

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

Y 4. C 73/7: S. HRG. 104-179

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**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  
BOSTON, MASSACHUSETTS

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



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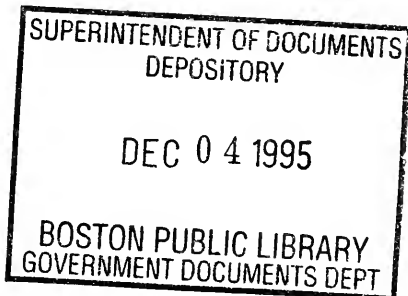
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# HEARING ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SATURDAY, MARCH 4, 1995

U.S. SENATE,  
SUBCOMMITTEE ON OCEANS AND FISHERIES COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Boston, Massachusetts*

The subcommittee met, pursuant to notice, at 9 a.m. in the auditorium of the New England Aquarium, Central Wharf, Atlantic Avenue, Boston, Massachusetts 02114. The Honorable Ted Stevens, chairman of the subcommittee, presiding.

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. Good morning and thank you very much for coming. First, I am Ted Stevens from Alaska. Let me yield to Senator Kerry. We are on his home turf.

## OPENING STATEMENT OF SENATOR KERRY

Senator KERRY. Senator Stevens, thank you very much. First of all, let me express my appreciation to you on behalf of the historical and deeply concerned fishing community here in Massachusetts. The congressional delegation and all of our citizens are extremely pleased that you have taken time out of a very, very busy schedule today to come here and then to go to Maine for the Fishermen's Forum.

I have had the pleasure of working with you for the 11 years that I have been in the Senate—you and I have worked together on these issues for that entire period of time. You have been a leader, not only fighting for the interests of the Northwest Pacific, and Alaska particularly, but nationally with respect to marine issues. Among our previous efforts were the United Nation's ban on driftnets, the Magnuson Act reauthorization, Marine Mammal Protection Act amendments of 1994 and a host of other things. You have really been tremendous, and I think everybody here owes you a great debt of gratitude for your concern.

Needless to say, we are here at another moment of deep concern and it is appropriate to be here at the New England Aquarium. We

are very appreciative of the Aquarium and all of its leaders for welcoming us and providing this forum.

The world's fisheries are under increasing stress. Recent studies have shown that out of the 17 major fisheries in the world, 13 may be approaching a state of distress. There is no question that the current fishing effort, globally, exceeds the capacity of the oceans at the current moment to provide fish. That does not mean there are not techniques that could not be employed to try to harvest more efficiently, to conserve better and to preserve the fisheries for the long run.

But it is very, very clear that all governments are challenged and all fishermen are challenged by the trend lines. You can look at other parts of the world, such as Iceland, Canada and Great Britain, where they have a fishing base and you will see significant efforts, including vessel buy-back and other programs, to try to deal with the current problem.

We are here today to listen and to learn and to explore, but most particularly to discuss the Sustainable Fisheries Act which Senator Stevens and I have introduced to reauthorize the Magnuson Act and try to deal with the current fishing crisis.

Now, let me just say very directly; yesterday a \$2 million pilot buy-back project was announced by the National Marine Fisheries Service together with the members of our delegation. We want to say, up front, that we know that this program does not provide the necessary money. We all know that \$2 million will not go very far. We all know that there is much more to be done. So we do not need to dwell on those aspects. This is literally a pilot project.

It is a project to test the waters and to try to find out the demand—how many people may want to participate and whether there is the capability to put an effective program together. If so, how do you value boats, how do you approach different fisheries, and how would you put together in a responsible way a program that is larger? Hopefully, the pilot program will provide an adequate base of data which we are always being accused of not having. It will provide an adequate data base to permit us, together with your input, to make smart decisions.

The reason the program is being announced as a pilot project with an outreach period is because too often there are criticisms that the government just dumps programs on fishermen without listening to them. So there is a period here for John Bullard, who will be at the Maine meeting today, to listen to the fishermen. During this period, we want to hear from people who are affected to try to fashion it in the most intelligent and sensitive way.

Along the same lines, I know Senator Stevens is concerned about several issues. There is a lot of concern about individual transferable quotas, about the council decisionmaking process, and about how we can come to cloture more rapidly on some of the decisions.

But the bottom line is this—and all of us in facing the future and fulfilling our responsibility have to face it—the oceans represent the finite resource. It is a life system and each part of it is dependent on others for replenishment. We have to be sensitive to that reality as we approach this on-going commercial endeavor to feed ourselves. If more and more human beings demand more and more



fish and an uncontrolled number of people go out to meet that demand, there is a very clear end game and it will be disastrous.

So all of us know that, like any other finite resource, marine fisheries must be managed. We are here today to try to assess how we can do that least intrusively, most intelligently, most sensitively with a view to keeping fishing part of the history of this State, to keeping people fishing long after we are gone and to preserving the extraordinary ecosystem that we have been made the conservators of. That is the goal of today's hearing.

Thank you very much, Senator Stevens.

Senator STEVENS. Thank you, Senator Kerry. I am delighted to be back in Boston again. I recall that at the time when we were considering the original Magnuson Act, Senator Magnuson asked me to hold hearings around the country, and we did hold hearings here in Boston and in Providence and on the West Coast and in Alaska.

Senator Kerry and I introduced this legislation in the last Congress. With the change of control of the Congress, one of the things I want to make sure people know that as far as fisheries policy is concerned, we do not countenance politics. I was in the minority at the time that Senator Magnuson asked me to hold the hearings, as I have mentioned, before the Magnuson Act was passed, and we have continued the policy of bipartisanship on all fisheries questions. This bill that we have introduced, S. 39, is about the same as the one we introduced last year. It has not been affected by the election, and our relationship will not be affected by the election. The only difference is that I get to hold the gavel, but that is about all there is to it right now.

We have worked together, Senator Kerry and I. We now have a new subcommittee. We have renamed it the Oceans and Fisheries Subcommittee. Just as Senator Kerry has made sure that my constituents were able to speak to the committee and subcommittee, I have assured him we will do the same as far as you all are concerned. We want to finish this process that we began. This is not the first hearing we have had on the bill. We are continuing really from the first ones that we started in 1993.

I do welcome Congressman Peter Torkildsen here and I will turn to him in just a minute. We expect Congressman Frank to join us in a few minutes. I am pleased to be able to thank Admiral Henn and the support group we have from the Coast Guard who are making it possible for us to not only be here this morning, but also to be in Maine this afternoon and then to be back to Washington, D.C. so we can spend Sunday with our families.

We are here to listen to you. We are not going to get into too much of a dialog with you. We hope to have time before we are through to listen to anyone that wants to make a comment, and we are here to get comments on S. 39. John Kerry has mentioned the buy-back section and the fisheries disaster relief section. They are important in New England and that is why they are there.

We have different regions in the country and the Magnuson Act tried to recognize the fact that each region must have the right to try to determine its own solutions to its fisheries problems. We have additional copies of the bill that we have introduced, S. 39, and the statements made by Senator Kerry and myself when this

bill was reintroduced this year. Copies of our introductory statements have been made available. Witness statements have been made available to us. We are going to leave the record open for another week so that anyone who wants to give us written testimony and who does not make comments today because of our time constraints may send them. I would ask that you send them to Senator Kerry and he will give them to our staff to put in the record.

Now, one of my tasks as chairman is to explain the system. Those two lights are the lights for witnesses and for people to comment. We have agreed to a 5-minute limitation. We ask witnesses to be respectful of the time limitations with the exception of Mr. Schmitt. He is our first witness, and we expect him to speak for the Administration. Is Rollie here?

Mr. SCHMITTEN. I am here.

Senator STEVENS. Yes, Rollie is here. We will not put that burden on the spokesman for the Administration, but after that all of us who speak will have a 5-minute limitation. I must, unfortunately, tell you that despite the beautiful day you have given us here in Boston, we will leave this room at 11:30 a.m. so that we can catch the plane to get to the meeting in Maine. There is a regional meeting in Maine, and we intend to be there in time to hold our hearing this afternoon.

Now, first let me ask Peter, do you have any comment to make?

**STATEMENT OF HON. PETER G. TORKILDSEN, U.S.  
REPRESENTATIVE FROM MASSACHUSETTS**

Mr. TORKILDSEN. Yes. Thank you, Chairman Stevens and Senator Kerry. I will just summarize my opening statement to keep as much time possible for witnesses to speak. I appreciate the Senate subcommittee holding this hearing in Boston. It is obviously essential. While you travel all the way from Alaska, we have much in common on this issue. And as you said on the Senate side fisheries has always been a bipartisan issue, so it is on the House side as well. The companion bill is H. 39, the reauthorization of the Magnuson Act filed by Chairman Don Young who also happens to be the Congressman at-large from Alaska.

This is an issue though of, I think, impending importance to New England just because of the damage that the New England Fishery has sustained. We have seen the catch of certain groundfish drop to perilously low levels. We have seen people have their livelihood jeopardized sometimes because of mismanagement and sometimes because of regulations that do not appear to make the greatest amount of sense. While we are talking about the reauthorization of the Magnuson Act today, I hope witnesses will address all of those related problems.

I also agree that we need to have the local councils as part of the management tool. We want people who are closest to the industry and closest to the resource to have a say in that. But at the same time, we want to make sure that those decisions that they make are not being impeded by a larger, and sometimes inaccurate, set of concerns. We want that decisionmaking to remain on the local level.

I think we also have to look at continuing alternatives to what have been traditional groundfish utilization. We have to look at al-

ternative species promotion and we also have to look at alternative sources of producing fish and that includes aquaculture. I know that is sometimes a controversial statement to make with some people who have been in the fishing industry, but I think we have to look at that as countries around the world like Canada, Norway, Australia and others have looked at aquaculture.

We need to continue that promotion of underutilized species as well. Certainly while those fish are out there in great abundance, there is no incentive to catch them unless we have the markets for them. And so promotion of those markets is important as well.

I earlier expressed my concern that the Clinton administration had recommended cutting out funds for the Northwest Atlantic Fisheries which was designed to promote both those areas and I hope that we can touch upon that as well.

Other than that, Mr. Chairman, I will just submit my statement for the record. Obviously, the Magnuson Act was important in the 1970's to address the problems of the 1970's that the fishing community faced. We now have some different problems but they equally need to be addressed by the reauthorization of the Magnuson Act and I look forward to today's testimony.

[The prepared statement of Mr. Torkildsen follows:]

STATEMENT OF THE HONORABLE PETER G. TORKILDSEN  
Regarding the reauthorization of the  
Magnuson Fishery Conservation and Management Act  
March 4, 1995

I would like to begin by thanking Chairman Stevens for holding this hearing on the Magnuson Act in Massachusetts. Boston is a long way from Alaska, but our two states will be directly impacted by the legislation we address today.

The Magnuson Fishery Conservation and Management Act was originally created to address the needs of U.S. fishermen, and reduce foreign fishing off the coast of the United States. The Act established a 200 mile zone, which the United States would regulate and manage in order to prohibit foreign fishing vessels from exploiting our resource. The Act was a triumph for fishermen across the country, who were seeing their livelihood scooped up by foreign vessels.

Today the Magnuson Act must address many challenges to the fishing community in addition to foreign competition. In New England, several fishing areas, including Georges Bank, are closed to commercial fishing for what looks to be an indefinite period. The closure of Georges Bank has left

many fishing families in a state of crisis and uncertainty. While serious measures are needed to effectively manage fisheries, we must also consider the economic ramifications to families and communities which depend on fishing for their livelihood.

Fisheries management is much more than conservation and regulation; it must also address economic development and opportunity, as well as meet the transition needs of those families impacted by the management plan. The local Management Councils, the National Marine Fisheries Service, and Congress must pursue comprehensive economic relief programs for fishing families to survive during the difficult period ahead.

There has been much discussion about a vessel buy back program to allow fishermen to get out of a fishery without first being starved out. Yesterday, Senator Kerry and I met with officials from the Commerce Department to discuss a pilot program to begin vessel buy backs in New England. This program is only a small first step designed to assess the demand for a buy back program.

Aquaculture must also be investigated as part of any comprehensive

solution to the problems we now face. Aquaculture will open up opportunities for those who would like to continue working in the fishing industry but realize that they must diversify and use new technologies to harvest fish. NOAA and the National Marine Fisheries Service must communicate their commitment in support of aquaculture to other agencies involved in the permitting process to ensure that permits are not held up as a result of bureaucratic delay and inaction.

Additionally, we should promote new markets for under-utilized species such as mackerel and herring to provide fishing families with some income to help them make ends meet during this very difficult time. This includes assisting onshore processors develop the technology to process these underutilized species and tapping into markets overseas.

I am very disappointed that the Clinton Administration chose to eliminate funding for the Northwest Atlantic Fisheries Reinvestment Program for FY 96. This program, which had an FY 95 authorization of \$2.8 million, is specifically designed to help promote underutilized species and aquaculture. These are exactly the programs we need to be investing in today. I will work with my colleagues on the Fisheries, Wildlife and

Oceans subcommittee to restore funding for this important program.

On a local note, I have requested that the Department of Commerce investigate an Intergovernmental Personnel Agreement (IPA) to enable the employees at the National Marine Fisheries Service's Research Lab in Gloucester to remain employed by NMFS after the ownership of the Lab is transferred to the Commonwealth of Massachusetts. An IPA would enable NMFS to participate in a proposed consortium involving the University of Massachusetts, and Salem State College.

This proposed consortium would conduct research at the Lab to help replenish the stocks in New England. Employees of the Lab will be able to contribute directly to research which will benefit their community. The expertise these scientists have amassed must remain in Gloucester.

Also in the area of fishery research, the subcommittee on Fisheries, Wildlife, and Oceans recently approved an amendment which will provide the basic framework for New England to participate in Atlantic tuna stock assessments, where the bulk of Atlantic tuna fishing takes place. Currently, the Atlantic bluefin stock assessments are conducted at the

Southeast Fisheries Center in Miami, Florida, while 90 percent of the annual catch is produced by New England fishing vessels. It makes good sense to conduct fishery research as close to the fishery as possible.

Both the House and Senate must include provisions within the Magnuson act to keep management of fisheries local. Each fishery has different complexities and problems which are best addressed with local input and evaluation.

We must reauthorize the Magnuson Act. The new Act must address the problems of fishing communities in the 1990's, just as the original Magnuson Act addressed the problems of fishing families in the 1970's, when the Act was first authorized.



