, I also serve as the president of the Island Aquaculture Company, a community scale diversified salmon and trout finfish farm located on Swan's Island. The company employs 5 full-time and 28 part-time employees on its farm and in its processing facilities.

In addition, I have served as the clerk of the Marine Hatchery Technology Association, a consortium of commercial fish and aquaculture interests and scientists that are developing a marine hatchery for cod and haddock at Swan's Island.

For the past 2-1/2 years, the Island Institute has organized forums of scientific discussion with a distinguished group of internationally recognized ecologists, fishermen, and fisheries scientists from the United States and Canada focused on how to integrate marine ecosystem principles into fisheries management. I believe that some of the preliminary scientific conclusions that this panel has reached outlines a startling path for fisheries management in the future that has not been adequately considered by policy-makers at NOAA and the National Marine Fisheries Service.

It is no accident that marine ecosystem tools have been developed in the Gulf of Maine region because there are a few overriding ecological facts that we are well aware of in the area. First, the Gulf of Maine is quite literally a sea within a sea, where Georges Bank and Browns Bank at the outer edge provide a physical barrier to define a unique marine ecosystem. The nutrients within this sea within a sea are carried around the Gulf by a set of circular currents, a gyre that cycles productivity in predictable patterns.

These currents can be detected in real time by high quality satellite images that reveal important linkages between different parts of the system. For instance, we can now see how a warm core ring from the gulf steam can pinwheel onto the edge of Georges Bank to create almost instantaneous changes in the environment that can interfere with larval recruitment of commercial species.

These images also reveal the unique effect of the eastern Maine coastal current that cycles down from Grand Manan and along most of the Main coast. This current, which interacts with Maine's 4,617 islands, creates a uniquely enriched set of inshore marine habitats that can be readily identified by integrating fishermen's intimate knowledge of the bottom with information on planktonic blooms revealed by satellite images.

Maine's highly enriched zone of inshore productivity also explains another fact fundamental to the structure of the fishery. We are a very large and diverse set of small communities stretched out over an immensely long coastline. Unlike most other parts of the United States, but like Senator Stevens' Alaskan coast, the fishery and our fishing communities are everywhere and nowhere. There are 144 different commercial ports in Maine, landing a variety, over 52 species, of marine life, more than in the rest of the region combined. Most of them are small and dispersed.

With the exception of Portland and perhaps Rockland, there are no huge concentrations of fishing boats. Instead, the fleet is characterized by a very large number of mostly small vessels that are highly flexible to changing conditions and highly localized within an elaborate set of agreements as to who can fish where and for what species.

For the Gulf of Maine, there is a fundamental ecological rationale for greater local control of fisheries resources. I believe the Federal Government should explicitly recognize this and begin shifting fisheries management policies to the State level to control fishing in an extended zone of inshore waters.

I recognize my time is limited. I want to suggest that the reauthorization process should provide explicit language and incentives to ensure that new marine fisheries ecosystem management tools and techniques are developed as rapidly as possible. This will not happen overnight. It will take leadership and resources to make this shift in scientific paradigms to the local level that are ecologically based.

But the point is we have to start now. We have got to begin working on these tools, and the fisheries conservation act and Magnuson reauthorization act is a unique opportunity to begin such cooperative efforts. And we will submit specific language under the ecosystem management section to accomplish this.

Thank you very much.

[The prepared statement of Mr. Conkling follows:]



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Testimony of

**Philip Conkling,
President of Island Institute**

on the Reauthorization of the Magnuson Conservation Act (S. 39)

**Public Hearing
March 4, 1995, Samoset Conference Center
Rockport, Maine**

Background

For the past two and a half years, the Island Institute has hosted a series of scientific discussions with a distinguished group of internationally recognized ecologists and fisheries scientists from the United States and Canada focused on how to integrate Marine Ecosystem Management concepts into fisheries management.

We believe that some of the preliminary scientific conclusions that this panel has reached outline a path for fisheries management that has not been adequately considered by policy makers in the National Marine Fisheries Service. We also believe that some of these conclusions are consistent with positions that have been advocated by leading commercial fishermen in Maine for years.

I deeply appreciate this opportunity provided by Fishermen's Forum to present an outline of how marine ecosystem science can contribute to fisheries management.

The Gulf of Maine

It's no accident that marine ecosystem tools have been developed in this region we call the Gulf of Maine. I want to highlight two facts of overriding importance:

- The Gulf of Maine is a unique place to understand principles of marine ecosystems because it is almost literally a "sea within a sea," isolated from the rest of the Atlantic ocean by two enormous banks-- Georges and Brown's Banks that provide a physical barrier at the outer edge of the Gulf of Maine.
- Second, the nutrients within this "sea within a sea" are carried around the Gulf by a set of circular currents--a "gyre" that cycles productivity in predictable patterns.

These currents can be seen in "real time" by high quality satellite images that reveal important linkages between different parts of the system. For instance we can now see how a "warm core ring" from the Gulf Stream can pin wheel up onto the edge of Georges Bank to create almost instantaneous changes in the environment that can interfere with larval recruitment of commercial species.

These images also reveal the unique effect of the Eastern Maine coastal current that cycles down from Grand Manan Island and along most of the Maine coast. This current, which interacts with Maine's 4,617 islands, creates a uniquely enriched set of inshore marine habitats that can be readily identified -- by integrating fishermen's intimate knowledge of the bottom with information on plankton blooms revealed by satellite images.

It is important to recognize that before the Magnuson Act, Maine fishermen were managing these rich and diverse inshore habitats for generations in unique systems of local control that worked to limit effort and to sustain these communities. They have done this by responding to natural cycles in the marine system and by shifting in and out of different fisheries as resources and markets change--from cod to lobster to shrimp to urchins to scallops and so forth.

Maine's highly enriched zone of inshore productivity also explains another fact fundamental to the structure of the fishery: **we are a very large and diverse set of small communities stretched out over a very long coastline.** Unlike other parts of the United States, the fishery and our

fishing communities are everywhere and nowhere; **there are 144 different commercial ports in Maine, more than in the rest of the region combined--most of them small and dispersed.** With the exception of Portland, and perhaps Rockland, there are no huge concentrations of the fishing boats. Instead, the fleet is characterized by a very large number of mostly small vessels, highly flexible to changing conditions and highly localized with an elaborate set of agreements as to who can fish where and for what species.

For the Gulf of Maine, there is a fundamental ecological rationale for greater local control of fisheries resources. I believe the federal government should explicitly recognize this and shift more fisheries management policy to the State level to control fishing in an extended zone of inshore waters.

What Is Ecosystem Management?

The scientific advice which the National Marine Fisheries Service (NMFS) provides to regional Fisheries Management Councils is based on collecting ever larger amounts of data (at enormous public expense) to estimate spawning stock biomass on a species by species basis. There are basic problems with the current state of affairs:

- Species by species population models on which fisheries science is based fail to take into account complex interactions within the ecosystem level. Current fisheries science tends to exclude consideration of major scientific advances in the understanding of how complex systems work. These fundamental advances in knowledge can be, and must be, fashioned into **practical and predictive tools** which managers and fishermen can understand and contribute to.
- Because current population models rely on ever more complex mathematical formulas, they tend to exclude fishermen from making meaningful contributions to fisheries science and to the understanding of the dynamics of marine environment. **This results in a serious loss to fisheries management.**
- Because of the high degrees of uncertainty in the adequacies of current fisheries science, many, if not most, fisheries scientists have major credibility problems with the fishing community .

The reauthorization process should provide explicit incentives and language to insure new marine fisheries ecosystem management tools are developed as rapidly as possible.

Preliminary Results from the Marine Ecosystem Modeling Project

- The Institute convened, moderated, and developed a scientific consensus on guidelines for marine ecosystem management in a peer reviewed volume called *System in the Sea* (Island Institute, 1993);
- The Institute secured funding for and contracted with Dr. Donald DeAngelis of Oak Ridge National Laboratory to produce a draft of a Marine Fisheries Ecosystem Model. (Jan. 1994);
- The Institute hosted a peer review panel of six respected scientists to critique the model and discuss its preliminary conclusions (Jan., 1995).

Among the numerous findings, I believe the following are highly significant and speak directly to the deliberations before Congress regarding the Magnuson Reauthorization Act:

1. The ecosystem management model shows that total biomass can be accurately predicted in a system such as the Gulf of Maine.
2. The ecosystem management model predicts how and why fish population crashes occur under heavy fishing pressure, such has recently occurred off Newfoundland, Nova Scotia and Georges Banks.
3. The ecosystem management model shows how fish populations naturally fluctuate in cycles, even without fishing pressure, a fact which fishermen also already believe to be true.
4. The ecosystem management model shows that different species in the food chain oscillate in resonance with each other and demonstrates how fishing pressure destabilizes these cycles.
5. The ecosystem management model can factor in competition between species for food resources and can model subtle predator-prey relationships that every fisherman knows exists, but which cannot be readily factored into existing fisheries science, let alone management.

6. The ecosystem management model can be used to predict different scenarios ecologically for maintaining greater stability (and sustainability) through a management regime that protects a portion of older fish (with higher fecundity) in the population through a series of spawning ground closures and marine sanctuaries throughout the Gulf.

7. Finally, the ecosystem management model also suggests that outside of these boundaries, management would not need to be nearly as burdensome as it currently is and would let fishermen compete extensively with each other, with much less intensive management than currently exists.

This will not happen overnight. It will take leadership and resources to make this shift in scientific paradigms for management happen. But the point is we have to start now, we have got to begin working on these tools to which marine scientists and fishermen can both contribute their knowledge.

Senator STEVENS. Thank you, Mr. Conkling.

Ms. Jennifer Atkinson of the Conservation Law Foundation of Rockland, Maine.

STATEMENT OF JENNIFER F. ATKINSON, CONSERVATION LAW FOUNDATION

Ms. ATKINSON. Thank you. Mr. Chairman, members of the subcommittee, Representative Longley, as you mentioned, my name is Jennifer Atkinson, and I am a consulting fellow in fisheries for the Conservation Law Foundation, on whose behalf I am testifying today.