Senator STEVENS: Thank you very much. We will now turn to the first witness, Mr. Rolland Schmitten, who is the Assistant Administrator of Fisheries for the National Oceanic and Atmospheric Administration. As I said, we are not going to put the time barriers on you. You may proceed.

**STATEMENT OF ROLLAND A. SCHMITTEN, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Mr. SCHMITTEN. Thank you very much, Mr. Chairman, Senator Kerry and Congressman Torkildsen. I am Rollie Schmitten, the director of NOAA's National Marine Fisheries Service. I do appreciate the opportunity to present the views of the Administration on S. 39, the reauthorization of the Magnuson Act.

And just personally let me say that the passage of this bill will be a major achievement for the Congress, for the Administration, for the fishing industry and most importantly for the fish.

Mr. Chairman, I will honor and be brief to be equitable to the others. But I would like to compliment both you and Senator Kerry for introducing this legislation. It includes the necessary major steps in our effort to rebuild sustainable fisheries and to ensure that there will be no more New England groundfish disasters in our future. Your bill certainly contains amendments to the Magnuson Act that will improve the stewardship of our Nation's marine resources.

Before commenting directly on the bill, let me put some specific suggestions that we have for amending the Magnuson Act in context by talking about the situation as we find it here in New England in the on-going effort to deal with these problems. In my 20 years as a fisheries manager, it is the most critical fisheries issue that this Nation faces. And as you know, the severe reductions in important groundfish species and sea scallops are creating profound economic hardships for many fishermen in this area. In particular, recent declines in stocks have brought haddock to the point of commercial extinction, and they are being followed now by cod approaching that same condition.

Last year, based on a recommendation from the fisheries scientists and the New England Fisheries Management Council, we implemented an emergency action during the first 6 months of 1994 to protect haddock by closing a large spawning area to trawling.

The next action, amendment 7, is expected to be submitted by the Council this summer and its main objective will be to rebuild stock abundance of haddock, cod and yellowtail flounder. These species were the bread and butter species that this Nation was founded upon, and amendment 7 is designed to build the levels capable of producing their long-term potential yield. Those are very similar to the overfishing definitions in S. 39. According to the fisheries scientists, management measures are necessary that will reduce fishing mortality rates as close to zero as possible over a sustained period.

Now, I should mention that although this situation has spurred the New England Council and my agency to take extraordinary

measures to restrict harvests and limit the fishing effort, there is a human element in this tragedy and we are working on providing meaningful assistance to displaced fishermen. We support the concept of transitioning to sustainable fisheries which is contained in S. 39. NOAA announced, early in the week, the availability \$4.5 million dollar in F.I.G, Fishing Industry Grants.

Again yesterday, we announced a \$2 million demonstration buy-out program. Let me footnote what Senator Kerry has said. It is a program aimed at addressing overcapitalization by bringing fishermen, the States, the councils, and the congressional interests together to help look at the design of such a prototype program. It admits that government does not know everything.

As I said earlier in my testimony, there must be no more New England groundfish disasters in the future. Unless we take aggressive action in the Magnuson Act to ensure that this does not happen, we will likely encounter similar biological and economic disasters in other fisheries. I believe that we need to seek to achieve our goals by concentrating on two areas. First, by refocusing on developing more and better scientific information with which to guide our fisheries managers.

Second, to undertake an aggressive approach to stewardship of our resources to rebuild overfished stocks and maintain them at a maximum sustainable level. This means being conservative in the management of fisheries today to assure sustainable levels in the future. It also means the use of management approaches that discourages wasteful fishing practices and investment in more fishing vessels than are needed to harvest the available fish.

We enthusiastically support measures in S. 39 that will result in the termination and the prevention of overfishing. Requiring actions of our regional councils within 1 year of notification that a fishery is overfished is a significant step. Maintaining stocks at or restoring stocks to their maximum sustainable yield is something that has been long needed in the Magnuson Act. We cannot afford to continue the current practices permitted under the Magnuson Act which allow stocks to legally be fished down to or managed at the point that overfishing occurs. We can do better. The Nation deserves better.

The Department strongly supports a concept of identifying essential fish habitat and providing for improved conditions—I am sorry, improved consultations with other agencies. You know, I have often said that we can continue to regulate as fisheries' regulatory managers and put the fishermen out of business, and we will not necessarily recover the fish unless we do something about their habitats. Given the importance of this issue, we are pleased to note that conservation communities and the fishing industry representatives have been working with our agency toward enhancing habitat conservation as a part of this reauthorization and we support those efforts.

We also support the provision in the bill that deals with bycatch. Much like habitat, this is a very serious threat to achieving full benefit of our marine resources. An emphasis on bycatch through a mandatory requirement in our fisheries management plans to contain information on bycatch is well taken and I believe essential. In addition to the provisions of S. 39, we recommend that a

new national standard, National Standard 8, be included to require all fisheries management plans to minimize bycatch.

We strongly support the inclusion of user fees associated with the individual harvest programs as suggested in S. 39. Establishment of a fee on the value of fish allocated under an individual harvest share would recover the cost associated with the specific form of management and enforcement. Since the benefits accrue directly to the holder of the ITQ or the ITQ to the exclusion of others, it is only reasonable to expect that these measures be paid by fees from the beneficiaries of the programs rather than from the general funds. As the chairman and I have talked about several times, it is imperative that these fees be dedicated to the management and the conservation of marine fisheries with a large portion of the fees going back to the region from which they were derived.

The department supports inclusion of strong provisions that would address the appearance or the possibility of conflict of interest on our fisheries management councils. The provisions in S. 39 are certainly a step in the right direction, and we would like to work with the committee to develop additional language to even strengthen these provisions.

Finally, we strongly urge the inclusion of a nationwide data collection program similar to that that we proposed last year, in addition to the provisions for a commercial fishing vessel registration system that is contained in the bill. To improve the management of our marine fisheries, we need to gather data in a consistent form and manner across the Nation to provide the underpinnings of various analyses that are required by the Magnuson Act and other applicable laws. Our intent of such a program is not, and that again I say, is not to increase the reporting burden on our fishermen. Already it seems that we are requiring them to become fishery bureaucrats. Rather we seek to simplify and reduce it.

Mr. Chairman, I want to thank you again. This concludes my testimony. We support strongly the reauthorization of the Magnuson Act and we look forward to working with you and the committee and their staffs, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Schmitten follows:]

TESTIMONY OF

ROLLAND A. SCHMITTEN  
ASSISTANT ADMINISTRATOR FOR FISHERIES  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
U.S. SENATE

FIELD HEARING  
BOSTON, MASSACHUSETTS  
MARCH 4, 1995

Mr. Chairman and members of the Committee: I am Rollie Schmittten, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). I appreciate the opportunity to present the views of the Department of Commerce (Department) on reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and S. 39, the Sustainable Fisheries Act.

Mr. Chairman, I would like to compliment you and Senator Kerry for introducing this legislation. S. 39 includes major steps necessary in our efforts to build sustainable fisheries and ensure that there will be no more New England groundfish disasters in the future. Your bill contains amendments to the Magnuson Act that will improve the stewardship of our Nation's marine resources.

Before discussing our proposals for amendment of the Magnuson Act, I would like to touch on the current situation in the New England fisheries and ongoing efforts to deal with these problems. As we all know, severe reductions in stocks of important groundfish species and Atlantic sea scallops in waters off New England are creating profound economic hardships for many fishermen who have long been dependent on these fisheries. In particular, recent precipitous declines in stock abundance have brought haddock to the point of commercial extinction and have caused cod to approach that condition. This situation has spurred the New England Fishery Management Council and the National Marine Fisheries Service to take extraordinary actions to restrict harvests and limit fishing effort to enhance the likelihood that these species will recover.

Based on a recommendation of the New England Council, we implemented an emergency action during the first six months of 1994 designed to protect haddock by closing a large spawning area to any trawl gear activity, and we established a possession limit for haddock of 500 pounds. Again, supported by the New England Council, Amendment 6 to the Fishery Management Plan (FMP) for the Northeast Multispecies Fishery was developed by NMFS as a Secretarial Amendment and extends the possession limit of 500 pounds for haddock beyond the emergency action timeframe.

Based on continuing bleak stock assessments for groundfish species presented at the August 1994 Council meeting, a new emergency rule was implemented in December 1994, which established more closed areas within which groundfish harvest is prohibited, along with other measures to protect important groundfish stocks. These stopgap measures have provided the Council time to develop a new framework action under the FMP. This will allow some of the emergency rule's measures to continue in effect until a more permanent effort to rebuild the stocks can be put in place under Amendment 7 to the FMP.

Amendment 7 is expected to be submitted by the Council for Secretarial review this summer. Its main objective will be to rebuild stock abundance of haddock, cod, and yellowtail flounder to levels capable of producing their long-term potential yield. According to fisheries scientists, management measures are needed that will reduce fishing mortality rates as close to zero as possible over a sustained period. Scientists estimate it may take as many as ten or more years for haddock stocks to recover and nearly as long for cod and yellowtail flounder to recover. These management decisions have been very difficult. NMFS and the Council believe that strong measures are essential to restore these fisheries to reasonably high sustainable yields.

Although the fishing industry, Council and the National Marine Fisheries Service have worked very hard to deal with the current

situation in New England, I believe that the Congress and the Administration must work closely together to ensure that this situation does not happen again. As I said earlier in my testimony, there must be no New England groundfish disasters in the future. Unless we take aggressive action in the amendment of the Magnuson Act to ensure this does not happen, we will likely encounter similar biological and economic disasters in other fisheries around the Nation. The economic incentives and pressures to overfish are too great for us to stand idly by. We must forge strong, even ironclad, stewardship principles for inclusion in the Magnuson Act to ensure we not only avoid future disasters but also reap the maximum benefits, consistent with conservation of the resource, from the fisheries for the Nation. By wisely managing fishery resources for the greatest long-term benefits possible, we will increase the Nation's wealth and, in turn, the quality of life for members of the recreational and commercial fishing industries and dependent communities. Additional benefits of increased jobs, increased economic activity and greater supplies of safe, wholesome seafood will also be realized.

I believe that we must seek to achieve our goals by concentrating on two areas: (1) refocusing on developing more and better scientific information to guide policy development and fishery management policies and planning, rather than letting controversy and uncertainty drive decision-making, and (2) undertaking an

aggressive approach to stewardship of our trustee resources to rebuild overfished stocks and maintain them at maximum sustainable levels, thereby avoiding the enormous economic and social consequences that accompany attempts to repair damage to resources after it occurs. This means being conservative in the management of fisheries today to assure sustainable levels of harvests in the future. It also means the use of management approaches that discourage both wasteful fishing practices and the investment in more fishing vessels than are needed to harvest the available fish.

The first area of action can largely be accomplished through our current authority. We have improved, and will continue to improve, our scientific data collection activities, resource surveys, biological studies, analyses and modeling of fish stocks, and advanced fishery predictions. Our proposed Fiscal Year 1996 budget includes an increase of more than \$23 million for data collection programs, making them a top priority. Progress in the second area is critical and will require amendment of the Magnuson Act, coupled with a refocusing of in-house efforts, to achieve our goal of sustainable fisheries.

In order to achieve this second area of rebuilding and maintaining stocks at maximum sustainable levels, we need the help of Congress through amendment of the Magnuson Act. I believe that many of the provisions in S. 39 are major steps in



the effort to ensure effective stewardship. Foremost, we support strong attention to conservation issues. We enthusiastically support measures that will result in the termination or prevention of overfishing. Requiring action by a Regional Fishery Management Council within one year of notification that a fishery is in an overfished condition is a significant measure. Inclusion of provisions for preventing overfishing and rebuilding programs that emphasize maintaining stocks at, or restoring stocks to, their maximum sustainable yield on a continuing basis is critical to ensuring the long-term productivity of fishery resources. We cannot afford to continue the current practices permitted under the Magnuson Act, by which stocks are legally allowed to be fished down to, and managed at, the point that overfishing occurs. We can do better. The Nation deserves better.

The Department supports strongly the concepts of identifying essential fish habitat and providing for improved consultations with other agencies. Regulatory measures alone will not restore our fisheries. Measures to identify and protect essential fish habitats will provide the long-term foundation necessary to sustain viable commercial and recreational fishing industries. Any progress we make in addressing the issues of overfishing and rebuilding depleted stocks will be short-lived if we do not ensure adequate fish habitat. Given the importance of this issue, we are pleased to note that conservation community and

fishing industry representatives have been working together with NMFS towards enhancing habitat conservation as part of this reauthorization. We support these efforts.

We also support the provisions in the bill that deal with bycatch. Much like habitat degradation, this is a very serious threat to achieving full benefits from our living marine resources. Large bycatches of undersized and non-target species have significantly reduced the populations of many of our marine fish stocks and other marine organisms. Emphasis on bycatch through a mandatory requirement for FMPs to contain information on bycatch is well taken and essential in our view. In addition to the provisions of S. 39, we recommend that a new National Standard be included to require all fishery management plans to minimize bycatch.

In addition to these amendments, we need to, and will, seek innovative ways to reduce bycatch. However, measures such as incentives and harvest preferences must be designed carefully to prevent "due process" problems. For example, we do not believe that such programs could prohibit some fishermen from receiving allocations of, or access to, fish stocks because of their individual bycatch levels without also providing for some sort of administrative hearing in advance of an agency decision.

While the Department supports many of the provisions in S. 39, it is opposed to section 107(h) that prohibits the Secretary from issuing permits to authorize the catching or harvesting of Atlantic mackerel or herring by foreign vessels before December 1, 1999. The provision may be inconsistent with the United Nations Convention on the Law of the Sea, which the United States has signed and intends to submit for advice and consent to ratification. Additionally, the provision may prevent establishment of joint ventures between the U.S. fishermen and other countries for these species, is likely to affect negatively our Governing International Fishery Agreement relationships, and may affect current fishing agreements between the U.S. and other countries regarding U.S. fishing in foreign waters.

With the collapse of the New England groundfish fishery, we expect U.S. fishermen to harvest an increasing amount of these underutilized species in the coming years. Therefore, we do not foresee a specification of a total allowable level of foreign fishing for these species in the next few years. In fact, the Mid-Atlantic Council recently recommended, and the Secretary of Commerce published, a proposal for a zero total allowable level of foreign fishing for Atlantic mackerel. The Department understands the need to allow U.S. fishermen to harvest these species and develop markets for them.