The Conservation Law Foundation is a regional environmental advocacy organization with headquarters in Boston and with branch offices here in Rockland, and in Montpelier, Vermont. We are a member of the Marine Fish Conservation Network.

First, I would like to thank you for inviting me to testify about the Magnuson Act this afternoon. I will take this opportunity to address several issues related to the prevention of overfishing.

As you are well aware, overfishing is the most pressing fisheries management issue facing New England. Not having prevented the situation from happening, we now must endure the devastating social and economic consequences of long-term stock restoration. And, I believe it is a mistake to think that New England is an isolated situation.

For just over a year now I have worked to understand how we reached this point. It seems that we sorely confused a key principle of the Magnuson Act contained in the first national standard. This principle is to prevent overfishing while achieving, on a continuing basis, optimum yield. Instead, we have prevented optimum yield while achieving, on a continuing basis, overfishing.

The reason for this miserable mixup is multi-faceted. As we have become fond of saying, there is more than enough blame to go around. But part of the problem, however, rests with the Act. It is designed to promote the achievement and maintenance of optimum yield from each fishery. Yet this is an elusive amount that is more easily exceeded than accepted. And to date the Act contains no provisions to ensure that our pursuit of optimum yield does not become a one-way ticket to overexploitation.

Senate bill 39 tries to change that. It contains several provisions that move the Magnuson Act in the right direction. The new requirement that each management plan contain a definition of overfishing is an essential first step. And the section on ecosystem management adds a much needed margin of safety. It requires the timely development of proposed regulations if a fishery is classified as "approaching a condition of being overfished."

S. 39 also includes two significant clarifications in the definition of optimum yield itself. The first one recognizes that optimum yield must account for the protection of marine ecosystems. The second redefines what optimum yield means for depleted stock. It is an amount that allows the stock to rebuild back to a level that will enable it to produce maximum sustainable yield rather than to a level that would result in further stock depletion.

As important as these changes are, they still leave untouched a critical aspect of the optimum yield concept. Under the current def-

inition, we can harvest beyond maximum sustainable yield. This is one of those theories which, once put into practice, has consistently led to stock depletion. This language must be revised to make it clear that encouraging a harvest in excess of maximum sustainable yield is not just unwise; it is unacceptable.

In addition to the provisions designed to reduce the threat of overfishing, I also strongly endorse the subcommittee's efforts to expand the techniques by which councils may develop their proposed regulations. I am referring to the section on negotiated conservation and management measures. It finally enables the councils to benefit from an approach which many of us in the northeast have been talking about, one that involves all stakeholders in creating management proposals rather than in opposing them.

Mr. Chairman, managing our fisheries is no easy task. It is a regulatory jungle. And recently these regulatory jungles have come under a great deal of criticism, and it is to this issue that I would like to address my final point.

As you and other members of the subcommittee undoubtedly recognize, the only way to achieve the continuing benefit from our fisheries resources is to adequately regulate their harvest. In New England this has meant the emergency implementation of measures that severely restrict fishing activities on portions of Georges Bank. Regulatory critics in Congress who are proceeding with broadly worded bans on regulations may not realize that their reforms may very well irreparably harm the recovery of our ground-fish stocks.

In late spring, these fish congregate to spawn and are extremely vulnerable to harvesting pressure. Currently these congregations are protected by emergency closure regulations. Later this year, permanent rules should be in place. They are expected to significantly expand and extent the emergency closures. A retroactive prohibition on regulatory implementation could remove both of these critical stock protections. If only for this reason, I ask you to exempt Magnuson Act regulations from those that will be affected by the reform legislation you consider in the weeks ahead.

On behalf of the Conservation Law Foundation, I want to thank you all for your attention and for this opportunity to testify.

[The prepared statement of Ms. Atkinson follows:]

CLF

Conservation Law Foundation

TESTIMONY OF JENNIFER F. ATKINSON
 CONSERVATION LAW FOUNDATION
 Before the
 U.S. SENATE SUBCOMMITTEE ON FISHERIES AND OCEANS

Field Hearings
 Rockport, Maine
 March 4, 1995

Good afternoon, Senator Stevens and members of the Senate Subcommittee on Oceans and Fisheries. My name is Jennifer Atkinson. I am a consulting fellow in fisheries for the Conservation Law Foundation (CLF), on whose behalf I am testifying today.

CLF is a regional environmental advocacy organization headquartered in Boston, MA and with branch offices in Rockland, ME and Montpelier, VT. We have approximately 8000 members, over 300 of which reside in Maine. CLF is a member of the Marine Fish Conservation Network.

CLF's mission includes improving the management of natural resources throughout New England. During our twenty-eight year history, much of this work has focused on critical marine resource problems. For the past six of these years, the marine resource problem to which we have put most of our energies is federal fisheries management.

In New England, our most pressing fisheries management issue is overfishing. Not having prevented this situation from happening, we now must face the devastating social and economic

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consequences of long term stock restoration. Moreover, I believe that it is a mistake to think that New England is an isolated situation. Therefore, it is to this issue of prevention that I will address the majority of my comments today.

For just over a year now, I have worked to understand how we so sorely confused a key principle of the Magnuson Act. Contained in the first national standard, this principle is to prevent overfishing while achieving, on a continuing basis, optimum yield. Instead we have prevented optimum yield while achieving, on a continuing basis, overfishing. I doubt that many anticipated this result when the Act was written.

The reason for this miserable mix-up is multifaceted. As we have become fond of saying, "there is more than enough blame to go around". Part of the problem, however, rests with the Act itself. It is designed to promote the achievement and maintenance of optimum yield from each fishery. Yet this is an elusive amount that is more easily exceeded than accepted. And to date the Act contains no provisions to ensure that this pursuit of optimum yield does not result in overexploitation.

Senate Bill 39 tries to change that. It contains several provisions that move the Magnuson Act in the right direction. The new requirement that each management plan contain a definition of overfishing is an essential first step. It's hard to prevent something you haven't identified. The section on "Ecosystem Management" adds a margin of safety to this concept, requiring the

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development of a management plan, amendment or proposed regulations if a fishery is classified as "approaching a condition of being overfished". In addition, this section provides some clarity of responsibilities and time periods concerning the development of these regulations. To further strengthen these provisions, I suggest that the following issues be considered:

- For a fishery that is overfished or approaching an overfished condition, § 305(b)(2) requires a Council to submit a management plan, amendment or proposed regulations to the Secretary within one year of the transmittal of that determination. However, § 303(e)(C) does not require the Secretary to prepare a plan if the Council has failed to submit a plan within one year. Instead, it directs the Secretary to prepare a plan where the Council has "failed to take sufficient action" within one year. These provisions should be consistent.

- In addition, the Secretary is required to prepare a plan only when the Council has failed to take sufficient action with respect to an overfished fishery, not a fishery approaching an overfished condition. Language that enables a Secretary to prepare a plan to prevent overfishing would significantly strengthen this new margin of safety.

- Section 305(e)(C) would also be improved by a clear time limit on the Secretary's preparation of a management plan, amendment, or regulations to prevent overfishing or to stop overfishing and to rebuild affected stocks of fish.

S. 39 also includes two significant clarifications in the definition of optimum yield. The first recognizes that in addition to food production and recreational opportunities optimum yield must account for the protection of marine ecosystems. The second specifies that for a depleted stock, optimum yield will equal a level of harvest that will allow the stock to rebuild to a size that can produce maximum sustainable yield in the future.

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As important as these changes are, however, they still leave untouched a critical aspect of the definition of optimum yield. The current definition allows harvesting beyond maximum sustainable yield, a practice which inevitably leads to stock depletion. This language must be revised to make it clear that harvesting at a level above the maximum sustainable yield (MSY), is neither optimum nor acceptable. Social and economic factors must only be allowed to shift the level of harvest below MSY.

Buttressing these overfishing prevention measures, are the provisions in S.39 to strengthen the Secretary's emergency authority to respond to an overfishing situation that was not averted. Most important is the doubling of time for emergency actions. The existing limit of two 3 month periods has proven to be too short, given that it almost always takes more than 180 days to amend a fishery management plan.

In addition to the provisions designed to reduce the threat of overfishing, I also strongly endorse the Senate's efforts to expand the techniques by which Councils may develop management plans, amendments, or proposed regulations. I am referring to the section on negotiated conservation and management measures; provisions which enable the Councils to benefit from an approach which involves stakeholders in generating management proposals rather than in opposing them.

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Closely modeled upon the provisions of the Negotiated Rulemaking Act, 5 U.S.C.S. § 561-583 (Supp. 1993), this new section will grant regional fishery management Councils the discretionary authority to employ assisted negotiation methods in the development of conservation and management measures. Limited only by the requirement that certain factors be considered prior to the use of these techniques, this authority provides Councils with access to tools readily available to all federal agencies charged with the development of rules and regulations. And, like all other federal agencies, the Councils must consider whether the use of these techniques will "unreasonably delay the development of any conservation and management measure or its submission to the Secretary".

This negotiation section is just one of the many new ideas that I am pleased to see in Senate Bill 39. Others innovations in fisheries management that I would like to commend include the sections that are designed to identify and protect essential fishery habitat. The oceans will continue to produce a bounty of fish only if the quality and composition of the habitats in which they need to grow, feed, and reproduce are maintained. Also important are the measures in the bill to reduce bycatch. We cannot afford to continue the wasteful destruction of sea life in our efforts to harvest the resources that we deem valuable. I couldn't help noticing, however, that S.39 provides the North Pacific with greater opportunity to deal with this problem than

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other regions. Yet, many of concepts contained in the section on reducing bycatch in the North Pacific could be adapted to serve the needs of fisheries in the rest of the nation.