Many fishermen will be displaced by the collapse of the New England groundfish fishery, and we are presently working to provide meaningful assistance to them. We support the concepts contained in S. 39 of transitioning to sustainable fisheries and fisheries disaster relief. These are complex issues but we are prepared to work with your committee to develop meaningful and lasting solutions, some of which may be made easier by our ongoing efforts. This week, we announced the availability of \$4.5 million in a second round of Fishing Industry Grants to assist the New England fishing community in its economic recovery. We also announced our plan for \$2 million in aid under a demonstration buyout program, intended to compensate fishermen for the removal of permits or vessels from the fishery. I would be pleased to answer any questions that you or the committee members might have about these programs upon the conclusion of my testimony.

We strongly support the inclusion of user fees associated with individual harvest share programs as provided for in S. 39. Establishment of an annual fee on the value of fish allocated under individual harvest share programs, such as individual transferable quota programs (ITQ), would recover costs associated with this specific form of management. Effective implementation of ITQ programs requires additional strict enforcement and other measures to ensure that the recipients of ITQs receive the benefits that are expected to accrue from such programs. Since

such benefits will accrue directly to the holders of ITQs, to the exclusion of others, it is more equitable to fund such measures from fees paid by the beneficiaries of the program rather than from the general receipts of the Treasury to which all taxpayers contribute. Costs associated with administering ITQs are substantial -- \$3.5 million per year are estimated for the Alaska halibut-sablefish program alone -- and should not be borne solely by appropriated funds.

As part of its Fiscal Year 1996 budget request, the Department is asking for authority to collect a fee on the value of the fish authorized to be harvested under ITQ programs, similar to that in S. 39. We estimate that such a user fee would generate approximately \$10 million starting in Fiscal Year 1996. It is important that these fees be dedicated to the management and conservation of marine fisheries, with a large portion of the funds going back to the region from which they were derived. Specifically, the Department suggests that such funds be used for programs important to, and directly benefiting, the fishing industry, including: collecting, processing, and analyzing scientific, social, and economic information; placing observers onboard domestic vessels; improving enforcement; and educating resource users.

The Department supports inclusion of strong provisions that would address the appearance or possibility of a conflict of interest

on the regional councils. While the provision in S. 39 is a step in the right direction, we would like to work with the Committee to develop appropriate language to strengthen this provision.

We strongly urge the inclusion of a nationwide data collection program similar to that proposed in last year's Administration bill, in addition to the provision for a commercial fishing vessel registration system contained in the bill. Our current authority is limited to the voluntary submission of data to individual fishery management plan recordkeeping and reporting provisions, or to individual fishery data collection programs in advance of a plan. To improve the management of our marine fisheries, we need to gather data in a consistent form and manner across the Nation to provide an underpinning for the various analyses of impacts that the Magnuson Act and other applicable law require. Our intent with such a program is not to increase the reporting burden on fishermen; rather, we seek to simplify and reduce it. One significant benefit of a nationwide program to fishermen would be to prevent requirements for various logbooks that are often redundant, complex, and duplicative of the same data in different formats. This would allow the Secretary to integrate the current data collection programs of NMFS, other Federal agencies, the states, and the fisheries commissions into a comprehensive and consistent nationwide data collection and management system.

Thank you, Mr. Chairman. This concludes my testimony. We support reauthorization of the Magnuson Act, and we look forward to working with you and the Committee in crafting meaningful improvements to S. 39. I would be happy to answer any questions you or other members of the Committee may have.

Senator STEVENS. Thank you very much. I see that Congressman Frank has arrived. We welcome you.

Mr. FRANK. Thank you.

Senator STEVENS. We are glad you could join us. Do you have some statements that you would like to make as we proceed now?

Mr. FRANK. Well, having come late, Senator, I will just—I do not want to interrupt the proceedings. I appreciate the courtesy. I may do that through my questions.

Senator STEVENS. Good. All right. If there is no objection, let us just go through the witnesses. We have here five witnesses plus Mr. Schmitt and if we go through the statements, then we can ask questions of the whole panel as we proceed.

First, let me recognize the mayor of the city of Gloucester. I will never forget my first day of law school when I went out on a case in the city of Gloucester. We are happy to have Mayor Tobey here and we would be pleased to recognize you, Mayor.

**STATEMENT OF BRUCE TOBEY, MAYOR AND CHIEF EXECUTIVE OFFICER OF THE CITY OF GLOUCESTER, MASSACHUSETTS**

Mr. TOBEY. Thank you, Senator. I suspect given history we probably lost that lawsuit but we do not lose them these days.

My name is Bruce Tobey and I am the mayor and chief executive officer of Gloucester, Massachusetts. I want to thank you all for being here in Boston today to receive testimony on S. 39, the Stevens-Kerry Sustainable Fisheries Act. But first I would like to give you some brief background information on Gloucester so you can understand, as Senator Kerry does, my city, its fisheries heritage and its current state of affairs.

Today a community of some 28,000 people, Gloucester was settled in 1623 by members of the Dorchester Bay Company. What drew the Dorchester Bay Company to our shores? The magnets were the rich supply of codfish then in our waters, and our fine harbor in which they could safely land, salt and dry their catches.

But the past was prologue to the present. The early years of the fishing industry in Gloucester were hard, just as they are today. History records the ultimate financial loss of the Dorchester Bay Company at 600 pounds in its Gloucester fisheries adventure. Thus, our noted local poet, Charles Olsen, noted that "it cost thirty thousand dollars to get Gloucester started."

The once fisheries-dependent economy of Gloucester has changed. We have diversified greatly over the years, adding substantial industrial, tourism and service segments to our local economy. And to the extent we still process fish, much of it is not caught by our own fleet but instead is imported in frozen blocks from Iceland or the Pacific Northwest.

Hence, neither the 1994 gross sales of an industry leader like Gorton's of Gloucester, well in excess of \$200 million dollars nor those of a new face to the industry, Good Harbor Fillet, approximately \$10 million in 1994, figured, in any way, as a benefit to the bottom lines of Gloucester's fishing boats.

But nevertheless, the heart and soul of Gloucester still remains closely identified with our fishermen, fewer in number perhaps than in our past, but nevertheless as proud as they were in her



heyday. Yet many in Gloucester's fleet are challenged now as never before. Federal fisheries policies of the 1970's and 1980's and their seductive incentives lured many in our fishing industry to invest heavily in the groundfishing industry, thereby sacrificing the diversity that had previously been the strength of our fisheries in Gloucester.

Given the collapse of the stocks which have sustained groundfishing off our shores, boats which account for one-half of Gloucester's landings are left high and dry. Some 3 dozen offshore Gloucester draggers have nowhere to turn. Their crews and the families they support are at perilous risk.

Please understand, these men want to continue to ply their trade as fishermen. They know that diversification and change are the keys to the survival of our fisheries and the restoration of our local fisheries economy. And please remember, our fishermen too are environmentalists but they need your help. The filing of S. 39 is cause for hope. But S. 39 needs to evolve further if it is to preserve and foster the American fishing industry into the twenty-first century and beyond.

What is needed? Well, Angela Sanfilippo, my colleague in government as I would call her in Gloucester, the president of the Gloucester Fishermen's Wives, will speak in Maine this afternoon and she will speak on the transfer quota issues. I would like to speak instead to four specific points.

First, more transitional aid targeted to benefit entrepreneurs and fishermen rather than savvy grant writers. We preserve an industry and create jobs by creating the investment pools to modernize shoreside equipment and facilities and by retrofitting vessels for entry into the sustainable harvesting of abundant but underutilized species. S. 39 should do this.

Second, market development assistance is critically needed. For example, mackerel and herring stocks are strong but domestic markets are not. Federal procurement and foreign aid programs could pick up the slack while those markets are being built. S. 39 should require this.

Third, waste water treatment considerations continue to hamper value-added fish processing. Fully 75 percent of the jobs which the fishing industry could produce are in processing, packaging and marketing. But Clean Water Act discharge standards and the costs of pretreatment cripple, cripple the redevelopment of this source of jobs. S. 39 should provide funding assistance to deal with these Federal pretreatment requirements, just as critically needed Clean Water Act reauthorization should provide desperately needed regulatory relief.

Fourth, a vessel buy-back program is needed but as a last resort for fishermen who otherwise would face financial ruin. But S. 39 does not go far enough. Fifty percent of Federal funding is inadequate and financing the balance by taxing the catches of those who remain in the fisheries is unfair. I confess to not reading all of S. 39, but I read enough to find new Federal taxes which could consume as much as 10 percent of the value of fishermen's catches. And by the way, it contains no provision whereby the banks which would benefit from these buy-outs are in any manner, shape or form required to reinvest the proceeds of their pay-backs and the

local economies which are seeing assets stripped away. Such an inclusion in S. 39 is critical to the local economies which would otherwise see draining away of valuable resources. In these areas S. 39 should be fixed.

I hope that these insights, together with those you will shortly receive from others here today, will assist you in your deliberations. As you go about your work on this project, work which we in Gloucester greatly appreciate, my city stands ready to work with you to restore the health and economic vitality of our domestic fisheries.

Thank you senators and congressmen for your consideration.  
[The prepared statement of Mr. Tobey follows:]



# CITY OF GLOUCESTER

GLOUCESTER · MASSACHUSETTS · 01930

Mr. Chairman and Members of the Committee:

My name is Bruce Tobey and I am the Mayor and Chief Executive Officer of Gloucester, Massachusetts. I thank you for coming to Boston today to receive testimony on Senate 39, the Stevens-Kerry Sustainable Fisheries Act. First, I would like to give you some brief background information on Gloucester so you can understand, as Senator Kerry does, my City, its fisheries heritage, and its current state of affairs.

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Hence, neither the 1994 gross sales of an industry leader like Gorton's of Gloucester, well in excess of \$200 million, nor those of a new face to the industry,

Good Harbor Fillet, pegged in 1994 at approximately \$10 million, figured in any way as a benefit to the bottom lines of Gloucester's fishing boats.

Nevertheless, the heart and soul of Gloucester still remains closely identified with our fishermen, fewer in number perhaps than in her past, but nevertheless as proud as they were in her heyday. Yet many in Gloucester's fleet are challenged now as never before. Federal fisheries policies of the 1970s and '80s and their seductive incentives lured many in our fishing fleet to invest heavily in the groundfishing industry, thereby sacrificing the diversity that had previously been the strength of our fisheries.

Given the collapse of the stocks which have sustained groundfishing off our shores, boats which account for one-half of Gloucester's landings are left high and dry. Some three dozen offshore Gloucester draggers have nowhere to turn; their crews and the families they support are at perilous risk.

Please understand -- these men want to continue to ply their trade as fishermen; they know that diversification and change are the keys to the survival of our fisheries and the restoration of our local fisheries economy. And please remember -- our fishermen too are environmentalists; but they need your help. The filing of S.39 is cause for hope -- but S. 39 needs to evolve further if it is to preserve and foster the American fishing industry into the 21st century and beyond.

What is needed? First, more transitional aid, targeted to benefit entrepreneurs and fishermen rather than savvy grantwriters! We preserve an industry and create jobs by creating the investment pools to modernize shoreside equipment and facilities and by retrofitting vessels for entry into the sustainable harvesting of abundant but underutilized species. Senate 39 should do this.

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but I read enough to find new federal taxes which could consume as much as 10% of the value of fishermen's catches. In these areas, Senate 39 should be fixed.

I hope that these insights, together with those you will shortly receive from others here today, will assist you in your deliberations. As you go about your work on this subject -- work which we greatly appreciate -- the City of Gloucester stands ready to work with you to restore the health and economic vitality of our domestic fisheries.

Thank you for your consideration.

Senator STEVENS. Thank you, Mr. Mayor. No, demonstrations are not allowed at a senate hearing. Please, the witnesses are here to give us their comments and we appreciate the mayor being here.

The next witness is Mr. Jeffrey Morse, Vice President of the Commercial Banking, State Street Bank and Trust Company of Boston. Mr. Morse, are you related to Brad?

Mr. MORSE. No, I am not, not that I am aware of.

**STATEMENT OF JEFFREY MORSE, VICE PRESIDENT OF COMMERCIAL BANKING, STATE STREET BANK AND TRUST COMPANY, BOSTON, MASSACHUSETTS**

Mr. MORSE. Thank you very much. Chairman and members of the committee, I welcome the opportunity to provide testimony on the proposed bill for the reauthorization of the Magnuson Act. As background I am a vice president at State Street Bank and Trust Company as a commercial lender to the fishing industry primarily in New England for the past fifteen years. My testimony will focus on Section 119, the Transition to Sustainable Fisheries, generally, and the proposed vessel buy-back program specifically.

The current emergency closure of George's Banks is the first step in what will likely become the complete closure of all groundfishing in New England that could well stretch into New Jersey. It is anticipated that amendment 7 to the groundfish plan will be in place within the next 12 months and it is unlikely that the grounds will open for at least 5 years. Already at the last New England Fisheries Management Council the stock assessment for the Gulf of Maine was completed that indicated, while not as severe as George's Bank, this area was heavily overfished and that significant cutbacks are required.

This is the beginning of the domino effect that will occur as the fishing effort concentrates in smaller and smaller areas and/or harvests particular species that have current availability and no management plan in effect. The present effort on monkfish comes to mind. As the New England Fishery Management Council attempts to control the fishing effort in the remaining open areas, the net effect will be that all areas will have absolute closures or will be so limited as to have the same effect.

I think that everyone has a natural bias to think that the pending crisis will affect only the large boat fleet. It is my strong feeling that the groundfish industry in New England will be nearly completely destroyed. It is my estimation that the entire industry will be shut down within the next 2 to 3 years. The inability to sell draggers into other regions of the U.S. due to moratoria on licenses will result in the potential for intentional sinkings and the abandonment of boats.

With no outside assistance I am reasonably certain that the above will occur. The loans that State Street has in the groundfish industry represent a very small part of our total loan exposure and we are prepared to deal with them accordingly. Business will go on as usual for State Street but that will not be the case for the thousands of fishermen and all those small businesses that serve the industry. This industry is unique in that the vast majority of the vessels are operated by their owners with no large corporate interests. These owners have their entire lives and all their assets tied

to these vessels. There are not a lot of alternative job options and I, therefore, feel that they will not leave the industry without a fight.

For this reason a buy-back program is of utmost importance. This will solve the two most pressing problems facing all groundfishermen at this time. How can I stay in the business or how can I get out of the business? The buy-out plan in the bill is necessary and needs to be put in place as soon as possible. For those that want to remain in the industry a reduction in the fleet will allow them to remain in a business in which they have invested their life. For those that want to exit via the buy-out, it will enable them to sell their vessel, repay their vendors and retain their dignity.

In order to be effective, a determination must be made to set a level of fishing effort that can result in sustainable fisheries for the available species in the open areas. Available scientific data will aid in predicting this fishing effort.

The next step, obviously, is buying enough of the vessels to allow those remaining to effectively prosecute the fishery on a sustainable basis. In most industry discussions there is a general agreement that fleet reductions must be at least fifty percent and perhaps as much as two-thirds. As a lender to the industry, there has always been a rule that the cost or value of your boat should be equal to what you can earn on it on a gross basis annually. In order to determine a base line for the total value of all vessels engaged in the groundfish industry, a meaningful measure would be that value of the total landed product for any given year.

Any buy-out must be on a voluntary basis to assure that those existing agree to remain out of the industry for some determinate period. All industry people would agree that fishing capability is only partially determined by the boat but mostly a function of the fisherman's ability. One criticism of any buy-out is the artificial enrichment of any individual that owns a valuable asset that is operated ineffectively or occasionally. The key to any buy-out is using available dollars to reduce fishing effort, not just the number of vessels.

One of my customers related to me a simple but effective way for the buy-out to be structured. Anyone interested in voluntarily offering his vessel for sale could only receive up to 100 percent of what that vessel had grossed on a per year based upon the average 3 years production. The seller could bid a percentage of his gross revenue number as determined by tax returns and those bids could be accepted for the buy-back starting from the lowest to the highest. This would be the best indicator of effort reduction based upon actual operating results.

The cost of a buy-out is hard to determine but in my estimation would be between 100 million and 150 million for the groundfishing industry. The bill proposes fifty percent of this cost be funded by the Federal Government and the balance from other sources. I personally think this is eminently reasonable and could be accomplished from contributions by State government and all user groups. Funding sources should include various conservation groups, recreational fisheries and a very significant increase in the commercial Federal fisheries license. Licenses should have a mini-

mum fee and an increase as a percentage of total revenue. This license fee must be paid by all commercial users including charter party boats.

Additional funding could be sought from the salvage of the vessels purchased via the plan. There is significant value in the machinery and equipment aboard the vessels that could be sold. The government, upon purchase of the vessel and the license, would also have a further source of revenue from the subsequent sale of licenses as the fisheries recovered.

One of the biggest criticisms of previous buy-out programs in agriculture has been for the—for they have to be repeated periodically as there are poor controls to stem a new buildup or continue overproduction. If a buy-out plan is implemented, it would coincide perfectly with the requirement for observer coverage for all those remaining in the industry. Enforcement has always been the problem with New England fisheries. Quota, gear restrictions and fish size has never worked effectively due to the large number of participants and the ease of off-loading fish. Observers that are paid by the users are the only effective way to assure that enforcement and such a plan can be easily imposed when employed with a buy-out plan.

In conclusion, I urge the Subcommittee on Oceans and Fisheries to include and fund a buy-out program. The groundfish industry in New England will be desperate for some assistance within the next 2 years or the problem will resolve itself with a heavy human toll. Thank you again for this opportunity to provide testimony.

[The prepared statement of Mr. Morse follows:]





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March 2, 1995

Sen. Ted Stevens  
Chairman, Subcommittee on  
Oceans and Fisheries  
Sen. John Kerry  
Washington, D. C. 20510

Dear Senator Stevens and Kerry:

I welcome the opportunity to provide testimony on the proposed bill for reauthorization of the Magnusson Act. As background I am a Vice President at State Street Bank and Trust Co. as a commercial lender to the fishing industry primarily in New England for the past 15 years. My testimony will focus on Section 119 Transition to Sustainable Fisheries generally and the proposed vessel buy back programs specifically.

The current emergency closure of Georges Banks is the first step in what will become the complete closure of all groundfishing in New England that could well stretch into New Jersey. It's anticipated that Amendment 7 to the Groundfish plan will be in place within the next twelve months and that it's unlikely that the grounds will reopen for at least five years. Already at the last New England Fisheries Management Council (NEFMC) the stock assessment for the Gulf of Maine was completed that indicated that while not as severe as Georges Banks this area was heavily overfished and significant cut backs are required.

This is the beginning of the domino effect that will occur as the fishing effort concentrates in smaller and smaller areas and/or harvests particular species that have current availability and no management plan in effect. (The present effort on monkfish comes to mind). As the NEFMC attempts to control fishing effort in the remaining open areas the net effect will be that all areas will have absolute closures or will be so limited as to have the same effect.

I think that everyone has a natural bias to think that this pending crisis

will affect only the large boat fleet. It's my strong feeling that the groundfish industry in New England will be nearly completely destroyed. It is my estimation that the entire industry will be shutdown within the next two to three years. The inability to sell draggers into other regions of the US due to moratoria on licenses will result in intentional sinkings and the abandonment of boats.

With no outside assistance I'm reasonably certain that the above will occur. The loans that State Street has in the ground fish industry represents a very small part of our total loan exposure and we are prepared to deal with them accordingly. Business will go on as usual for State Street but that will not be the case for thousands of fishermen and all those small businesses that serve the industry. This industry is unique in that the vast majority of vessels are operated by their owners with no large corporate interests. These owners have their entire lives and all their assets tied to these vessels. They don't have a lot of alternative job options and I don't believe they will leave the industry without a fight.

For this reason a buy-back program is of utmost importance. This will solve the two most pressing problems facing all groundfishermen at this time. How can I stay in the business? and how will I get out of the business? The buy-out plan in the bill is necessary and needs to be put in place as soon as possible. For those that want to remain in the industry a reduction in the fleet will allow them to remain in a business in which they have invested their life. For those that want to exit the buy-out will enable them to sell their vessel, repay their vendors and retain their dignity.

In order to be effective a determination must be made to set a level of fishing effort that can result in sustainable fisheries for the available species in the open areas. Available scientific data will aid in predicting fishing effort levels.

The next step obviously is buying enough of the vessels to allow those remaining to effectively prosecute the fishery on a sustainable basis. In most industry discussions there is general agreement that fleet reductions must be at least 50% and perhaps as much as 66%. As a lender to the industry there has always been a rule that the cost or value of your boat should equal what you can earn in gross revenues on an annual basis. In order to determine a base line for what the total value of all the vessels engaged in the groundfishery, a meaningful measure should be what the value of the total landed product for any given year.

Any buy-out must be on a voluntary basis in order to assure that those exiting agree to remain out of the industry for some determinate period. All industry people would agree that fishing capability is only partially determined

by the boat but mostly a function of the fisherman's ability. One criticism of any buy-out is the artificial enrichment of any individual that owns a valuable asset that is an ineffective or occasional fishing vessel. The key to any buy-out is using available dollars to reduce fishing effort not just the number of vessels.

One of my customers related to me a simple but effective way for the buy-out to be structured. Anyone interested in voluntarily offering his vessel for sale could only receive up to 100% of what that vessel had grossed per year based upon an average of the past three years production. The seller could bid a percentage of his gross revenue number as determined by tax returns and those bids be accepted for the buy-back starting from the lowest to the highest. This would be the best indicator of effort reduction based upon actual operating results.


The cost of a buy out is hard to determine but in my estimation would be between \$100 Million and \$150 Million for the groundfishing industry. The bill proposes that 50% of this cost be funded by the federal government and the balance from other sources. I think this is eminently reasonable could be accomplished from contributions by state government and all user groups. Funding sources should include various conservation groups, recreational anglers, and a very significant increase in the commercial federal fisheries license. Licenses should have a minimum fee and increase as a percentage of total revenue. This license fee must be paid by all commercial users including charter party boats.

Additional funding could be sought from the salvage of the vessels purchased via the plan. There is significant value in the machinery and equipment aboard the vessels that could be sold. The government upon purchase of the vessel and license would also have a further source of revenue from the subsequent sale of the licenses as the fisheries recovered.

One of the biggest criticisms of previous buy out programs is the tendency for them to be repeated periodically as there are poor controls to stem a new build up or continued over production. If a buy-out plan is implemented it would coincide perfectly with a requirement for observer coverage for all commercial vessels. Enforcement has always been the problem with New England fisheries; quotas, gear restrictions, and fish size have never worked effectively due to the large number of participants and the ease of offloading fish. Observers that are paid by the users are the only effective way to assure enforcement and such a plan can be easily imposed when employed with a buy out plan.

In conclusion, I urge the Subcommittee on Oceans and Fisheries to include and fund a buy-out program. The groundfish industry in New England will be desperate for some assistance within the next two years or the problem will resolve itself with a heavy human toll. Thank you again for this opportunity.

Very truly yours,



Jeffrey L. Morse  
Vice President

Senator STEVENS. Thank you very much, Mr. Morse. Our next witness is Stephen Drew, the program director for the Fisheries Observer Program at Manomet Observatory in Maine. Mr. Drew, where are you? Down there?

Mr. DREW. Yes, sir.

Senator STEVENS: Massachusetts, pardon me.

**STATEMENT OF STEPHEN C. DREW, FISHERY OBSERVER PROGRAM DIRECTOR, MANOMET OBSERVATORY, MANOMET, MASSACHUSETTS**

Mr. DREW. I thank the senators and the congressman for giving me the opportunity to come here and speak with you and comment on this reauthorization.

My name is Steve Drew. I am from Manomet Observatory in Plymouth, Massachusetts. We have been involved in research in the offshore and coastal waters of the Northeastern U.S.A. since the mid 1970's. Since 1989 we have executed a contract with the National Marine Fisheries Service to deploy observers aboard U.S. fishing vessels from Maine to North Carolina. We have worked co-operatively with more than 600 vessels including trawlers, pair trawlers, gillnetters, scallopers, groundfish longliners, swordfish longliners, lobster boats and fish pot boats. From over 9,000 days at sea we have gathered data on the catch, the bycatch, marine mammal and sea turtle interactions, fishing technology and vessel economics. On a daily basis we deal with N.M.F.S. scientists and fishing industry contacts in more than thirty ports in the Northeast.

Fisheries are highly complex and dynamic entities which are changing fast. Furthermore, in recent years the pace of this change is accelerating at an ever-increasing rate.

Looking at fisheries which target traditional groundfish species such as cod and haddock, it is obvious that recent regulations are causing rapid changes in fishing effort. But what are the effects of the changing effort? A year or two after the implementation of these fishery plans, managers will need to know this.

An example of changing fishing effort which is more relevant to displacement of groundfish vessels concerns monkfish. Five years ago there was little or no directed fishing on monkfish. In fact the first time an observer covered a gillnet trip targeting monkfish in 1991 a scientist who received the data called to tell us that the observer had made a mistake in recording the target species on the trip because at that time a trip directed at monkfish was virtually unheard of. In contrast, now, large numbers of vessels including gillnetters, trawlers and even scallop dredge vessels target monkfish on a regular basis.

How much fishing pressure can monkfish sustain? What are the bycatch rates and the habitat effects of the various gears targeting monkfish? Five years from now will we be facing a collapse of monkfish stocks or a collapse of species taken as bycatch in monkfish fisheries? The answers to these critical questions remain unclear. In recent years similar concerns have been voiced for many other fast-developing fisheries such as Mid-Atlantic gillnetting, pair trawling for large pelagic species, offshore

demersal longlining in the Gulf of Maine and trawling for small silver hake.

As commercial fishermen strive to survive severe biological, regulatory and economic pressures, they are developing and modifying technology in ways not seen before in this region. What are the effects of the new technology on fish stocks, bycatch and habitats? Again, the answers are unclear. Now, I would not suggest a blanket restriction on the development and introduction of new gear types because I think that that would serve to stifle the innovation of selective fishing gear and new methods, and stifle development of fisheries for underutilized species that we need in order to have healthy fisheries in the Northeast. But we do need adequate information.

In many cases fishery scientists and managers are unable to answer these questions because nobody is gathering, analyzing and disseminating enough of the right types of information on a timely basis. Biological, oceanographic, technical, economic and social information are necessary in order to assess what is happening with marine resources and the communities which depend on them.

In recent years there has been a very serious deterioration of several systems which gather fisheries information. As a result, in a year or two when managers start to look for scientific information about the effects of all these changes, such information will not be available. We will not know whether we are doing enough to protect groundfish or doing too much. We will not know what the effects have been on the species hit by displaced effort.

Changes may be needed to strengthen the management structure established by the Magnuson Act. However, even an ideal management structure will fail if it does not have adequate information on which to base the development of management measures.

The only way to address the issues of bycatch, discards, fishing gear selectivity and habitat effects during normal fishing operations is to gather data aboard fishing vessels. For these purposes properly collected observer data are essential. Most fishermen favor the collection and use of observer data because they feel that this is the most accurate information obtainable about what actually happens at sea.

Some costs and difficulties associated with observer coverage could be reduced by clarifying the legal status of observers and vessel owners regarding liability. Current legislation leaves uncertainty with regard to liability which often necessitates very substantial insurance costs. It would be worthwhile to clarify in the law that observers are not crew members serving the vessel and to examine more effective limitations on the vessel owner's liability.

Additional clarification of the allowable uses of observer data, i.e. science versus enforcement of fishery regulations, could also be valuable. However, this is a very complex issue since observer programs are often intended to serve multiple purposes and these purposes may differ in different fisheries.

In our fishery management system a great deal of responsibility is borne by the fishing industry and by the general public. If the industry and the public do not receive timely information in formats that they can understand and use, they cannot consistently

execute this responsibility in ways which yield sustainable fisheries.

If we want managers to make sound decisions and if we want these decisions to be accepted by the industry and be enforceable, then we must do a better job of communicating scientific information and processes to fishermen.

There is a need for improved communications in both directions, from scientists to fishermen and from fishermen to scientists. Fishermen have a tremendous wealth of knowledge which is often referred to as anecdotal. Such information may be hard to quantify but at the very least scientists can use it as input to some of the assumptions and hypotheses tested in data analyses. We see some cases in science and more cases in management where fishermen's inputs are used effectively but this conduit must be strengthened.

In summary we believe that in order to conserve and manage the country's marine resources in a sound manner it is essential to gather, analyze and communicate scientific information to the diverse people and organizations who share the responsibility for caring for these resources. Thank you.