Added to these innovations are timely provisions that allow for the development of programs that address the social consequences of management failures. Although S.39 significantly improves our approach to fisheries conservation and management, there will always be times when we are unable to meet all the challenges of managing a natural resource. The measures designed to deal with these times (disaster relief, transition plans, and capacity reduction programs) wisely recognize this fallibility.

Managing our fisheries is no easy task. It relies on the development of regionally appropriate rules. Recently, such regulatory activities have come under a great deal of criticism. It is to this issue that I would like to address my final point.

Mr. Chairman, as you and the other members of the Subcommittee on Oceans and Fisheries undoubtedly recognize, the only way to achieve the continuing benefit from our fisheries resources is to adequately regulate their harvest. In New England, this has recently meant the emergency implementation of measures that severely restrict fishing activities on portions of Georges Bank. Regulatory critics in Congress, who are proceeding with broadly worded bans and moratoria on regulations, may not realize that by rescinding this action, they may very well irreparably harm the recovery of our groundfish stocks.

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In late spring these fish congregate to spawn and are extremely vulnerable to harvesting pressure. Currently, these congregations are protected by emergency closure regulations adopted in December, 1994. Later this year permanent regulations, currently being developed, will be in place. They are expected to significantly expand and extend the emergency closures. A retroactive prohibition on regulatory implementation could remove these critical stock protections as well as severely hinder the process by which the permanent provisions are developed. If only for this reason alone, I ask you to exempt the Magnuson Act from the list of laws that will be affected by the regulatory reform legislation you consider in the weeks ahead.

On behalf of CLF, I want to thank you all for your attention and for this opportunity to testify today.

Senator STEVENS. Thank you very much.

Senator SNOWE.

Senator SNOWE. Thank you, Mr. Chairman. I want to thank all of you for your testimony here this afternoon.

One area I want to explore is negotiated rulemaking, because almost all of you make some reference to it in your testimony. I will start with you, Jeff. Should it be mandatory or should it be discretionary?

Mr. KAELIN. That is a good question. I really haven't been one of the people who has been pushing for this because our herring management has been taking place primarily within the Atlantic States Marine Fisheries Commission. Honestly, we feel that our recommendations have been listened to. We have had a little more success with ASMFCA than perhaps some of the groundfish people have had with the council.

I would rather defer to Dennis or some of the other people who are more directly interested in this process. We are supporting this provision, we did through the Associated Fisheries of Maine, which, as you know, I used to be president of. There may be some merit in its mandatory use in some circumstances.

On the other hand, I don't know that it is appropriate in every situation or necessary. I guess I'll leave it there, Senator.

Senator SNOWE. OK. Dennis, would you care to comment?

Mr. FRAPPIER. I would support it, especially if there was the ability to have the Gulf of Maine interest represented, which is different than the rest of the groundfish interests in the region.

Senator SNOWE. I notice that Ms. Alden mentioned in her testimony that it should be mandatory to use the results of negotiated rulemaking. Would you agree?

Mr. FRAPPIER. I would.

Senator SNOWE. Would you prefer the council or the Secretary to have that ability or that authority? In the reauthorization bill, they name the council. I introduced legislation giving the authority to the Secretary. Does it make a difference? I know you have had a lot of frustrations with the enforcement of Amendment 5 as far as the council is concerned.

Mr. FRAPPIER. I am not knowledgeable enough to comment on that. I am sorry.

Mr. BURNS. Do you want me to comment?

Senator SNOWE. Yes. I know you are opposed to mandatory, but I did not know if you were opposed to discretionary.

Mr. BURNS. No, I don't think we are opposed to discretionary. As a matter of fact, that is why I said that. I think that this process has to become workable. One of the chief complaints we keep hearing is that decisions are hard to come by in a quick fashion, and if some negotiation would help work that out, fine. But I'm afraid that mandatory will just make it a stall and delay tactic every time that somebody needs to bite the bullet.

And I have been talking to friends of mine on the council, and they feel that way about it. So that is why we took that position.

Senator SNOWE. Anybody else who cares to comment?

Ms. ATKINSON. I would like to comment on that idea. You are asking whether it should be mandatory or discretionary.

Senator SNOWE. Assuming you support it.

Ms. ATKINSON. Yes, yes, I do. I strongly endorse the concept and have spent some time with members of the fishing industry exploring this concept further. However, I don't support a mandatory provision or mandatory characteristic. And that is partly because of my understanding of negotiated rulemaking itself.

I think that if the council is forced into doing this type of activity you won't come up with a measure that I think everybody supports. They will go into the whole process unwillingly. If it is discretionary, and I think if people understand its value and its use, then I think you will come to a much better conclusion.

Senator SNOWE. Ms. Alden made the comment that it was a very expensive process to assemble, so therefore the results should be mandatory.

Ms. ATKINSON. I think one difficulty, too, with the results themselves being mandatory as opposed to the actual convening of a panel being mandatory, that it could be that the results aren't in accord with the goal that was put forward. And the council does have its responsibility to make sure that the proposals it puts in meets its mandate.

Senator SNOWE. I know my time is up, Mr. Chairman.

Senator COHEN. I will yield you 1 minute of my time.

Senator STEVENS. You already did.

Senator SNOWE. He is tough on us, too. [Laughter.]

Senator SNOWE. One final question, Ms. Atkinson. With reference to one of the proposed changes in the Magnuson Act, in developing a comprehensive plan, if the council fails to do so, the Secretary would implement a plan. You are saying the difference ought to be where they fail to take sufficient action. That is a much broader discretion that you are granting to the Secretary.

Ms. ATKINSON. What I was trying to point out was just that there is a difference in the two, and I was trying to point out that there is a loophole there. I don't even know if I had thought through which was the appropriate, but I wanted to just point out that, having kind of gone through the Act with a red pencil, I said oh, there are two provisions that are quite different and it really does make a difference.

I think if the idea is to kind of hold a stick more over the council, then it really makes sense that the Secretary as well would have to act if the council failed to submit a plan, as opposed to failing. So it depends on the policy.

Senator SNOWE. Thank you.

Senator STEVENS. Senator Cohen.

Senator COHEN. In the 1 minute that is remaining to me, Mr. Chairman, Ms. Atkinson, does the Foundation support the concept of a buyout?

Ms. ATKINSON. I think we haven't reached that conclusion, as you have been seeing as well. We are still looking at the idea and thinking about the idea. I think one thing that we are particularly concerned, and a lot of people have talked about as well being concerned, is making sure that in any type of buyout program there is provisions put in to prevent the reduction being replaced by new entry or entry from other fisheries. And there is also the concern about the impact on other fisheries.

But I think today I was very encouraged, listening to this idea of a pilot program to try to work all the kinks out and figure out what will work best for this region. I am very encouraged by everybody's activity in trying to explore this issue.

Senator COHEN. Jeff Kaelin, I don't want to undermine your credibility or impeach you before you say anything, but Jeff used to work on the House Merchant Marine Fisheries Committee staff. That probably disqualifies you now as having a conflict of interest of sorts. But you are familiar with other fisheries around the country. Are there any, in your judgment or your experience, other regions that could absorb the bought-out fishing boats or vessels?

Mr. KAELIN. I am proud of being an ex-staffer on the Merchant Marine Fisheries Committee, but most proud of being one of your staffers too, Senator Cohen.

Senator COHEN. I was not fishing for that.

Mr. KAELIN. But that is true. I don't know. In some of the buyout design meetings that we have had over the last year or so, I don't think we can identify areas of the United States where extra capacity is needed. I think there are several areas around the world where extra capacity or certain technology doesn't exist. Some of us have been thinking about perhaps tying a buyout into a foreign aid kind of an approach and maybe moving vessels around the world to move capacity from the region.

I would not be in favor of moving those boats anywhere else in the United States personally.

Senator COHEN. Just one final point. Dennis, you have to deal not only with the fishing community but those who are dependent upon the fishing community—those who supply the fuel, the ice, the equipment, and others. Do you think there should be a buyout if it does not at least guarantee that the money that goes to the boat owner also has to go to pay creditors first?

Mr. FRAPPIER. I completely support the buyback, and I do believe that creditors ought to be made whole as well—and there are lots of them.

Senator COHEN. Mr. Chairman, I have other questions which I will save for the record.

Senator STEVENS. Congressman.

Mr. LONGLEY. A couple quick questions. Mr. Frappier, you emphasized changing some procedures regarding by-catch. Could you elaborate on that?

Mr. FRAPPIER. Yes. We have regulations right now that say there is no by-catch. There is no by-catch by regulation, which is a hallucination for managers to sit somewhere and think that there is no by-catch because they say there is no by-catch.

What they mean is that the fishermen will throw the fish away dead instead of bringing them in; therefore, there is zero percent by-catch landed. Unfortunately, there isn't the staff and the capacity to send observers onto vessels to make sure that there isn't by-catch, and I suggest just switching the table around just a little bit and encouraging them to sell the fish.

Then you will know if there is by-catch. If the by-catch is significant or if the amount of species caught that should be protected are significant, you can take action if there is flexibility in the legislation that allows that to happen.

Mr. LONGLEY. That may make too much sense.

Ms. Atkinson, I have a question. You were focusing on the question or issue of overfishing versus optimum yield. Why are you making such a point of that, or could you highlight for me where you see a change necessary from the existing legislation?

Ms. ATKINSON. Well, I think the idea is that we have been trying to do two things that we may be incapable of doing, which is fishing to this point of optimum yield and preventing overfishing at the same time. And it may be that sometime down in the future when we have perfect information we may be able to do it at the same time.

But what it has, I think, allowed us to do or encouraged us to do is to push too hard toward the opportunity that optimum yield kind of holds out there.

Mr. LONGLEY. So you want to see more of a definition in terms of limits?

Ms. ATKINSON. Exactly. It is the idea that optimum yield should be defined more in accord with maximum sustainable yield, that you need to put a ceiling on it so that it can only be—it cannot be adjusted upward, for example, to meet social or economic interests; it can only be adjusted downward.