[The prepared statement of Mr. Drew follows:]

Comments on  
The Reauthorization of the Magnuson Fishery Conservation and Management Act  
(with particular reference to fisheries information and communication)

Stephen C. Drew  
Fishery Observer Program Director  
Manomet Observatory  
PO Box 1770  
Manomet, MA 02345

1. Background of Manomet Observatory's marine science activities

Manomet Observatory is a non-profit organization dedicated to ensuring that scientific information is used as input to decisions on resource conservation and management. We have been involved in research in the offshore and coastal waters of the northeastern USA since the mid-seventies. Our marine activities started with seabird and marine mammal research, and subsequently expanded to the management of fishery observer programs on foreign and domestic vessels. Since 1989 we have executed a contract with the National Marine Fisheries Service (NMFS) to deploy observers aboard US fishing vessels from Maine to North Carolina. We have worked cooperatively with more than 600 vessels, including trawlers, pair trawlers, gillnetters, scallopers, groundfish longliners, swordfish longliners, lobster boats and fish pot boats. From over 9,000 days at sea we have gathered data on the catch, bycatch, marine mammal and sea turtle interactions, fishing technology and vessel economics. On a daily basis we deal with NMFS scientists and fishing industry contacts in more than 30 ports in the Northeast.

2. The accelerating pace of change in northeastern fisheries

Fisheries are complex and highly dynamic entities which are changing fast. Furthermore, in recent years, the pace of this change is accelerating at an ever-increasing rate.

Looking at fisheries which target traditional groundfish species such as cod and haddock, it is obvious that recent regulations are causing rapid changes in fishing effort. But what are the effects of this changing effort? A year or two after the implementation of these fishery plans, managers will need to know this. Are we doing enough to rebuild these stocks and re-establish healthy fisheries? Are we doing too much, and causing economic and social hardship beyond that which is necessary?

For those species that are not targeted by traditional fisheries in the Northeast, consider two examples. Ten years ago the sea urchin fishery was an obscure and relatively insignificant activity pursued by a handful of people in Maine. By 1993, the sea urchin had become the sixth most valuable species landed in the Northeast.



Another example that is more relevant to the displacement of groundfish vessels concerns monkfish. Five years ago there was little or no directed fishing on monkfish. In fact, the first time an observer covered a gillnet trip targeting monkfish in 1991, a scientist who received the data called to tell us that the observer had made a mistake in recording the target species on the trip. At that time a fishing trip directed at monkfish was virtually unheard of. Now large numbers of vessels, including gillnetters, trawlers and even scallop dredge vessels, target monkfish on a regular basis. This trend has accelerated since the recent emergency area closures and since scallop vessels began to exhaust their allocated days at sea targeting scallops.

How much fishing pressure can monkfish sustain? What are the bycatch rates and habitat effects of the various types of gear targeting monkfish? Five years from now, will we be facing a collapse of monkfish stocks, or a collapse of species taken as bycatch in the monkfish fisheries? What are the implications of gear conflicts which result from these shifts in effort? The answers to these critical questions remain unclear. In recent years similar concerns have been voiced for many other fast-developing fisheries, such as mid-Atlantic gillnetting, pair trawling for large pelagic species, offshore demersal longlining in the Gulf of Maine, and trawling for small silver hake.

As commercial fishermen strive to survive severe biological, regulatory, and economic pressures, they are developing and modifying technology in ways not seen before in this region. What are the effects of this new technology on fish stocks, bycatch and habitats? Again, the answers are unclear.

### 3. The need to gather adequate information

In many cases, fishery scientists and managers are unable to answer these questions because nobody is gathering, analyzing, and disseminating enough of the right types of information on a timely basis. Biological, oceanographic, technical, economic and social information are necessary in order to assess what is happening with marine resources and the communities which depend on them.

In recent years there has been a very serious deterioration of several systems which gather fisheries information. As a result, in a year or two, when managers start to look for scientific information about the effects of all these changes, such information will not be available. We will not know whether we are doing enough to protect groundfish or doing too much. We will not know what the effects have been on the species hit by displaced fishing effort.

Changes may be needed to strengthen the management structure established by the Magnuson Act. However, even an ideal management structure will fail if it does not have adequate information on which to base the development of management measures. Unless

we reverse the current trend of deterioration in fishery information systems, management will fail due to inadequate information.

The only way to address issues of bycatch, discards, fishing gear selectivity, and habitat effects during normal fishing operations is to gather data aboard fishing vessels. For these purposes, properly collected observer data are essential. Most fishermen favor the collection and use of observer data because they feel that this is the most accurate information obtainable about what actually happens at sea. Unfortunately, sufficient resources for observer coverage are often available only in fisheries where species of particular concern are taken (i.e. marine mammals and sea turtles). In order to address the bycatch, discard, and selectivity issues, more observer coverage in all the major fisheries will be necessary.

#### 4. Changes needed in the law regarding observer coverage

Some costs and difficulties associated with observer coverage could be reduced by clarifying the legal status of observers and vessel owners regarding liability. Current legislation leaves uncertainty with regard to liability which often necessitates very substantial insurance costs. It would be worthwhile to clarify in the law that observers are not crew members serving the vessel, and to examine more effective limitations on the vessel owner's liability.

Additional clarification of the allowable uses of observer data (i.e. science versus enforcement of fishery regulations) could also be valuable. However, this is a complex issue since observer programs are often intended to serve multiple purposes, and these purposes may differ in different fisheries.

#### 5. The need for adequate data analysis, dissemination of information, and improved communications.

In some cases, large quantities of data have been gathered, but the timely output of useful information is limited because the resources needed to analyze the data are not available. Such situations obviously do not help us to achieve sound resource conservation and management.

In our fishery management system, a great deal of responsibility is borne by the fishing industry and the general public. If the industry and the public do not receive timely information in formats they can understand and use, they cannot consistently execute this responsibility in ways which yield sustainable fisheries. Fishermen see a great deal of activity devoted to gathering data, but they receive relatively little feedback of information analyzed and presented in laymen's terms. This leads them to question the entire information system - the data-gathering processes, analyses, and conclusions. In this context it is inevitable that they will challenge the resulting management recommendations.

There is often a world of difference between the scientist's perception and that of the fishermen. We see a few cases in which this gap is bridged, but the challenge is not met frequently enough.

If we want managers to make sound decisions, and if we want those decisions to be accepted by the industry and enforceable, then we must do a better job of communicating scientific information and processes to fishermen.

There is a need for improved communications in both directions - from scientists to fishermen and from fishermen to scientists. Fishermen have a tremendous wealth of knowledge which is often referred to as anecdotal. Such information may be hard to quantify, but at the very least, scientists can use it as input to some of the assumptions and hypotheses tested in data analyses. We see some cases in science, and more cases in management, where fishermen's inputs are used effectively, but this conduit needs to be strengthened.

## 6. Conclusion

In summary, we believe that in order to conserve and manage this country's marine resources in a sound manner, it is essential to gather, analyze, and communicate scientific information to the diverse people and organizations who share the responsibility for caring for these resources. We must improve these critical functions if we want to achieve a sound future for our marine resources and the communities large and small which depend on them.

Senator STEVENS. Thank you very much. Our next witness is William Palombo who is president of the Atlantic Offshore Lobstermen's Association from Newport, Rhode Island.

**STATEMENT OF WILLIAM R. PALOMBO, PRESIDENT OF THE ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION, NEWPORT, RHODE ISLAND**

Mr. PALOMBO. Thank you very much for the opportunity to speak today. Mr. Chairman, members of the committee and invited guests, my name is William R. Palombo. I am president of the Atlantic Offshore Lobstermen's Association based in Newport, Rhode Island. Our members are owners and operators of offshore lobster vessels that fish off our coasts from New Jersey to Maine and out to the continental shelf and up to the Canadian border of the Hague Line. As president of A.O.L.A., I am not compensated. I own three offshore lobster trap fishing vessels and a 120 foot combination trawler/scalloper. I am president of the Boston Wholesale Lobster Company located here in Boston and president of International Marine Industries Inc. which operates a fish processing plant in Rowley, Massachusetts and a fish distribution and management company in Rhode Island.

I have been in the offshore lobster fishing business for over 24 years and I currently have two cousins, both sons of my father's brother, who each own and operate an offshore lobster boat. My family has been in the fishing industry for over 125 years. In 1870 my great grandfather, Michael Palombo, owned and operated three fishing boats fishing out of Gaeta, Italy. In 1905 his son, Erasmo, came to America and in 1908 settled in Nahant, Massachusetts, a small peninsula island about 15 miles north of here. He bought a rowboat and a few lobster traps and entered the inshore lobster fishery.

My family has consistently been in the lobster industry in America since then, over 87 years ago. As I said before, I personally have been in the offshore lobster fishery over 24 years, starting in 1971, and I am here to tell you that the outlook is as bleak in the offshore lobster fishery and in the groundfish fishery as I have ever seen it. We are in dire straits.

Until recently the offshore lobster fishery seemed fairly reasonably stable, particularly in comparison to our other major fisheries. Over the past year, however, a number of factors have combined to cast a pall over the entire industry. First and foremost is the terrible beating the offshore lobstermen are taking at the hands of displaced groundfish trawlers. I have personally lost over \$60 thousand dollars worth of lobster traps in the last few months and I am fearful that over the next 6 months I will lose everything that I have worked for and built up over the last 24 years.

Damage to fixed fishing gear caused by towed fishing gear is reaching epidemic proportions in New England and the Mid-Atlantic regions as the traditional target species for the mobile gear fleet becomes more and more scarce, causing them to look for new species in new areas. Many of these areas are areas that have traditionally been fished by fixed fishing gear. Over the last few months fixed gear fishermen from Maine to New Jersey have lost hundreds of thousands of dollars worth of equipment to mobile gear fisher-

men. The geographic extent of the damage and its magnitude is unprecedented in the history of the offshore lobster fishery.

The ability of the fixed and mobile gear fishing fleets to co-exist on the offshore grounds in the past has depended on both cooperation between responsible fishermen and the ability of each fleet to make a living without concentrating on the same area. Over the past year, however, trawlers have been faced with declining stocks of their traditional species and more restrictive rules on where, when and for what they can fish. This has led many of them to explore new grounds for new species, often in areas where fixed gear fishermen have previously been able to set gear without fear of molestation.

As mobile gear fishermen have moved into new areas, they have not shown a willingness to communicate with the fixed gear fishermen already there or to abide by voluntary gear separation agreements that have been worked out by either fishermen on the grounds or under the auspices of the New England Fishery Council. I have an actual tape right here with me of this conversation on the fishing grounds between a trawler towing his nets in the middle of our fishing traps. He has traps on his deck and intertwined in his net. My partner, John Borden, on our lobster fishing vessel Endeavour is trying to communicate with the trawler, asking him to cease damaging our traps. I will gladly make copies of this tape and give it to anyone who wants it.

Fixed gear fishermen have not only lost traps and catch but they have been forced to abandon productive fishing grounds that they have a right to fish in accordance with agreements that were negotiated between representatives of the fixed and mobile gear fisheries. So as well as losing the actual valuable traps, we are now also losing our ability to harvest weekly from these traps. My assets as well as my income, the income of my partner, his crew and myself are steadily being destroyed weekly before our eyes as the system offers little protection.

These gear conflicts are not only an economic problem for offshore lobstermen but they also pose a significant biological threat to both the lobster resource and to other species that trawlers are now targeting. New targeted species such as monkfish, as which was just mentioned, have no effective protection against overfishing. It seems likely that this resource will be depleted before any rational management plan will be developed.

The trawlers are also increasing their targeting on lobsters. This is a problem because the National Marine Fisheries Service and the New England Fishery Management Council have already declared the lobsters to be overfished. While the council is working on a plan to reduce fishing effort on lobsters, the trawler fleet is increasing its effort on lobsters. And they are doing it with gear that poses a threat to both the lobster resource and to its critical habitat.

One of the areas of serious conflict is the offshore submarine canyon region of the outer continental shelf. The National Undersea Research Program has documented the unique Pueblo community nature of the canyon habitat with its complex of lobsters, tilefish and a host of other species. This area is considered to be so environmentally fragile that Congress specifically prohibited offshore

oil and gas exploration in the canyon areas. Now we have trawlers bulldozing that same bottom. The problem of trawler damage which is critical to habitat is one that everyone is aware of but no one seems to want to address. Even as a trawler owner, I own the fishing vessel Mandy Ray, I know that it is not in my long-term best interest to avoid confronting a problem that must be dealt with.

A more subtle impact on lobster conservation is occurring as lobstermen, who have devoted their time and effort of the development of new lobster conservation programs, find that they must focus all of their efforts now on the survival of their businesses in the face of this onslaught from the draggers. It would be especially tragic if this causes a delay in the development of a new plan. Such a plan is sorely needed but the National Marine Fisheries Service has stated that a failure by the council to submit a new plan by July 20, 1995 will result in the complete withdrawal of the Federal lobster management plan, leaving the Atlantic Coast's most valuable single species without Federal protection.

The current situation is one in which lawlessness is paying off for irresponsible trawler captains and owners. Unless the rule of law is brought to bear on the offshore fishing grounds, further lawlessness will be the only avenue available for people who are seeing their life's work destroyed. Violence is inevitable if this situation continues.

We have a number of suggestions that could restore order on the offshore fishing grounds. First, we ask for your support in increasing Coast Guard patrols of the offshore fishing grounds. This could be an immediate step to stop the damage that is continuing as we speak. The presence of a Coast Guard cutter is a strong deterrent to flagrant gear damage.

Second, we ask for your support in obtaining the implementation of a vessel monitoring system that was called for in both the New England Groundfish and the Sea Scallop Management Plans. This system was intended to be in place a year ago but there is still no definite time when it will be operational. We believe that system will be a critical component in a comprehensive approach to the resolution of gear conflicts.

Another important part of the solution to this problem will require congressional action to modify the Magnuson Act. The Magnuson Act makes it illegal for one fisherman to destroy another fisherman's gear. But the language, as it is currently interpreted, makes it extraordinarily difficult for the Coast Guard and the National Marine Fisheries Service to enforce and prosecute trawler fishermen for violating the prohibition against one fisherman knowingly destroying another fisherman's gear.

We are told that it is virtually impossible to prove that someone knowingly damaged gear, regardless of clear evidence. I am currently in the middle of one of these incidents and face an uphill battle to have justice done, even though we have pictures and my partner, John Borden, personally witnessed this destruction and was personally no more than fifty feet away from this trawler when he observed our destroyed gear on his deck.

Senator STEVENS. Mr. Rita, could I interrupt you right there. We set a time limit but the way I see it is you represent another State.

We are going up to Maine to hear other people. We have got the Massachusetts people here. I am going to let you continue through your statement but I do hope you will keep it as short as you can.

Mr. PALOMBO. OK, just a few more pages.

Senator KERRY. It is a small State.

Mr. PALOMBO. Pardon me?

Senator KERRY. It is another State but it is small.

Mr. PALOMBO. It is a small State but we have—actually I have businesses in Massachusetts and a lot of our members are from Massachusetts and Maine and New Jersey.

Everyone who has considered this problem, including the responsible trawler representatives who want to restore order and there are many, has agreed that the word knowingly should be replaced by language that allows clear negligence to be sufficient for prosecuting a case of clear damage—gear damage. We respectfully ask that you make that change. And again, I do not want to put a blanket brush on all trawlers because there are some, the majority are doing a good job in trying to work with us.

We also want to express our support for a fishing vessel buy-out program. Clearly the excess of vessels over the fishery resources available to those vessels is wreaking havoc not only in the fisheries in which those vessels have traditionally participated but in a domino fashion, as Jeff has said, throughout the regional fisheries. We believe that such a program can be repaid from the earnings of the vessels that remain in the fishery after it is rebuilt. A vessel buy-out would be the single most effective method available at present to resolve many problems in the New England fisheries. We must quickly match our sustainable catches to our catching capacities if we are to get from here to there. We are not asking for a hand out. We are asking for a hand up.

In the minds of most lobstermen the dragger fleet has destroyed the resources that once supported it and is now in its death throes. Unless action is taken to prevent it, the dragger fleet will destroy more resources and more healthy fisheries in its last desperate thrashings. We believe that this situation has arisen because of a lack of property rights in all fisheries. Without property rights there have been no incentives, thus no one was able to invest in the future of the fisheries.

The fisheries have been characterized by a free-for-all, get what you can while you can mentality. Correcting this situation will require that fisheries be brought under a comparable system of property rights that has provided the order and stability with which our land resources are used. This, however, is a long-term solution. One needs to look no further than the telecommunications industry. What chaos would result if there were no effective licensing schemes, i.e. limited entry, transferable quota system, in cable TV, cellular phones or TV signals.

So, in summary, to address the issues outlined in your invitation to speak today I wholeheartedly support a new definition and provision to protect against overfishing. Our association, since 1972, has sought to bring professionalism to the fishing industry. We have worked to promote a system which would focus on the long-term health of the fishing stocks while providing the highest sustainable harvesting from these stocks.

We support the reforms to make the council less political and more professional. Somehow the council must concentrate on creating a fishing system to provide for long-term sustainable yields from our fisheries. I was privileged to serve on the Rhode Island Marine Fisheries Council when Rhode Island and other States passed legislation that provided for a management plan to rebuild the striped bass fishing stocks. Basically, it was a quota management plan with strict enforcement. Quota management works if a system is put into effect that strictly controls the harvesting. If the right system is created in all the offshore fisheries, it could be effective without being costly and have high compliance among fishermen.

We definitely support at this time authorization for a fishing and permit buy-out program. It is critical that this takes place immediately and in all fisheries. Fishermen today are now willing and ready to leave the industry if given an opportunity. They need a way out of this disastrous situation. The present situation of our fisheries is in need of disaster relief. No different from other areas of this country where floods, storms and earthquakes have devastated an economy. The New England fish stocks should be declared a disaster area. We are not advocating nor do we support a buyout program similar to those that bought back all the cows. We can only support a buy-out program that would permanently remove permits from the fishing industry and create a system which matches capital to sustainable yields from the fisheries.

We support a program for economical assistance to fishing families in the New England area. Families need help making the transition from fishing to other professions.

We support efforts to protect fish habitats and suggest that some of the critical areas that have been closed remain permanently closed. Some of those critical spawning grounds should be permanently closed to allow the fish to mature and grow. As the population of fish grow in these areas, fish will no longer have the room they need. The excess fish will swim out of the areas since they know no boundaries and create necessary fish for harvesting. It is time we stop subverting the overwhelming scientific evidence that support quota management and start supporting our scientists and supporting the money that is needed to obtain these fish population studies.

And last, as president of an association which basically is just a small group of men who put their money where their mouth was and have contributed since 1986 toward developing a management strategy for offshore lobstermen, I feel that it is important that a fair definition and set of guidelines for individual transferable quotas be set up.

I have attached a list, marked Exhibit A, of the people who have supported our association with their time, effort and money. This money was used to try to develop a professional fishery. It is time to get serious about fisheries management and create a system that works, a system that provides the greatest amount of fish for the United States consumer from our natural resources and done in a way that is both safe and economically fair to a fisherman.

We appreciate this opportunity to explain the problems that have been facing the fishing business operators. We have been frustrated



at our previous inability to get a satisfactory solution to these problems through official channels. Many of our members have become hopeless that anyone cares about the depletion of our fishery or the potential destruction of their businesses. I hope that you are able to act on the suggestions that we have made. Thank you very much.

[The prepared statement of Mr. Palombo follows:]



**ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION**  
221 Third Street P.O. Box 5001 Newport, RI 02840 (401) 849-3232 Fax 401-847-9966

Testimony of William R. Palombo

President

Atlantic Offshore Lobstermen's Association

221 Third Street

Newport, RI 02840

On S. 39, The Sustainable Fisheries Act

Presented to the

Committee on Commerce

of the

United States Senate

in

Boston, MA, March 4, 1995

Mr. Chairman, Members of the Committee, and invited guests, my name is William R. Palombo. I am the President of the Atlantic Offshore Lobstermen's Association, based in Newport, RI. Our members are owners and operators of offshore lobster vessels that fish off our Coasts from New Jersey to Maine out to the continental shelf and up to the Canadian fishing border, the Hague Line. As President of AOLA, I am not compensated. I own three offshore lobster trap fishing vessels and a 120' combination trawler/scalloper. I am the President of the Boston Wholesale Lobster Company, located here in Boston, and President of International Marine Industries, Inc. which operates a fish processing plant in Rowley, Massachusetts, and a fish distribution and management company in Rhode Island.

I have been in the offshore lobster fishing business for over twenty four years, and I currently have two cousins, both sons of my father's brother, who each own and operate an offshore lobster boat. My family has been in the fishing industry for over 125 years. In 1870, my Great Grandfather, Michael Palombo, owned and operated three fishing boats fishing out of Gaeta, Italy. In 1905, his son Erasmo came to America and in 1908 settled in Nahant, Mass, a small peninsula-island about 15 miles north of here. He bought a rowboat and a few lobster traps and entered the inshore lobster fishery.

My family has consistently been in the lobster industry in America since then, over 87 years ago. As I said before, I personally have been in the offshore lobster fishery over 24 years, starting in 1971, and I am here to tell you that the outlook is as bleak in the offshore lobster fishery and the groundfish fishery as I have every seen it. We are in dire straits.

Until recently, the offshore lobster fishery seemed reasonably stable, particularly in comparison to our other major fisheries. Over the past year, however, a number of factors have combined to cast a pall over the fishery. First and foremost is the terrible beating that offshore lobstermen are taking at the hands of displaced groundfish trawlers. I have personally lost over \$60,000 worth of lobster traps and line in the last few months and am fearful that over the next six months I will lose everything that I have worked for and built up over the last 24 years.

Damage to fixed fishing gear caused by towed fishing gear is reaching epidemic proportions in New England and the Mid-Atlantic regions as the traditional target species for the mobile gear fleet become more and more scarce, causing them to look for new species in new areas. Many of these areas are areas that have traditionally been fished by fixed fishing gear. Over the last few months, fixed gear fishermen from Maine to New Jersey have lost hundreds of thousands of dollars worth of equipment to mobile gear fishermen. The geographic extent of the damage and its magnitude is unprecedented in the history of the offshore lobster fisheries.

The ability of the fixed and mobile gear fishing fleets to co-

exist on the offshore grounds in the past has depended on both cooperation between responsible fishermen and the ability of each fleet to make a living without concentrating on the same area. Over the past year, however, trawlers have been faced with declining stocks of their traditional species, and more restrictive rules on where, when, and for what they can fish. This has led many of them to explore new grounds for new species, often in areas where fixed gear fishermen have previously been able to set gear without fear of molestation.

As mobile gear fishermen have moved into new areas, they have not shown a willingness to communicate with the fixed gear fishermen already there, or to abide by voluntary gear separation agreements that have been worked out either by fishermen on the grounds, or under the auspices of the New England Fishery Management Council. I have an actual tape with me of a conversation on the fishing grounds between a trawler towing his nets in the middle of our fishing traps. He has traps on his deck and intertwined in his net. My partner, John Borden on our lobster fishing vessel Endeavour is trying to communicate with the trawler, asking him to cease damaging our traps. I will gladly make copies of the tape and give it to anyone who wants it.

Fixed gear fishermen have not only lost traps and catch, but they have been forced to abandon productive fishing grounds that they have a right to fish in accordance with agreements that were negotiated between representatives of the fixed and mobile gear fisheries. So as well as losing the actual valuable traps, we are also losing our ability to harvest weekly from these traps. My assets, as well as the income of my partner, his crew, and myself are steadily being destroyed weekly before my eyes, as the system offers little protection.

These gear conflicts are not only an economic problem for offshore lobstermen, but they also pose a significant biological threat to both the lobster resource and to the other species that trawlers are now targetting. New target species such as monkfish have no effective protection against overfishing. It seems likely that this resource will be depleted before any rational management plan will be developed.

The trawlers are also increasing their targetting on lobsters. This is a problem because the National Marine Fisheries Service and the New England Fishery Management Council have already declared the lobster to be overfished. While the Council is working on a plan to reduce fishing effort on lobsters, the trawler fleet is increasing its effort on lobsters. And they are doing it with gear that poses a threat to both the lobster resource and to its critical habitat.

One of the areas of serious conflict is the offshore submarine canyon region of the outer continental shelf. The National Undersea Research Program has documented the unique "Pueblo community" nature of the canyon habitat, with its complex of

lobsters, tilefish, and a host of other species. This area is considered to be so environmentally fragile that congress specifically prohibited offshore oil and gas exploration in the canyon areas. Now we have trawlers bulldozing that same bottom. The problem of trawler damage to critical habitat is one that everyone is aware of, but no one seems to want to address. Even as a trawler owner, owning the F/V Mandy Ray, I know that it is not in my long term interest to avoid confronting a problem that must be dealt with.

A more subtle impact on lobster conservation is occurring as lobstermen who had been devoting time and effort of the development of a new lobster conservation program, find that they must focus all of their effort on the survival of their businesses in the face of this onslaught from the draggers. It would be especially tragic if this causes a delay in the development of a new plan. Such a plan is sorely needed, but the National Marine Fisheries Service has stated that a failure by the Council to submit a new plan by July 20, 1995 will result in the complete withdrawal of the federal lobster management plan, leaving the Atlantic Coast's most valuable single species without federal protection.

The current situation is one in which lawlessness is paying off for irresponsible trawler captains and owners. Unless the rule of the law is brought to bear on the offshore fishing grounds, further lawlessness will be the only avenue available for people who are seeing their life's work destroyed. Violence is inevitable if this situation continues.

We have a number of suggestions that could restore order on the offshore fishing grounds. First, we ask for your support in increasing Coast Guard patrols of the offshore fishing grounds. This could be an immediate step to stop the damage that is continuing as we speak. The presence of a Coast Guard cutter is a strong deterrent to flagrant gear damage.

Second, we ask for your support in obtaining the implementation of the vessel monitoring system (VMS) that was called for in both the New England Groundfish and Sea Scallop Management Plans. This system was intended to be in place a year ago, but there is still no definite time when it will be operational. We believe that system will be a critical component in a comprehensive approach to the resolution of gear conflicts.

Another important part of the solution to this problem will require Congressional action to modify the Magnuson act. The Magnuson Act makes it illegal for one fisherman to destroy another fisherman's gear, but the language as it is currently interpreted makes it extraordinarily difficult for the coast Guard and the National Marine Fisheries Service to enforce and prosecute trawler fishermen for violating the prohibition against one fisherman "knowingly" destroying another fisherman's gear.

We are told that it is virtually impossible to prove that

someone "knowingly" damaged gear, regardless of the clear evidence. I am currently in the middle of one of these incidents and face an uphill battle to have justice done, even though we have pictures and my partner, John Borden, personally witnessed this destruction and was personally no more than 50 feet away from this trawler, when he observed our destroyed gear on his deck.

Everyone who has considered this problem, including the responsible trawler representatives who want to restore order, has agreed that the word "knowingly" should be replaced by language that allows clear negligence to be sufficient for prosecuting a case of gear damage. We respectfully ask that you make that change.

We also want to express our support for a fishing vessel buy-out program. Clearly the excess of vessels over the fishery resources available to those vessels is wreaking havoc not only on the fisheries in which those vessels have traditionally participated, but in domino fashion throughout the regional fisheries. We believe that such a program can be repaid from the earnings of the vessels that remain in the fishery after it is rebuilt. A vessel buy-out would be the single most effective method available at present to resolve many problems in the New England fisheries. We must quickly match our sustainable catches to our catching capacities, if we are to get from here to there. We are not asking for a hand out, only a hand up.

In the minds of most lobstermen, the dragger fleet has destroyed the resources that once supported it, and is now in its death throes. Unless action is taken to prevent it, the dragger fleet will destroy more resources and more healthy fisheries in its last desperate thrashings. We believe that this situation has arisen because of a lack of property rights in all fisheries. Without property rights, there have been no incentives, thus no one was able to invest in the future of the fisheries.

The fisheries have been characterized by a free-for-all, get what you can, while you can mentality. Correcting this situation will require that fisheries be brought under a comparable system of property rights as has provided the order and stability with which our land resources are used. This, however, is a long term solution. One needs to look no further than the telecommunications industry. What chaos would result if there were no effective licensing schemes (i.e., limited entry, transferrable quota system) in cable-tv, cellular phones or our tv signals.

So in summary, to address the issues outlined in your invitation to speak today, I whole heartedly support a new definition and provision to protect against overfishing. Our association, since 1972, has sought to bring professionalism to the fishing industry. We have worked to promote a system which would focus on the long-term health of the fishing stocks while providing the highest sustainable harvesting from these stocks.

We support the reforms to make the council less political and more professional. Somehow the council must concentrate on creating a fishing system that provides for long-term sustainable yields from our fisheries. I was privileged to serve on the Rhode Island Marine Fisheries Council when Rhode Island and other states passed legislation that provided for a management plan to rebuild the striped bass fishing stocks. Basically, it was a quota management plan with strict enforcement. Quota management works, if a system is put into effect that strictly controls the harvesting. If the right system is created in all the offshore fisheries, it could be effective without being costly, and have high compliance among fishermen.