Mr. LONGLEY. If I have time, one final question, and I know this isn't giving merit to the significance of the issue, but, Mr. Burns, you were commenting about recreational fishing versus commercial. In the minute that we have got left, I would appreciate if it you would elaborate on that to the extent that we have not had time today.

Mr. BURNS. Do you simply mean the access?

Mr. LONGLEY. To what extent do you see a conflict?

Mr. BURNS. Well, from a subsistence fishery or from a recreational fishery standpoint, we have suffered on the quality end of it, just as—I mean, quality fishing, being able to catch something—just as the commercial fishermen do, although obviously it is not our living. There is or there was a significant charter boat industry that has simply gone out of business.

I just think that, as in Newfoundland, when the only fishing that has been allowed has been a little subsistence, personal use fishery, there was some talk at a recent subgroup of the council about cutting recreational fishing back to 3 days in the Gulf of Maine. We are opposed to that to the bottoms of our feet. It is an insignificant factor in the total mortality of the fishery, and to limit the access for the very few trips a year or, in some cases, the few trips of a lifetime that people get to go offshore on one of these party boats is just an unnecessary punishment, and I hope there is no thought of it becoming practice.

But I know for a fact that it was seriously discussed by some members of the council.

Mr. LONGLEY. A quick follow-up to Dennis or Jeff. Do you see a problem with what Mr. Burns is suggesting?

Mr. FRAPPIER. I don't see a significant problem, except I think the industry feels strongly that if they are excluded from closed areas that those closed areas exclude everybody, recreational and commercial alike. If they are spawning grounds, there should not

be charter boats in there taking economic advantage of those fish. If they are closed, they are closed.

Mr. LONGLEY. Thank you, Mr. Chairman.

Senator STEVENS. Ms. Atkinson, I hope you do not stick to your demand that the optimum yield could never go up. I remember when the king crab wandered away for 3 years, and we reduced it down to almost zero. And then when they came back, it went back up again. It is not a static concept at all. It ought to be adjusted upward or downward on a scientific basis.

Ms. ATKINSON. I guess what we are saying is in relation to maximum sustainable yield, which will adjust upward and downward with the stock as well. I am not a scientist, but from what I understand—

Senator STEVENS. But you were saying you believed it should never go up.

Ms. ATKINSON. That the maximum sustainable yield as a point should be the ceiling.

Senator STEVENS. Well, that depends on the species and the time period and the conditions of the stocks. I would hope that we have some understanding that right now, particularly, we are looking at a period of reducing that level for a period of time to restore the fisheries on this area. When it comes back, God willing, I hope we restore the fishery.

Mr. Conkling, you would make a good Alaskan. We would like to have the Gulf of Alaska under our control, too. Send me your paper, and maybe we will find some way we can do that. I tried, as a matter of fact. When I introduced the bill, I thought I would extend the State's jurisdiction to 200 miles, but that couldn't quite work. You know, if you look at the problems that you have as you go out beyond 2 or 3 miles, you soon find conflicts with your neighbors.

But I do appreciate your coming. I hope you will send us your paper.

Last, Ms. Sanfilippo, we admire your vision. The fact that your wives' association would get together and plan for the year 2020, I think, demonstrates what we would like to see, and that is a greater connection between the communities along the coast and the resources off their shores. So I hope you will pardon me for having to move you along a little bit as you made your presentation.

Ms. SANFILIPPO. That is OK. Thank you.

Senator STEVENS. Our next panel will be Patton White, Ted Ames, Gail Johnson, and Marshall Alexander. We will take a sort of seventh-inning stretch while they are changing. [Pause.]

Senator STEVENS. We are going to move along, if we can, because we still want to have any comments from the audience, if it is possible. We will be leaving, as I said, right at 5:30. Mr. White. Could we ask the audience please to hold it down?

STATEMENT OF PATTEN D. WHITE, EXECUTIVE DIRECTOR, MAINE LOBSTERMEN'S ASSOCIATION

Mr. WHITE. I am starting off at a disadvantage already, Mr. Chairman. I am on the red. Thank you very much for this oppor-

tunity. While I approve of many of the amendments to the Magnuson Act, I have some concerns which I would like to address.

On conflict of interest, the Sustainable Fisheries Act requires council members to recuse themselves from voting or debating issues if they have a financial interest that is significantly affected by a council decision. At this point in time, the majority of the appointed members of the New England Fishery Management Council represents, either directly or indirectly, the groundfish industry, to the detriment of other fisheries. The method of appointment allows room for bias which sometimes results in decisions which are more beneficial to one industry than to others.

Since I represent the Maine lobster industry, I am particularly concerned with the difficulty of receiving fair and unbiased attention under this system. I would like to suggest that a stronger emphasis be placed on the New England Fishery Management Council to establish negotiation panels to assist in the development of specific conservation and management measures for a fishery.

The entire northeast lobster industry currently has an effort management team process in place for just that purpose. I feel the efforts of this process are undervalued by the New England Fishery Management Council.

With regards to fishery habitat, the intent of these amendments is unclear to me. To date, the only method used to facilitate protection of essential fish habitats is through temporary closures. I feel consideration of gear type and the effects of their long-term use on habitat and juvenile populations is essential. The bill later makes reference to analyzing newly introduced gear types, but it appears to disregard an analysis of existing gear types, some of which may adversely impact habitat and juvenile populations.

I would like to address the issue of redirection of effort and gear conflict resulting from displaced fisheries. With the mandatory reduction of effort on some species, those fishermen involved are forced to turn to alternative fisheries. I don't feel there are any species that can withstand additional pressure, least of all lobsters, which have been deemed to be overfished. In addition, with displaced boats looking for new areas to fish, incidences of gear conflicts are increasing, resulting in substantial losses of fixed gear such as gill nets and lobster traps.

As far as the individual transferable quotas, as chair of the Area 1 EMT, which encompasses the area from Cape Cod to the Canadian border, I would like to report that the overwhelming consensus of its members indicate opposition to any form of ITQs to be used as a method of effort reduction in the inshore lobster fishery.

In regard to the by-catch, in regard to the proposal, why are the majority of proposed amendments concerned with only the north Pacific, is my question. And another question: Why doesn't the Senate amendment contain a national standard 8 as does the House version?

I would also at this time like to thank Senator Snowe for her efforts to protect our herring stocks, as they are crucial to the future of the lobster industry. I appreciate it. Thank you for your time.

[Prepared statement of Mr. White follows:]



MAINE

Lobstermen's Association, Inc.

Box 147 Damariscotta, Maine 04543 563-5254

March 4, 1995

While I approve of many of the amendments to the Magnuson Act, I have some concerns which I would like to address.

ISSUE: Conflict Of Interest

S.39 SUSTAINABLE FISHERIES ACT requires Council members to recuse themselves from voting or debating issues if they have a financial interest that is significantly affected by a Council decision.

At this point in time, the majority of the appointed membership of the New England Fishery Management Council represents, either directly or indirectly, the groundfish industry to the detriment of other fisheries. The method of appointment allows room for bias which sometimes results in decisions which are more beneficial to one industry than to others. Since I represent the Maine lobster industry, I am particularly concerned with the difficulty of receiving fair and unbiased attention under this system. I would like to suggest that a stronger emphasis be placed on the NEMFC to establish negotiation panels to assist in the development of specific conservation and management measures for a fishery. The entire northeast lobster industry currently has an Effort Management Team process in place for just that purpose. I feel the efforts of this process are undervalued by the NEMFC.

ISSUE: FISHERY HABITAT

The intent of these amendments is unclear to me. To date, the only method used to facilitate protection of essential fish habitats is through temporary closures. I feel consideration of gear type and the effects of their long term use on habitat and juvenile populations is essential. The bill later makes reference to analyzing newly introduced gear types, but it appears to disregard an analysis of existing gear types, some of which may adversely impact habitat and juvenile populations.

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ISSUE: INDIVIDUAL TRANSFERABLE QUOTAS (ITQS)

As chair of Area #1 EMT, which encompasses the area from Cape Cod to the Canadian border, I would like to report that the overwhelming consensus of its members indicated opposition to any form of ITQS to be used as a method of effort reduction in the inshore lobster fishery.

ISSUE: BYCATCH

In regard to the proposals, why are the majority of proposed amendments concerned with only the North Pacific? Why doesn't the Senate amendment contain a National Standard 8 as does the House version?

Patten D. White, Executive Director



Senator STEVENS. Thank you very much.

Let me announce that Mr. Tom Melius, who is Senator Pressler's representative here, will be down here somewhere—Tom, identify yourself. For those people who may want to make comments to us at the end, we would like to establish some sort of pecking order of getting to the microphone, so would you please meet with Tom right over here. He has forms that we have to have for our records to identify the person who spoke for our record. So would you meet with him if you desire to make any comments to us at the end of the hearing, please? Thank you very much. Next is Mr. Ames.

**STATEMENT OF TED AMES, HARVESTER, FORMER PRESIDENT,
MAIN GILLNETTERS ASSOCIATION**

Mr. AMES. Thank you, Mr. Chairman.

Senator STEVENS. Mr. Ames, you did not give us a copy of your statement. You are going to send us a copy of your written statement, are you not?

Mr. AMES. I believe you have it, but it has just arrived.

Senator STEVENS. Thank you very much. Proceed.

Mr. AMES. I will not be able to review all of its components. In particular, I won't have time to address national standards and by-catch reduction. But they are very important and I wanted to share my views on it.

I am Ted Ames, a fisherman from Stonington, Maine, and I want to thank you for the opportunity to speak. I was fishing back in 1965, up through 1976, when the Russian fleet was here and remember full well the need for the Magnuson Act. But it has failed. Groundfish stocks have been devastated and New England's traditional inshore fleet has been staggered.

Through it all, we fishermen have been forced to stand on the outside of the decisionmaking process and watch the council allow methodical destruction of our livelihood. Now that ground stock fish stocks have been flattened, the owners of the vessels responsible for that destruction are unfairly demanding ownership of the resource. The council is listening, not to us but to them.