We definitely support, at this time, authorization for a fishing and permit buyout program. It is critical that this takes place immediately and in all fisheries. Fishermen today are now willing and ready to leave the industry, if given an opportunity. They need a way out of this disastrous situation. The present situation of our fisheries is in need of disaster relief. No different from other areas of this country where floods, storms, and earthquakes have devastated an economy. The New England fish stocks should be declared a disaster area. We are not advocating nor do we support a buyout program similar to those that bought back all the cows. We can only support a buyout program that would permanently remove permits from the fishing industry and create a system which matches capitol to sustainable yields from the fisheries.

We support a program for economical assistance to fishing families in the New England area. Families need help making the transition from fishing to other professions.

We support efforts to protect fish habitats and suggest that some of the critical areas that have been closed remain permanently closed. Some of the critical spawning grounds should be permanently closed to allow the fish to mature and grow. As the population of fish grow in these areas, fish will no longer have the room they need. The excess fish will swim out of the areas, since they know no boundaries, and create necessary fish for harvesting. It's time we stop subverting the overwhelming scientific evidence that support quota management and start supporting our scientists and supporting the money that is needed to obtain these fish population studies.

And lastly, as President of an association, which basically is just a small group of men who put their money where their mouth was and have contributed since 1986 toward developing a management strategy for the offshore lobstermen, I feel that it is important that a fair definition and set of guidelines for individual transferrable quotas be set up.

I have attached a list (marked Exhibit A) of the people who have supported our association with their time, effort, and money. This money was used to try to develop a professional fishery. It

is time to get serious about fisheries' management and create a system that works. A system that provides the greatest amount of fish for the United States consumer from our natural resources and done in a way that is both safe and economically fair to a fisherman.

We appreciate this opportunity to explain the problems that we are facing as fishing business operators. We have been frustrated at our previous inability to get a satisfactory solution to these problems through official channels. Many of our members have become hopeless that anyone cares about the depletion of our fishery or the potential destruction of their businesses. I hope that you are able to act on the suggestions that we have made. Thank you.



## EXHIBIT A

## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION DUES HISTORY 1986 - 1994

Member's Name	1986	1987	1988	1989	1990	1991	1992	1993	1994	Total
Paul Bennett	880	1750	1750	1750	1750	1750	1750	1750	1750	14880
John Borden						1750	500	1375	800	4425
Brad Bowen								1313	500	1813
Jim Brady							1750	1750	250	3750
Peter Brown		875	1750	1750					700	5075
Roy & Rob Campanale						1750	1750	1750	1750	7000
Jackson Clemmey								1750		1750
Robt. & Dennis Colbert							400		500	900
Frank Collins	350	1750	1750							3850
Bro Cote	250	1750	1750	1750	1750	1750	1750	1750	1750	14250
Dan Devine									500	500
Alan Eagles - F/V C.A.	294	1750	1750	1752	500				800	6846
Alan Eagles - F/V Rel.	63	1750								1813
John Eddy									800	800
Biran Felding				1750	1250	1750				4750
Mike Flanigan	450	1750	1750	1750	1750	1750	1750		1000	11950
Tim Handrigan						750	564	500	500	2314
Phil Huyler									500	500
Bruce Kopf	664	1750	1750	575	429	571				5739
Tom Kroger									500	500
Carlton Macomber		1750	1200	1750	1750	1750	1750	1750	1000	12700
Gary Mataronas									1000	1000
Grant Moore		1750	1750	1450	1750	1750	1750	1750	1750	18700
Richard Mudd									800	800
Bill Mulvey							1750	1750	500	4000
Cheryl Palombo									500	500
Marc Palombo						1750		875	1000	3625
W. Palombo & J. Borden									1750	1750
W. Palombo - F/V H.A.		1468	1750	1752	1750	1750	1750	1750	1125	13095
W. Palombo - F/V T.M.		1683	1750	1752	1750	1750	1752	1750	1750	13939
John Peabody	300	1750	1750	1700		1700			500	7700
Charlie Raymond	1000	1750	1750	1750	1750	1750	1000	1750	700	13200
Stephen Robbins	842	1750	1750	1606	1750	1750				9448
Albert Rosinha									1000	1000
Al Sandord				730					500	1230
J. Shafmaster - F/V J.R.				875			1750	1750	1700	6075
J. Shafmaster - F/V A.M.								1750	1700	3450
Alex Smith	875	1750				1000				3625
Steve Snow	210	70	875	500	500	100				2255
David Spencer	150	1750	1750	1750	1750	1750	1750	1750	1750	14150
Bob Stevens									500	500
Martin Stillufsen							1700		800	2500
Jimmy Violet					1241	400			1000	2641
Eric Winn					146	1000				1146
TOTALS	6328	28596	26577	26692	21566	30021	25166	28563	33925	227434

Senator STEVENS. Thank you, Mr. Palombo. Mr. Rita, I apologize. I called Mr. Palombo by your name a minute ago. But our next witness is John Rita, the owner of the fishing vessel Odyssey, Theresa and Matthew J—East—Matthew J. You are of East Freetown, right?

Mr. RITA. Correct.

Senator STEVENS. All right. Thank you very much. Proceed.

**STATEMENT OF JOHN P. RITA, OWNER OF FISHING VESSEL  
ODYSSEY, EAST FREETOWN, MASSACHUSETTS**

Mr. RITA. OK. Thank you, Mr. Chairman, for the opportunity to express my views on a few of the things that are under discussion here. In your letter—

Senator STEVENS. Can you pull that mike up closer to you, please?

Mr. RITA. Yeah, OK. How is that? Is that better?

Senator KERRY. Pull it down.

Mr. RITA. Down?

Mr. FRANK. Push the top down.

Senator KERRY. There you go.

Mr. RITA. OK, how is that? OK, I will touch on a few of the aspects of your bill and let you have your time back so that you can get to the rest of the folks here.

Relative to conflict of interest, it seems to us that council members should be made to abstain when their specific self-interest is an issue even though the other voting members may have an ample majority to prevent any collusion. However, you should keep industry people on the council because you cannot have used car salesmen and snake oil salesmen determining the direction of the fishing—which the fishing industry should go in. It is by its very being a fishery council.

Relative to economic assistance, we have had the commercial fishery failure and a promise of assistance.

Senator KERRY. Pardon me, are those the only other people left after you finish?

Mr. RITA. Well, if you look hard, you might find someone else. So far and this is a year later after many promises of commitment were made, all we have is more business failures, an industry in worse shape than it was 12 months ago and very little assistance.

Relative to protecting habitat, I really do not know how you jump in the water on this one. We have farm pesticide runoff into wetlands and estuaries, you have car and truck oil runoff into wetlands and estuaries, you have power plants sucking up millions of gallons of cooling water which contain larva being killed off never to see maturity and in the distance on the horizon a boat or two trying to eke out a living getting all the blame for all the woes besetting the oceans and waterways. As far as the boats are concerned, I will offer a remedy to protect habitat in a moment.

Relative to individual transferable quotas, we have had this debate in council committee meetings and many industry meetings. What we have gleaned from our industry colleagues is that they do not want it but it seems government does. The problem with ITQs is the transfer itself. We have yet to hear of a way to transfer quotas in a fair and equitable fashion. Those of us who have stud-

ied this have concluded the best method to allow free enterprise to prevail is an overall quota, not an individual quota. You have to allow the efficient producer to produce. This is like politics. If you are good, maybe someday you become a senator. If you are not so good, you remain in your hometown as a dogcatcher or a fisherman. ITQs, to our knowledge, have not worked well. When an overall quota is caught up, everyone stops. By this process the efficient producers will have produced a little more than the inefficient ones and this is as it should be.

Authorization for vessel permit and buy-back programs, and this is where it is all at, gentlemen. Unless and until you get rid of half the players, no bycatch reductions, no ITQs, no closed areas, no catch limits, no mesh or dredge restrictions will solve this problem of reduced resources. Unless you cut the fleet back, all these measures are stopgap, futile exercises doomed to failure. You are merely, as one individual put it, shuffling the deck chairs around on the Titanic. You are trying to play 5 card draw poker with 1 deck and 10 guys sitting in. It cannot be done. Cut the players in half, you solve the problem. Then these other issues you are trying to address can be handled and indeed perhaps resolve themselves.

Let me expound a bit if I may. Recently 6,000 square miles of George's Bank was shut down. Big headlines claim this drastic definitive closure was being taken to protect the resource. You know what? We think government exacerbated the problem because it forgot two very important things. The first thing they forgot was that fish swim. They move. They migrate. By closing this particular area they have sealed the fate of these fish anyway because they will be caught before they enter the area or after they leave it.

The second thing they forgot was that the boats, like the fish, also move. When you shut say 200 boats out of George's Bank, the boats do not disappear or vanish. They move and intensify their fishing in other areas and with other boats with gear heretofore not utilized in those other areas. What you end up with is more fishing intensity on the resources in these other areas and more gear conflicts. You have draggers fighting with gillnetters, scallopers feuding with longliners, lobster boats and monkfish boats battling for their own exclusive ocean bottom and on and on and on. Unless and until you cut the fleet back with a buy-out or back-back or consolidation, call it what you will, you are still allowing too many boats to catch too few fish.

On the subject of a buy-back let me say the industry, at least those I have spoken to, does not want a handout, a subsidy or a grant. We want the government to orchestrate the plan and get paid back through a means to be determined by your brain waves and actuaries in consultation with industry. Government subsidies, guaranteed loans, grants, et cetera helped cause this problem and we feel its time government jumped in with both feet and helped resolve the problem of overcapitalization.

I thank the committee for your indulgence.

[The prepared statement of Mr. Rita follows:]

Re Senate Testimony

Fm John P. Rita, Hemlock Point, East Freetown, MA 02717-1332

To United States Senate, Subcommittee on Commerce, Science, and Transportation

Re Reauthorization of the Magnuson Act

Senators and Staff:

Thank you for the opportunity to testify on a few of the issues under consideration and stated in your letter of 2/27/95.

(1) BYCATCH and (2) OVERFISHING I'll get into shortly in conjunction with (4) VESSEL and PERMIT BUYBACK.

(3) CONFLICT OF INTEREST. It seems to us, Council members should be made to abstain when their specific self-interest is an issue, even though the other voting members have an ample majority to prevent any collusion. You should keep industry people on the Council. You can't have used car salesmen and snake oil purveyors determining the direction the Fishing Industry should go in. It is, by its very being a "Fishery Council."

(5) ECONOMIC ASSISTANCE. We've had the Commercial Fishery failure and a promise of assistance. So far - and this is a year later, after many promises of commitment were made - all we have is more business failures, an Industry in worse shape than it was 12 months ago, and very little assistance.

(7) PROTECTING HABITAT. How do you jump in the water on this one? You have farm pesticide runoff into wetlands and estuaries, you have car and truck oil runoff into wetlands and estuaries, you have power plants sucking up billions of gallons of cooling water which contain Larva being killed off never to see maturity; And, in the distance, on the horizon, a boat or two trying to eke out a living getting all the blame for all the woes besetting the oceans and waterways. As far as the boats are concerned, I'll offer our remedy to protect habitat in a minute.

(8) INDIVIDUAL TRANSFERABLE QUOTAS. We've had this debate in Council Committee meetings and many industry meetings. What we've gleaned from our industry colleagues is that they don't want it; but, it seems, government does. The problem with ITQ's is the transfer itself. We've yet to hear of a way to transfer quotas in a fair and equitable fashion. Those of us who've studied this have concluded the best method to allow free enterprise to prevail is an overall quota not an individual quota. You have to allow the efficient producer to produce. It should be like Politics: If you're good maybe someday you become a Senator. If you're not so good you remain in your Hometown as a Dogcatcher - or a Fisherman. ITQ's, to our knowledge, haven't worked well. When an overall quota is caught up, everyone stops. By this process, the efficient producers will have produced a little more than the inefficient ones, and this is as it should be.

(4) AUTHORIZATION FOR VESSEL & PERMIT BUY BACK PROGRAMS. This is where it's

all at folks. Unless and until you get rid of half the players, no bycatch reductions, no ITQ's, no closed areas, no catch limits, no mesh or dredge restrictions, etc. will solve this problem of reduced resources. Unless you cut the fleet back, all these measures are stopgap, futile, exercises doomed to fail. You are merely, as one individual put it, "shuffling the deck chairs around on the Titanic." You're trying to play 5 card draw polka with 1 deck and 10 guys sitting in. It can't be done. Cut the players in half, you solve the problem. Then, these other issues you're trying to address can be handled: and, indeed, perhaps resolve themselves.

Let me expound a bit if I may. Recently, 6,000 square miles of Georges Bank was shut down. Big headlines claim this drastic definitive closure was being taken to protect the resource. You know what? We think Government has exacerbated the problem because it forgot two very important things. The first thing they forgot was that fish swim. They move. They migrate. By closing this particular area they've sealed the fate of these fish anyway, because they'll be caught before they enter the area or after they leave it. The second thing they forgot was that boats, like fish, also move. When you shut say 200 boats out of George's Bank, they don't vanish or disappear. They move and intensify their fishing in other areas and with other boats with gear heretofore not utilized in those other areas. What you end up with is more fishing intensity on the resources in these other areas and more gear conflicts. You have Draggers fighting with Gillnetters, Scallopers feuding with Longliners, Lobster boats and Monkfish boats battling for their own exclusive ocean bottom, and on and on and on. Unless and until you cut the Fleet back with a buyout, buyback, consolidation, - call it what you will - you're still allowing too many boats to catch too few fish.

On the subject of a buyback, let me say, the Industry, at least those I've spoken to, does not want a handout, subsidy, grant, etc. We want the Government to orchestrate the plan and get paid back through a means to be determined by your Brain Waves and Actuaries in consultation with Industry. Government subsidies, guaranteed loans, grants, etc. helped cause this problem. We feel it's time Government jumped in with both feet and help solve this problem of over capitalization.

I thank the Committee for your indulgence. Should you have any questions, comments, or observations, feel free to fire away.

Respectfully Submitted,

John P. Rita

Senator STEVENS. Thank you very much. All right. Rollie, as far as I am concerned you are available to us in Washington so I am not going to ask you any questions right now. Does anyone else on the panel want to ask questions of Mr. Schmitten? No. All right, fine.

Then we turn to Mayor Tobey. Mayor, you had some interesting comments. One was the idea that if we find a way to have a partial buy-out, that the bankers ought to put part of the repayment of their capital into the infrastructure of your area. Did I misunderstand? Is that what you are suggesting?