Today our coastal stocks are fished as heavily by offshore vessels as they were prior to the Magnuson Act. I personally think we might be far better off if your bill simply split the whole EEZ up and handed its management over to the States for their section. Compared to the council, the States have done a much better job of managing fisheries, period. And they are accountable to us as well, accountable for the regulations they make, because we are voters, you see. The end result has been State regulations that work well. There is no need to mention the success of the council's regulations.

At the very least, we need our State territorial waters to be extended back to 12 miles to protect our stocks from EEZ fishermen. That in turn will give us an opportunity to rebuild our fisheries.

The council has been unable to do the job. It has repeatedly cast aside the rights of the majority of us fishermen for the benefit of a few companies. It has designed one management plan after another that concentrates ownership to the point of creating monopolies. We need representation and accountability. These people are making decisions that deprive us of our businesses and our homes.

They must be responsible for their decisions, but we have no recourse because those positions are all appointed. We can't even vote them out of office when they make incompetent decisions.

Add a seat to the council that has full voting rights. Fill this chair with a democratically elected representative for each fishery, and then, when that particular fishery is being discussed by the council, have that representative be seated and let him participate in the ongoing discussion and vote afterwards. Let them be nominated and elected by the harvesters of the industry. It is our necks that are being chopped.

Conflicts of interest are a special concern. It is unconscionable that members should be allowed to come, not to comment—because we are all free to talk—but to vote and to lobby in inappropriate ways on issues in which they have a direct financial interest.

ITQs are really uncomfortable because we are already acquainted with them in Maine. Maine has extensive beds of mahogany clams off its coast, and yet we have been denied the right to catch them.

I see I have run out of time. I apologize for having such a negative note to where we are at as a fishing industry, but we need your help. Thank you.

[The prepared statement of Mr. Ames follows:]

TESTIMONY

OF

TED AMES
Thurlow Hill, Stonington,
ME 04681

to the

SUBCOMMITTEE on OCEANS and FISHERIES

of the

COMMITTEE on COMMERCE, SCIENCE, and TRANSPORTATION

MARCH 4, 1995

Testimony of Ted Ames
P. O. Box 188, Stonington, ME 04681
Tel: (207) 367-5907

INTRODUCTION

I'm Ted Ames, a fisherman from Stonington, ME. I'd like to thank you for the opportunity to speak today about the Magnuson Act.

HISTORY

Those of us who were groundfishing back in 1965-76 when the Russian fleet fished here, remember full well the need for the Magnuson Act.

But it has failed. Groundfish stocks have been devastated and New England's traditional inshore fleet staggered.

Through it all, we fishermen have been forced to stand on the outside of the decision-making process and watch the council allow the methodical destruction of our livelihood.

Now that groundfish stocks have been flattened, the owners of the vessels responsible for that destruction are unfairly demanding ownership of the resource. The council is listening. Not to us; to them.

STATE BOUNDARIES AND THE 12 MILE LIMIT

Today, our coastal stocks are fished as heavily by offshore vessels as they were before the Magnuson Act was first passed.

Personally, I think we all might be better off if your bill simply split the whole EEZ up. Divided the Gulf of Maine and Georges Bank into sections and just handed it over to the bordering states to be managed. Compared to the council, states have done a much better job of managing our fisheries.

And state managers are accountable, as well. Accountable to us fishermen for the regulations they make... We're voters, you see. The end result has been state regulations that work. There's no need to mention the success of council regulations.

At the very least, we need our state territorial waters to be extended back to the 12 mile limit, to protect our stocks from EEZ fishermen. That, in turn, will give us an opportunity to rebuild our fisheries.

THE COUNCIL

The council has been unable to do the job. It has repeatedly cast aside the rights of the majority of us fishermen for the benefit of a few big companies. It has designed one management plan after another that concentrates ownership to the point of creating monopolies.

WE NEED REPRESENTATION

Big companies have seats, states have seats, some associations have seats, and the public has seat. But we fishermen are not allowed a single democratically elected delegate.

AND ACCOUNTABILITY

We have no recourse. We can't persuade them or even vote them out of office when they make incompetent decisions. The council's members are all appointed.

Yet, this council is allowed to make decisions that deprive us of our businesses and homes. I most heartily object. Council members must be made responsible for their decisions and fishermen must be allowed to have representation.

Add a seat to the council that has full voting rights. Fill this chair with a democratically elected representative of each fishery. Whenever that particular fishery is being discussed on the council floor, let it's representative be seated. Let them be nominated and elected by the harvesters of that fishery.

CONFLICTS OF INTEREST

Qualified fishing industry people serving on the council must be allowed to have involvement with industry. It is that relationship that allows them to perform their duties well. But at the same time, it is inconceivable that council members should be able to participate in matters where there is a direct conflict of interest or be hired by a private company to lobby other council members for it's private policies.

While not solely to blame for our depleted stocks, conflict of interest situations have thwarted sound management and prolonged unwise fishing techniques. Stocks so damaged include redfish, haddock, cod, and Georges Bank herring.

ITQ's

ITQ's are proposed in the bill as being preferred by federal regulators. We already have some experience with them. Maine has extensive beds of mahogany clam off it's coast.

Yet, Maine fishermen have been denied the ITQ's to catch them. Even though they were entitled to them. NMFS and the council have refused to give Maine fishermen any shares. It seems that all the ITQ's are owned by the three big clam companies (1 Canadian, 1 Japanese, and 1 American company). Owner-operators, the backbone of Maine and New England's traditional fleet have been excluded.

This doesn't feel like fisheries management to me; it feels like piracy! The bill advocates ITQ's, but it doesn't acknowledge this problem.

There are other problems. It would be tremendously expensive.

ITQ's means next year's catch is allocated to fishermen based on

an estimate of how much can be harvested without damaging the stock. Each year NMFS would have to survey all the commercial stocks in New England and make new estimates on allowable harvest.

In addition, just look at the record. Population predictions are unreliable (+/-30% at best). As a result, NMFS misses as many stock projections as it hits. The bottom line is, NMFS doesn't have the ability to predict accurately enough to make ITQ's work.

They can certainly divvy up the stock... But tying our livelihood to predictions for ITQ's like that would be little better than making guesses from a bar room.

Do Maine fishermen want ITQ's? I don't think so! We want a process that is fair and equitable and ITQ's is neither. What we need is protection from the ITQ process.

For people who simply want ownership of fish, let them grow them in their backyard. America's coastal wealth belongs to all Americans; fishermen included.

NATIONAL STANDARDS AND THE OVERFISHING DEFINITION

The 602 guidelines as applied by the NEFMC is of little value for determining overfishing.

Let's face it. It is not enough for NMFS to say the fish are gone. In order for national standards to work for marine life, attention must be brought to what the real problem is.

For a stock to be sustainable, fish have to be able to grow and reproduce at least once before being caught.

a) NMFS should be required to identify spawning grounds, nursery areas, and summarize the average size of each species at the time of first spawning (not maturity) and the size it is recruited into the fishery (mesh size used should also be included).

b) Overfishing is caused by specific activities. The standard should require NMFS to identify at what point in life the stock is being overfished; is it because of fishing pressure (a) during spawning, (b) during it's juvenile stages, (c) as a bycatch to another fishery, or (c) pollution of these areas.

c) The definition of overfishing should also address how, when, where, and by what method, wherever known.

d) Deficiencies in the protection of spawning areas, nursery areas, and migration routes of fish should be noted.

USE OF THE STANDARDS

NMFS should make this 4-part report on overfishing available to

each council member. Having it will allow council members to better manage how, where, and when fishing should occur in those

sensitive areas.

The council should be required to provide management plans which correct the deficiencies identified by NMFS in a reasonable and timely manner that allows industry to adjust. If council members do not, they should be replaced.

Access to such information is clearly critical to effective management, but it has not always been readily available in the past. Consequently, the knowledge base used by the council in many of its decisions has been inadequate.

My experience at council meetings has been that most members are unaware of such basic information as the location of spawning grounds, nursery areas, or average size-at-first-spawning, of the stocks they are discussing.

BYCATCH REDUCTION AND HABITAT PROTECTION

Times have changed. And we fishermen must change with it. Or fall by the way. Bycatch is a difficult problem to solve. If a fishing technique is too destructive, it must be modified, restricted from being used in certain areas, or banned.

We fishermen all recognize this, whether we like it or not. About all the Magnuson Act can do to help us, though, is to provide additional funds to research how to make gear more selective and time to do it.

Habitat protection is critical to commercial fishing. But it must be done wisely so that fish harvesting can continue. If a gear type is harmful to particular area, the gear must be modified or restricted from being used there. Not as a penalty, but to protect other fishermen and other uses from loss of the habitat.

Maine fishermen recognize that much must be done to restore and care for our fisheries. As a result, the Maine Legislature, responding to requests from the Maine Gillnetters Association, Maine Fishermens CoOp, and Maine Lobstermens Association to:

- a) Explore designing a bill to close inside the 3-mile limit to all fishing for groundfish during spawning season.
- b) Explore designing a bill to require that applicants must be properly trained before a new commercial fishing license is issued. These will include a fisherman's responsibility to care for his fishery, to other fishermen, the ecosystem he uses, and the environment.

Give the State of Maine and Maine fishermen the right to administer our share of offshore grounds and we'll start restoring them, too.

Senator STEVENS. We will take your full statement, and I thank you for your points. Next is Ms. Gail Johnson, Maine Fishermen's Wives Association.

STATEMENT OF GAIL JOHNSON, MAINE FISHERMEN'S WIVES ASSOCIATION

Ms. JOHNSON. Thank you, Senators and Congressman Longley. Thank you for the honor of testifying on reauthorization of the Magnuson Act that governs so much of the lives of we who earn our living from the oceans. I am Gail Johnson. I am a charter member and past president of Maine Fishermen's Wives Association, for whom I speak today. We have members in every county along Maine's 3,600-mile coast and 144 coastal ports.

After passage of the Magnuson Act and subsequent withdrawal of the foreign fleets, the U.S. Government actively encouraged modernization and enlargement of the U.S. fishing fleet. Investors had boats built to gain investment tax credits, tax shelters, and passive losses. Many of the vessels built were never intended to make money, so when inevitably the investors went out of the fish business the vessels stayed and became, at a lower cost, property of motivated fishermen-owners.

We are all aware of the decline of some of our most important fish stocks. A buyback of some groundfish vessels makes economic and environmental sense. At present, there are more vessels and technology available than there are fish to support them. The electronic technology is too entwined with safety to be a target for downsizing.

The quickest and most effective way to reduce fishing effort and allow a greater chance for stock rebuilding is by buying back the entire vessel with its permit. Our fishing families and the coastal communities of the State of Maine contributed the last to the present problem, yet will be affected, and hurt, the most because of the economics of our coastal communities.

Council members and conflict of interest is a matter of perception and not fact. Senator Stevens, I am happy to read in the Congressional Record that you "still believe that the councils should be made up of the people directly affected by fishery management decisions." They are indeed the ones, and the only ones, who have the integral knowledge of what may work or what may compromise safety or may even be counterproductive.

We are opposed to making some of the 602 guidelines actual law. One of the contributing factors to the decline of cod and yellowtail was the inability of the council to implement incremental actions such as larger mesh and closed areas. Section 602.11(b)(5)(iii) mandates that "a program must be established for rebuilding the stock over a period of time." Trouble was, it took a very long time to develop this suite of measures that constitute a program, and because of the length of time the measures no longer fulfill their mandate.

Any one of these incremental measures may not have stopped overfishing, but the council would have been able to see how much each measure contributed to decreasing effort and catch. We have now a suite of measures in amendment 5 that are not sufficient and are very difficult for the National Marine Fisheries Service and the Coast Guard to monitor and enforce.

The Overview of Approach to the 602 Guidelines Final Rule states that "certain principles instructed the revision throughout: flexibility, integrity, consistency." The fisheries are dynamic and they present a moving target; therefore, the councils must have the flexibility to effect actions that take into account those dynamics, whether not any individual action will reach the goal of rebuilding the stocks. We simply do not know exactly how man's actions will affect the stocks.

In summary, the Maine Fishermen's Wives Association supports the Act and those amendments which allow for public involvement in the process of developing plans to safeguard the integrity of the fisheries, specifically as it relates to fishing families and their communities. Thank you very much.

[The prepared statement of Ms. Johnson follows:]

TESTIMONY OF MAINE FISHERMEN'S WIVES ASSOCIATION
FIELD HEARING ON S.39

Senator Stevens, Senator Kerry, Senator Snowe thank you for the honor of testifying on reauthorizing the Magnuson Act that governs so much of the lives of we who earn our living from the oceans. My name is Gail Johnson. I am a charter member and past president of Maine Fishermen's Wives Association, for whom I speak today. We have members in every county along Maine's 3600 mile coast and 144 coastal ports.

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We are all aware of the decline of some of our most important fish stocks. A buyback of some groundfish vessels makes economic and environmental sense. At present, there are more vessels and technology available than there are fish to support them. The electronic technology is too entwined with safety to be a target for "downsizing." The quickest and most effective way to reduce fishing effort and allow a greater chance for stock rebuilding is by buying back the entire vessel with its permit. Our fishing families and the coastal communities of the State of Maine contributed the least to the present problem yet will be affected—and hurt—the most because of the economics of our coastal communities.

Council members and conflict of interest is a matter of perception and not fact. Senator Stevens, I am happy to read in the Congressional Record that you "still believe that the councils should be made up of the people directly affected by fishery management decisions." They are indeed the ones—the only ones—who have the integral knowledge of what may work or what may compromise safety or even be counterproductive.

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long time develop this suite of measures that constitute a program, and *because* of the length of time, the measures no longer fulfill their mandate. Any one of these incremental measures may not have stopped overfishing but the council would have been able to see how much each measure contributed to decreasing effort and catch. We have now a suite of measures in Amendment 5 that are not sufficient and are very difficult for NMFS to monitor and enforce.

The Overview of Approach to the 602 Guidelines Final Rule states that "Certain principles instructed the revision throughout: *flexibility*, integrity, consistency." The fisheries are dynamic and present a moving target; therefore the councils must have the flexibility to effect actions that take into account those dynamics, whether or not any individual action will reach the goal of rebuilding the stocks. We simply do not know exactly how man's actions will affect the stocks.

In summary, MFWA supports the Act and those amendments which allow for public involvement in the process of developing plans to safeguard the integrity of the fisheries, specifically as it relates to fishing families and their communities.

Senator STEVENS. Thank you very much. Now, Mr. Marshall Alexander, owner-operator of the fishing vessel Dee-Dee Mae, Biddeford, Maine.

**STATEMENT OF MARSHALL ALEXANDER, OWNER/OPERATOR,
FISHING VESSEL DEE-DEE MAE, BIDDEFORD, MAINE**

Mr. ALEXANDER. Thank you for the opportunity to testify to you, Senators and Representative, on the reauthorization of Senate bill 39, the Magnuson Act. My name is Marshall Alexander. I own and operate my 54-foot fishing vessel, the Dee-Dee Mae II.

I go back to the beginning of the Magnuson Act, when myself and my vessel sailed on Washington from Maine back when you were first trying to pass the bill.

As far as the council makeup, I believe that it is very important that the councils be made up of knowledgeable industry people, if they are to do the job presented to them.

On the issue of by-catch, there is no such thing as a fishery with no by-catch, whether it be hook, line or autotrawl. In the past 4 years, we have come a long ways with mesh size. The State of Maine, the fishermen of the State of Maine proposed a 6-inch mesh size. We have given it little time to work. We, the fishermen, can see the results of this mesh size.

We have also, in the shrimp fishery in the Gulf of Maine, we are now using Nodmore grate. Maybe some of the industry wasn't too pleased with it, but I can tell you point blank that I know no one in the industry that would ever go without it. The by-catch is just zero with this Nodmore grate in our shrimp fishery.

I think that other gear technologies could be used to cut down the by-catch in other fisheries, and I know as a fishermen and my fellow fishermen, we do not like throwing fish overboard. It is our resource, and we do care about it.

Users fees. I do not feel this is the time for users fees when our industry is in the shape it is in now. I will not say that I am totally against them at some time, but I do not feel as though the industry could survive with them at this time.

Buyback. I firmly support a buyback. How we come up with paying for it, I understand the money problems. I care about the money problems, because I am a taxpayer. This big effort that put our stocks in the shape it was in was put there through private gain—like I say, money people. It was not the owner-operator, which most Maine boats are. When the Maine fisherman goes to sea, it is his family, and he does not own just a pair of boots. It is usually his house, everything he owns is tied up in that vessel. So he cares about the industry. He cares about not breaking these laws because they mean everything to him that he has worked all his life for.

But a buyback would be the quickest way to reduce the effort that has caused our problem and has continued to keep it this way.

I would like to make a comment on something that wasn't down there, and that is science. Our industry needs more competence science, with the checks and balances which it does not have. The time spent at sea by people in the scientific field is way too little to understand what is happening out there. If we are to be able to help the stocks and the habitat, we need more and better science.

Working together, as fishermen and scientists we can and will have a resource and industry for generations to come.

Thank you very much.

Senator STEVENS. Thank you, sir.

Now, we are going to limit ourselves to 2 minutes now.

Senator SNOWE. 2 minutes? We are fast talkers, but I do not know.

Senator STEVENS. We do have other people who want to make comments to us, so we will limit ourselves to 2 minutes. Senator Snowe.

Senator SNOWE. Thank you, Mr. Chairman.

Ms. Johnson, you mentioned the fact that the failure of the council to take incremental action early on contributed to the decline of the New England groundfish. Do you think that this legislation, the way it is drafted now to take incremental action, will allow the council to take incremental action in the interim while it is developing a comprehensive plan? Will it address the problem you are talking about so that they can be more responsive at the time in which the problem is occurring?

Ms. JOHNSON. I certainly hope so. In fact, the way amendment 5 is done, amendment 5 allows for framework action. Incremental action as we go along certainly would help. In the development of amendment 5, it was extremely frustrating to some council members as well as the industry to see things continuing to decline, know that there were actions that could be taken and be unable to do so because of guidelines, also because of an overhanging lawsuit.

Senator STEVENS. You can have one of my minutes.

Senator SNOWE. Thank you, Mr. Chairman. That is very kind.

One of my other questions has to do with, Mr. Alexander, the by-catch definition. Chairman Stevens' legislation. Do you think that that would be helpful?

Mr. ALEXANDER. By all means. Like I say, we have cut back by-catch considerably since we have gone to a bigger mesh in the groundfish fishery. It is very little. Some of the things we need to work on on by-catch is, and the problem we have with this groundfish fishery in New England is, it's not like in a lot of other places. There is always something mixed with them. They are never alone. The codfish are never alone. It's like the woman asked me, when we had the haddock closures, what are you doing? I said I hang a sign on my net: No haddock allowed.

I mean, that is the best way I could answer the question, because there is no way of doing it. It is a unique fishery, like very few places in the world. But no, there are ways. Like I say, the Nodmore grate. There is ways that the fishermen, when they are in concentrations, they have got to get up and move. Fishermen know where certain concentrations of fish are or are expected to be at times, and we need to work with the scientists and the regulatory groups to make sure these are protected when they are in juvenile concentrations.

Senator SNOWE. Thank you. Thank you, Mr. Chairman.

Senator STEVENS. Thank you. Senator Cohen.

Senator COHEN. Just one question. Mr. White, I think that your organization has had some difficulty in gaining access to commu-

nicate with the council. I assume that you probably have some concerns about what a buyout should and should not include.

It seems to me that we have to ask, about a buyout, for what, for where, and for how long. I assume that there is genuine concern that if you buy out a vessel or permit for one purpose it could be used for another purpose, namely a threat possibly to the lobster and herring industry.

Would you care to comment on that?

Mr. WHITE. Without seeing the structure of the buyout, it is very difficult to comment, but to your point, I think if there isn't some definite restriction as to the use of that, the moneys used in a buyout program, we would have serious concern of the effect of it on our resource, as well as other people, I am sure.

Senator COHEN. And, just quickly, Mr. Alexander, I assume that you are a boat owner, but there are a lot of non-boat owners. These buyouts in all probability would have very little benefit to a captain or a crew who doesn't own a boat. Do we have any obligation at the Federal level or State to try and deal with their livelihoods as well?

Mr. ALEXANDER. I, for one, am very concerned about this. Most of these people that are on these larger boats now do come from fishing families. A lot of them have lost their boats because of the loss of stocks. That is why they are on these bigger boats right now.

Yes, but how we do it, I really don't know. I will tell you that most good fishermen usually could find a job on another boat, but in some of these bigger boats that carry a lot of crew it is going to be difficult.

Senator COHEN. Mr. Chairman, I have other questions. I will yield back the balance of my time.

Senator STEVENS. Senator, thank you very much. Congressman?

Mr. LONGLEY. Mr. Chairman, a couple of quick questions.

Mr. Ames, I would be very interested in a written copy of your remarks. I think that you have raised some issues that certainly need to be followed up on.

I have a question, coming back to Mr. Alexander and Ms. Johnson. Are you aware of any hard numbers in terms of the number of vessels that we are talking about from the standpoint of a buyout program?

Mr. ALEXANDER. No, I do not. I have spoke with some people today that I thought we in the State of Maine ought to do as the Gloucester Wives Association is doing, and that is send out a questionnaire to see if we couldn't get the figures of the people that would be interested, would participate in a buyout program, so that we could have some harder facts to give to this group for this supposedly \$2 million to try a pilot project.

Mr. LONGLEY. Mr. Chairman, I just want to end with a quick comment. Again, I am trying to absorb as much information as I can, as quickly as possible, but I am amazed that this crisis, the problems have continued for as long as they have, and we appear to have so little hard data on the extent of the problem and what we need to do about it.

I just want to extend an invitation to anyone in this audience. If you have any comments or information that you would like to

pass on to my office, my staff assistant, Owen Drey, is right here behind me and will be here through tomorrow morning. I am anxious to spend as much time as I can for the foreseeable future learning as much as I can about this problem.

Mr. Chairman, thank you for the opportunity to participate.

Senator STEVENS. Thank you very much. I do thank the panel very much. I have some questions, and, as a matter of fact, we may send you some questions. We will wait and see about that. Thank you all very much.

We are going to take some individual comments now. I remind you again that if you wish to send us testimony, we will keep the record open for a week and, if you get one of the little slips from Tom, send us a letter with that little slip, and we will put it in the record.

Tom, would you find a way to introduce, using that microphone, the people that are coming? If I am correctly informed, there are eight witnesses. We have roughly 24 minutes—I have just manufactured 4. As a matter of fact, why do you not run the gate there, and we will run the clock. And please make your comments within 3 minutes.

STATEMENT OF STEPHEN BROOK, CHAIRMAN, MAINE COUNCIL, TROUT UNLIMITED

Mr. BROOK. Thank you, Chairman Stevens, Senators Snowe, Cohen, and Representative Longley. My name is Steve Brook, and I'm from Farmingdale, Maine. I'm the chairman of the Maine Council of Trout Unlimited. I also sit on the national resource board of our Trout Unlimited organization.

Trout Unlimited is America's cold water fisheries organization. We are more than 75,000 recreational conservation-minded anglers nationwide. We have over 450 chapters. And here in the State of Maine we have approximately 900 members and 5 chapters.

I would like to speak very, very briefly about some fish that are groundfish that spend their lives at sea but come back to our fresh-water rivers to reproduce. These are fish that we call anadromous fish, and they are fish that have some severe problems here in Maine in particular, as well as across our nation as a whole. We are talking about Atlantic and Pacific salmon. Here in Maine we are talking about a full range of herring that are used as bait fish in the commercial fishing industry, alewives in particular.

We are talking about two species of sturgeon, the short-nosed sturgeon that is currently on the endangered species list, as well as the Great Atlantic sturgeon. The Atlantic sturgeon is a creature that will grow to 6 and 7 feet long, live to 60 and 70 years. And they are over 9 million years old in terms of their specie and the way they have adapted.

I think that there is one major reason for the decline of these fish that has to do with habitat, and I would like to encourage you in the workings with the Magnuson Act to include recreational anglers and some of the habitat issues. These are species of fish that come to the fresh water to spawn. They need riverine habitat, and in the State of Maine they have already lost over 90 percent of the habitat that they need to survive to be able to reproduce, and to maintain productive populations at sea.

In particular, I'd like to bring to your attention a study that was put forth by the Office of Technology Assessment that was done by the predecessor committee last year. This is a fisheries study that deals with fish passage and passage issues, and I would urge you to see that this study is carried out because I believe that it is critical to the survival of these species of fish.

Thank you very much.

Senator STEVENS. Thank you very much. You have a lot of members up my way, I might say.

STATEMENT OF JOHN J. KILCOMMONS

Mr. KILCOMMONS. Senators, I am not a fisherman. I'm a retired FBI agent. I spent 5 years investigating what is wrong with the fisheries. I don't know anything about fisheries. I am an investigator. I just spent weeks reading the history of the Magnuson Act, and I conclude that it is the Magnuson Act itself that is flawed. It is the one act that is causing most of the trouble. That takes me half a minute.

I will send it to you. I have got a report. I did it. And—you used to be a prosecutor, weren't you, Senator? I will present it to you like you present anybody—

Senator COHEN. Do you want me to prosecute Senator Stevens?

Mr. KILCOMMONS. I'd prosecute him if you go back and read this thing because what he put forth in 1975 is not what you have got now. And that case that's here in Maine, that will turn on the definition of two words, to recommend and to propose. I went through this forerunner of S. 39, and you look at that, and you've got the councils saying they manage. They do not manage anything.

Senator STEVENS. OK. Thank you very much. We appreciate it. Send the report in. We will take a look at it. I am a former prosecutor; I will defend myself. [Laughter.]

[Written material provided for the record maybe found in committee files.]

STATEMENT OF MAGGIE RAYMOND

Ms. RAYMOND. Thank you. My name is Maggie Raymond, and I own a groundfish trawler with my husband that he operates.

This boat sustains our family as well as three other Maine families, and indirectly contributes to the employment of hundreds of other people in fisheries-related businesses, in fact, many of the people that are here this weekend. I mention this because I want you to know that these are good jobs and that we have no prospects for comparable alternative employment.

I also speak regularly for an association of 22 Portland groundfish boats. I want to express our complete support for a buyback. This would be both an effective conservation strategy and a humanitarian alternative to the bankruptcy of the fleet.

I'd like to respond to Senator Cohen's question about what would happen to crew members. I think that you understand that fishermen are entrepreneurs, and if we go bankrupt we are gone. We are done. However, if someone were to be able to pay off the mortgage on his boat and not lose everything, then he may be able to start another business and employ some of those people that currently work for him.

So the jobs will be lost, but we are trying to conserve as many of them as possible. I think the buyback will allow us to preserve the infrastructure of our industry, as many of the people here as possible, so that when the stocks do recover the industry will be able to recover with it.

In response to the language in S. 39 that suggests a tax on vessels that would remain in the fishery after buyback, I would just like to remind the Senators that fishermen, between Federal, State, and self-employment tax, already pay over 40 percent of their income to the government, so we would, of course, be reluctant to pay any more. In fact, the only difference that I can see between Federal dollars and non-Federal dollars is the Federal dollars come out of this pocket and the non-Federal dollars would come out of this pocket.

I think an unintended result of such a tax would be to drive income underground, and we certainly would not want that to happen. Senator Stevens: Thank you very much.

STATEMENT OF HARRIET DIDRIKSEN

Ms. DIDRIKSEN. Harriet Didriksen from Mattapoisett, Massachusetts. I own, with my husband, two offshore trawlers. He is a fisherman himself.

I want to comment on the ITQs that are talked about in regards to amendment 4 on the scallops. I believe that ITQs are only going to take the ownership of vessels and the harvesting out of the hands of individual boat owners and into large corporations. I feel it is going to just ruin the fabric of many of the coastal communities.

I have felt, after going to council meetings for 10 years, I feel a certain push among council members that they would like to see this happen. The scoping document which is going to go out in scallops within the next couple of months I personally begged at one of the meetings that an alternative where no money would be involved could be included in that scoping document. It was basically refused.

I feel there has to be done work done at the council meeting level. As the Coast Guard said, regulations are becoming complicated. As I have inquired of both National Marine Fisheries and council members on occasion, they themselves can't even relate the rules to me. How would the fishermen out on the boat really know what's going to happen?

I want to back the buyout program. I feel it is needed. But I also feel we need a fishery in the future, and so therefore we need work on the level of the management on the council level. There is work to be done. The fishery is in chaos. Thank you.

Senator STEVENS: Thank you very much.

STATEMENT OF HENRY L. SURETTE

Mr. SURETTE. Mr. Chairman, I thank you for the time to speak. I'm a Canadian, and I am sort of an expert on the groundfish because I was driven out by ITQs.

But from New Jersey to the Labrador coast is an ecological disaster of the magnitude of the rain forests or the Ethiopian famine.

The only difference here, we have enough money to feed the people who are hungry. And it is growing by leaps and bounds.

But there is a predator that is really causing a lot of this problem, and the world is not addressing it and they are afraid to address it, and it is the seal. 5 years ago, it was come to the conclusion they eat 50,000 metric tons, and they haven't been hunted since. And nobody even dares to guess what is the magnitude they eat today.

In the Gulf of St. Lawrence they ran out of fish. They found thousands and thousands of lobster claws on the shore that they eat. They don't eat the claws; they just eat the body and the shell. So they are really starving. And I think as a nation we should step up and do something about this.

Are we going to protect the seals or watch these families just have to move? A whole province is going to have to move because there is no fish for them to fish, and it will never come back unless we address this problem. And it is growing this way, I will tell you. We probably can send a lot to Washington and use the fur seals of approval or something. [Laughter.]

Senator STEVENS. Send me one for disapproval, too, will you?

Mr. SURETTE. I used to belong to an international organization called Like-Hearted, and it was discussed there there's 5 million metric tons of fish being discarded a year. The world can't stand that. We have to use some of this fish to feed the hungry.

Thank you for your time. Senator Stevens: Thank you.

STATEMENT OF BARBARA STEVENSON

Ms. STEVENSON. I am Barbara Stevenson and I am a fishing vessel owner and I happen to be on the New England Fishery Management Council. I also happen to be the person who absurdly suggested the 3-day recreational fishing.

There are a couple of things I want to address. One thing is that which I understand people think is ridiculous, but had we picked one of the possible levels of fishing, there would have been no fishing in the Gulf of Maine, including lobstering, and yet the recreational catch would still had to have been cut by a third. The recreational catch in the Gulf of Maine of cod is very, very significant. It has to be treated as very significant.

I am not saying that is the solution. All I was saying is they have to be part of the solution because there is no other way.

There are a couple of other things that I wanted to point out. One is on the owner-operators, and I hope that Marshall is using owner-operators in the sense of their point of view and not their actual owner-operator-ness, in that I own various vessels, two vessels, and everything I own is tied up in that, but I haven't been on one of them in quite some time.

But there is a different viewpoint from corporate ownership and owner-operator ownership, and I think that is what most of us are getting at.

Another point that Olympia brought up when she asked if the wording in the Magnuson Act was enough for the incremental steps, I do not think it is. I have been 8 years trying to get the council to do something more on fishery management for ground-fish. They finally got ready to move, and then they couldn't move.

Well, every move that you make would have been better for us and sometimes it takes longer than a year to get to the next step.

All the fisheries are highly dynamic, and we don't know. What we think is right this year might not be right next year, and you have to do something more and something more. I don't think anyone has any answer as to what is right, what will actually do the job. All we have to do is keep working on it until we get there.

Thank you. Senator Stevens: Thank you very much.

STATEMENT OF SALLY CROWLEY

Ms. CROWLEY. Good afternoon. I am Sally Crowley. My husband is a lobster fisherman and I am town manager of Gouldsboro, which is a fishing community of about 2,000.

I would like to speak to a slightly different subject. This last year our legislature passed a resolution and our Governor signed it endorsing extending our State territorial limits to 12 miles from 3 miles. For us down east it becomes a very important question because the way it is measured it is from the last point of land. In some areas, 3 miles takes you out quite a ways. Where we are, 3 miles and you are outside the harbor and that is about it.

What we are finding is that our traditional lobster fishing grounds, which are relatively close to our homes, are now being invaded by these very large boats that have been displaced since they are forbidden to fish other places. And they are dragging in these areas. No offense to these very large boats, but they have very little territorial interest in conserving what is on the bottom in the areas in our local traditional fishing grounds.

The lobster fisherman typically is a conservationist because they are in a relatively local area, so we are working with our legislators, our congressmen, to hopefully present an act that will allow our territorial limits to be extended to 12 miles, and I hope that you will support that so that we will be able to have the necessary regional support for our necessary conservation measures.

Thank you. Senator Stevens: Thank you.

STATEMENT OF JESSICA HARRIS

Ms. HARRIS. Good afternoon. My name is Jessica Harris and I'm from Marion, Massachusetts. I work as a fishery biologist in conservation engineering, but the views I'm expressing right now are really my personal views and mine alone.

I would like to express my concern about section 305(d), which is the gear evaluation and notification section. Many of the gear modifications that have been used in fisheries and that are under consideration and development today have been thought of and initiated by innovative conservation-minded fishermen. No one knows the gear better than the fishermen that use it every day.

And while a few use that knowledge for unsavory purposes, many use it to better the integrity of the industry. I fear that with the continuation of this section such innovation and the resulting benefits to the stocks may be lost.

Thank you. Senator Stevens: Thank you.

STATEMENT OF SCHAUN GEHAN

Mr. GEHAN. Shaun Gehan with the Seafarers' International Union. I am particularly pleased and honored to have the opportunity to address members both of the Senate and of the House. I would like to limit my remarks to only one aspect of the Senate bill before us today, and will provide more specific comments to both the House and Senate side in written testimony.

The concern that the union has is regarding the provisions dealing with Individual Transferable Quotas or ITQs. The first major concern is that, economic incentives being what they are, if the councils and NMFS are given the incentive to increase their budgets by charging a user fee only for plans which include the use of ITQs, then that is a great incentive to take everything right down that road. We oppose the use of ITQ's as a management tool.

The other suggestion we would make is a return to an idea that had existed in previous reauthorization bills from the last Congress, and that was, instead of devising an advisory panel to study rules for implementing ITQ's, to rather devise an advisory panel to look at the policy implications of individual transferable quotas.

The Union believes they have tremendous implications for the future of the commercial fishing industry, from shifting it from a largely small-scale and family based industry to a much more corporatized future, and believes there should be a national discussion and a policy that is made consciously instead of letting councils lead the Nation down that path.

So I would urge that a moratorium be put in place so the policy implications and economic considerations can be fully studied by a blue ribbon panel by an organization outside of the National Marine Fisheries Service, such as the General Accounting Office, which has no current vested interest.

Thank you.

Senator STEVENS. Thank you. Thank you very much. I thank my colleagues, Senator Snowe, Senator Cohen, Congressman Longley. We will have hearings in Seattle, for your information, on the 18th and hearings in Alaska on the 25th of this month. And then following those hearings and the receipt of the testimony we receive after each of those, we will schedule hearings in Washington, hopefully for sometime in late May. We plan to hold hearings down in the Gulf May 13. So we have three regional hearings still to hold, and then the final wrap-up hearing will be somewhere toward the end of May in Washington.

Thank you all for your courtesy.

[Whereupon, at 5:27 p.m., the subcommittee adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

R. B. Allen Associates

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March 9, 1995

Comments on S. 39, The Sustainable Fisheries Act

Submitted for the Record of the Field Hearings

Held in Boston, MA and Rockport, ME

On March 4, 1995

My name is Richard B. Allen. I have been a commercial fisherman for thirty years, in various fisheries ranging from quahog hand-raking to deep-sea red crabbing to San Francisco Bay herring seining. I currently own a 44' inshore lobster trap fishing vessel which I operate from the port of Point Judith, Rhode Island. I am also a fisheries consultant with clients that include the Shafmaster Fishing Company, a major operator of offshore lobster trap fishing vessels. I have been active and have held various positions in fishermen's organizations over the past twenty years. I am currently a member of the New England Fishery Management Council and a Commissioner on the Atlantic States Marine Fisheries Commission.

I applaud the interest that the members of the Senate Commerce Committee and others have shown in the management of our Nation's fisheries. The comments and questions of the Committee members at the public hearing in Rockport, Maine on March 4, 1995 demonstrated the members' knowledge and understanding of the fundamental problems facing our fisheries.

While I agree with many of the concepts that are embodied in S.39, I would like to suggest some changes to the proposed language that I believe would be beneficial to the management of our Nation's fisheries.

First, I believe that it is unwise to disadvantage individual transferable quota management in comparison to other limited access programs such as limits on permits and fishing effort allocations. I have become controversial in recent years because of my advocacy of ITQs. The reason that I switched from being an opponent of limited entry to a proponent of ITQ management is because ITQs met many of my objections to limited entry. As a fisherman and as a member of the fishery management system, I find it frustrating that the objectionable features of limited permit and effort allocation systems are being ignored as people focus on ITQs.

For these reasons, my first general suggestion is that you change all references to "individual transferable quotas" to read "transferable fishing allocations", and define transferable fishing allocations to include limited access fishing permits, fishing effort allocations, or quota shares. Fishing effort allocations might be further defined as including "days at sea" allocations, trap allocations, or fishing capacity allocations.

The effect that I would seek in such a change would be to bring other transferable fishing allocation systems under the same guidelines that are proposed to be developed for individual transferable quotas. I would also suggest that the same fee requirements should apply to all allocation programs.

I also believe that it would be a mistake to delay the approval and implementation of transferable fishing allocation systems pending the development of guidelines relating to such programs. Rather, I would suggest that programs approved prior to the development of those guidelines be required to come into compliance with those guidelines within a specified time period. I consider this change in the proposed language to be important in avoiding a delay in necessary improvements to our Nation's fisheries. A number of important fisheries are in the process of developing transferable fishing allocation systems as their best available alternative to rebuild and maintain the biological and economic productivity of those fisheries. A legislated delay in the approval of transferable fishing allocation systems will throw the management of those fisheries into limbo, with deleterious results.

The issues that are identified in the proposed amendments as being the subject of Secretarial guidelines are being vigorously debated in the development of transferable fishing allocation systems in the Fishery Management Councils. Keeping in mind this process, and the wide latitude of the Secretary to approve, disapprove, or partially disapprove plans, I do not believe that any irresponsible approvals of transferable fishing allocation plans will occur prior to the development of guidelines. Rather, I would expect that the cost of delaying transferable fishing allocation plans in fisheries for which such plans are being developed would be far greater than the cost of bringing those plans into compliance with national guidelines after such guidelines are promulgated.

Many of our fisheries require immediate action to reverse declines in both biological and economic productivity. The fishing industry, the regional management councils, the environmental community, and state and federal fishery management agencies are continuing to grapple with this difficult task on a day to day basis. After having considered and tried many unsuccessful approaches to fishery management, this process is leading many people to believe that ITQs are the best alternative available to accomplish the objectives of the Magnuson Act. I urge you to allow this alternative to move forward as you develop the appropriate guidelines for its use.

I appreciate your consideration of my views and I would be happy to discuss these issues further with you or your staff.



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