Mr. TOBEY. That is exactly right, Senator.

Senator STEVENS. Is that on the theory that those loans would be no good unless we have the buy-out and therefore if we partially restore them that they ought to give part of it? Have you discussed it with the bankers?

Mr. TOBEY. I have had a little bit of conversation. I even have one in my family. I think the theory is this. I do not think the boats, in the case of say, for example, State Street Bank are much good to the bank if foreclosed upon. Unless Jeff's got plans to change careers, I do not think those boats are going out fishing under bank ownership and I do not think they will do well if they do.

What we need to do is see the funds that are made available to the banks are put into some sort of reinvestment pool so that we do not see what used to be viable capital assets in the city of Gloucester turned into money that is reinvested in Texas or some other far-flung place and not to the benefit of the people of the community that has made its livelihood off of those capital assets.

Senator STEVENS. Mr. Morse, do you have any comment about that?

Mr. MORSE. Well, I have no—certainly I am not in any position to comment about how the bank uses its capital. But I understand Mayor Tobey's position. I would like to comment that the largest bank to the fishing industry is the Federal Government in the Title 11 Program.

Senator STEVENS. I was going to ask that too but I decided we could ask that when we get back. I wonder who really holds these mortgages here and to what extent they are coming out of Title 11.

Mr. MORSE. Well, you know—well, let me put it this way. A large part of those loans are held by various banks or other financial institutions around the country. But the Title 11 Program is structured such that all the risk falls to the government. And if there is a failure, the government is the party that would be paying out these guaranteed loans, because the people that bought those loans clearly just bought a government guaranteed obligation. And I suspect that—I do not know what the New England district's loan volume is, but I think that across the country the loan volume is about 150 million dollars.

Senator STEVENS. It sounds to me like we need a negotiated plan for utilization of those funds if that does materialize. Senator Kerry? Can we just limit it to those two people for now and then go on, or do you want to go across the board?

Senator KERRY. Mr. Chairman, I would like to get a give and take discussion going if it is possible and if you are willing.

Senator STEVENS. That is fine.

Senator KERRY. As I listened to a number of you, you are describing a disaster. Mr. Palombo, you have basically described a disaster on the fishing grounds. The trawlers are entering, your gear is being ripped up. Mr. Morse, your view from the investment side certainly is that with no near-term change the situation will deteriorate, is that correction?

Mr. MORSE. That is my very strong feeling.

Senator KERRY. And my sense is, Mr. Drew, you agree with that in terms of science?

Mr. DREW. It looks as if things are headed in that direction. I do think that Mr. Morse's picture was more bleak than I would paint.

Senator KERRY. Well, let me ask you this. Is it not clear that if you close areas, as we are, and we encourage fishing on underutilized species, those so-called underutilized species are going to very rapidly become overutilized, are they not?

Mr. DREW. I think that is clear, yes. I would agree with you.

Senator KERRY. And we do not know exactly how fast that will happen but there is a common sense factor that absolutely says it is going to happen, correct?

Mr. DREW. Yes.

Senator KERRY. So the bottom line it seems to me, is that we face a disaster. Mr. Palombo, you are describing actual violence within the industry at this point?

Mr. PALOMBO. Yes, I would say that. Absolutely, that is where we are at.

Senator KERRY. Is it fair to say that—I have talked to a lot of fishermen on the side quietly. You do not hear this at hearings but you hear it out there when you go to the docks and you sit down and you talk to people. You know, folks are going out, one kind of fishermen, whether it is a scalloper or somebody else, they are coming back with a lot of bycatch. They are selling the bycatch, correct?

Mr. PALOMBO. Absolutely.

Senator KERRY. So the fact is there is very little control right now.

Mr. PALOMBO. What you have is this, I would say the majority of fishermen are good, hardworking people who have been victims of poor management. And remember we have been—

Senator KERRY. Pull the mike a little closer, will you?

Mr. PALOMBO. We have been managing this fishery for how many years, 18 years? I mean, a long time. The government has managed the fishery and has not done a good job. I mean, we have to say that. We had a pretty good fishery when we kicked out the Russians and said everything was so bad. We had a lot of fish kicking around here. It only takes 5 or 10 percent of the offshore draggers to do a hundred percent of the damage out there. It is just incredible what is going on.

You have got to remember what some of these gentlemen have said. You have 200 boats that have been displaced who were eking out livings and fishing was declining. The closures exacerbated how fast the fishermen are going down, how fast this—the domino effect that Jeff referred to is happening; they are creating losses and gear

damage trying to survive. We all need to survive because there is no way out. So in very short order every fishery will be destroyed because we have all these boats.

You have to match fish with capacity, if you have twice as many boats as there are fish you have a problem. I will give you a good specific example of poor management of the underutilized species squid, the legal squid. It gets harvested now in the fall. If the boats waited 3 months, they like triple in weight their catch and double the price per pound in value. That alone could take a lot of pressure from this problem but—that is not how they are fishing squid. They are catching it in the fall instead of waiting until January so everybody is grabbing at what they can as soon as they can. It is not managed.

Senator KERRY. Now, Mr. Drew, is not it true that those fisheries where they have reduced the fleet effort, the remaining fleet has been able to catch the same amount of fish as the entire fleet was originally?

Mr. DREW. In many cases that is true and that is what has been predicted for the Northeastern U.S.A.

Senator KERRY. So the truth is that simply reducing the fleet with a buy-out, which I think personally is critical, is not enough unless you also have management with enforcement, vessel monitoring systems, quotas, et cetera. Is not that accurate?

Mr. DREW. Absolutely, I would agree.

Senator KERRY. Now, to do that, is there any one of you who disagrees that we are grossly under-resourced in terms of the Federal effort at this point in time?

Mr. PALOMBO. In what area? In enforcement?

Senator KERRY. Coast Guard, management, capacity to be able to be out there policing, monitoring, the costs of the observer programs.

Mr. PALOMBO. We believe that there are some systems that do not need a policeman on every boat on every block. There are some systems, and I personally, and this is a personal and not an association position, think the ITQ, system can achieve this. We have done a lot of study of ITQ's and we have grants on them, ITQ's do work. It is self-policing. It is not a very difficult concept.

Our own membership are much in turmoil on ITQ's and not everybody agrees with them, but when we attended the EMT meetings to develop trap limits, people did not want to support the ITQs because they were afraid of giving away rights. So we tried to develop trap quotas, but when we started trying to limit traps, there were so many problems, you had to end up putting a policeman on every boat. There are some systems available in my view that would require a lot less policing and be very effective and give you flexibility. But you still need half the boats out of most fisheries. There are too many people fishing.

Senator STEVENS. Senator Murkowski and I deal with an area that is equal to the whole coastline of the United States. We have self enforcement through the rules and regulations and the seasons established by the council. And I hear what you said, my friend, Senator Kerry, but I do not know how we can afford a Coast Guard or fisheries service that is capable of fully enforcing every fisheries regulation. There has to be self-discipline to do that.



Senator KERRY. Well, I think the catching limit can be enforced but I think there are other aspects of it.

Mr. PALOMBO. Well, there are things—even the catching limit, we have it exactly backwards. Instead of not being able to keep fish you should be mandated to keep every fish you take because you take them out of the resource. That would encourage the fishermen to fish on bigger fish because if they had to keep the smaller ones, they would get less money. The lobster has a unique advantage.

Senator STEVENS. Let me ask you why he would be forced to, supposing he is under a quota. He has a certain amount of small fish and he knows they are not going to bring him money or be utilized. He throws them overboard and keeps fishing until he gets the others. That happens today. People just throw fish over. When fishing for squid in the Pacific, two-thirds of the commercial fish caught are thrown overboard. Two-thirds of the entire catch is thrown overboard. So why should we believe that they are going to hold on to it?

Mr. PALOMBO. I think ITQ systems have to be put in place and maybe in some particular fisheries you do need observers so that you do keep everything on the boat. There are some fisheries you do need observers.

Senator STEVENS. We envision from this bill that we will bring about full retention in the Pacific, with a penalty for those who catch fish that are not targeted species. The penalty is they must take the fish, deliver them to someone else, and have that fish delivered while it still can be processed to someone who is in the business of processing it. So if you catch fish that is not a targeted species, you have the penalty of seeing to it that it gets to someone else and gets to the market—and you pay the cost of doing that. That is one of our North Pacific solutions, and so far it has been supported by the industry.

Mr. PALOMBO. Mr. Chairman, these are very different concepts but if you are forced to keep fish, then you get into—

Senator STEVENS. Yes, each area may need its own solution.

Mr. PALOMBO. You cannot paint fishery management with a broad brush because it is specific—it is species specific. Every fish is different. Like the lobster has a tremendous advantage. You can take a lobster up from twelve hundred feet, bring him all the way to the surface, measure him. If he is too small, you throw him back overboard and he will go to the bottom. He lives. If you bring the hake fish from that depth, he dies anyway and you throw him overboard and you have not done anything to conserve the resource.

So that is why it is hard to paint a broad brush on this stuff but there are—there is a lot of science out there and there is a lot of management plans with the National Fisheries Service that we just have to get serious about and people are, because it is a crisis.

Senator KERRY. Let me—I want to cede to my colleagues here but I just want to ask one other thing. Mr. Schmitten had indicated a response on the resource issue. Could you just respond for the record and then I will cede to the congressman.

Mr. SCHMITTEN. Thank you very much, Senator Kerry. Certainly there is a lot of blame to go around and I think the government should accept its share but it will not do us any good. We have to focus on the solutions. To me, if I look back in history, the key fail-

ure occurred 2 years after the groundfish plan was put into place. When the fisheries were beginning to come back the council took off the quotas. I think that there is a two-part solution.

The first part is to protect and rebuild the fish, if you are going to ultimately give something back to the fishermen. To do that you need better enforcement and you need quotas on your fisheries. As we transfer effort somewhere else you have to have a quota in place or you are going to have every underutilized species taken out as soon as you dislocate the fishermen in the original fishery.

The second part is to reduce overcapitalization. I see the formula there is a moratorium, some sort of limited effort. I think that this pilot buy-back is getting at the final piece of that.

Senator KERRY. I did have a couple of other questions but I will come back in the next round.

Senator STEVENS. All right. Thank you. Peter, do you have comments or questions?

Mr. TORKILDSEN. OK, thank you. Just to follow up on that same line about throwing back a catch especially when that catch is dead, right now we have a requirement that there is a 500 pound haddock limit and anything over that gets thrown over. In testimony before the House Committee Rollie Schmitten indicated that, you know, throwing carcasses over in large numbers can sometimes poison a bed and prevent fish from being able to increase or reproduce there.

Would Mr. Drew, Mr. Palombo and Mr. Rita comment on that? I mean, does it make sense from your perspective to require to keep the catch? I mean, I think a lot of fishermen would like to keep the catch and right now they are required to throw overboard anything over 500 pounds on haddock by regulation.

Mr. PALOMBO. I will give you one example. One of my boats, the Mandy Ray, is monkfishing, and it is a fairly new industry, and we were going at it pretty hard and we did pretty well. And what we are finding is buyers just want the tails so you can just cutoff the tails and get the liver and throw everything overboard. We are getting quite a few of these monkfish. We have landed 30,000 pounds per trip which is about a 100,000 pounds of monkfish. So we are throwing over 70,000 pounds of waste monkfish. And what happens after you fish an area pretty hard for about a week, you come back and you have soured the bottom.

So, you know, I am not a scientist but I think that a lot of these things can be proven if you make people bring back the small fish, they will not want to fish on small fish. There is a lot of work in handling small fish. Fishermen do not want to do that. That is my personal opinion.

Mr. TORKILDSEN. Well, what will make them bring them in? What will make them keep them on board?

Mr. PALOMBO. Well, for some of the fisheries you might have to have observers. That is what I am trying to say. Also some areas should be permanently closed, I think when they opened the haddock area a couple years ago. Boats went in these area and they could not bring back haddock. They fished for yellowtail and they destroyed all the haddock. I mean, just tons and tons of haddock. It was terrible. Millions and millions of pounds. It was a terrible waste, just to get a few yellowtail.

Spectator: 10 million pound of haddock last year was destroyed because of—

Senator STEVENS. Sorry, sorry.

Mr. PALOMBO. I am sorry. Ten million pounds of haddock was destroyed and the fishermen know the figures better than I do because they fish up there out of Gloucester. So we are doing things wrong. We are not looking at the whole picture of how everything interrelates. That is why we are having all these lobster conflicts because you just do not all of a sudden kick a whole bunch of people out of business and expect them not to try to survive.

And I do not say that some of these gear conflicts, and obviously I am losing money from these gear conflicts, are being done on purpose. Some of these boats have never fished in these areas before. They do not even understand that there is gear there. They have no idea how the gear is set. When we have been working with the draggers that work in that area, they know all about it. So the drastic area closures that we took were a mistake, in my opinion. But the bottom line, is, and I agree with you, you have got to take half the boats out of the fisheries. Right away you would have half the gear conflicts and you would have half the problems.

Mr. TORKILDSEN. OK. If Mr. Rita and Mr. Drew could comment on the point about throwing back fish and changing it so one incentive would be to have fishermen keep whatever they catch?

Mr. RITA. Yeah, excuse me. You have got an enforcement problem here, throwing it back, 500 pounds of this and that. Because unless you have an observer or a policeman on every boat, there is just no way you are going to enforce it.

Mr. TORKILDSEN. Um-hum.

Mr. RITA. Perhaps the best approach is when you get to a critical situation you close that particular fishery down completely so that nobody can have the fish, not a boat, not a fisherman, not a fish processor, not a fish market, nobody, until the stock comes back. I think they did that with the striped bass a few years back and it worked. But when you do that you really put the kibosh on an awful lot of boats and they are going to go give somebody else grief, a lobster guy or somebody else. So, you have got a dilemma. If you get rid of half the players, the fish come back and everybody is a happy camper. That is the key to the whole show.

Mr. DREW. Many of these species which may not be targets and which may not be able to sustain this fishing pressure are almost inevitably caught in the gear given our current level of technology. One thing that is encouraging is that in recent years there has been significant development of more selective fishing technology which is capable of catching just certain species and letting the other species go. And personally, I think that in the—if we are to have sustainable and healthy fisheries in the long run, selective fishing gear and selective methods are an essential element of that system.

Mr. TORKILDSEN. Did you want to say something, Mr. Morse?

Mr. MORSE. Yes, I did. One of the reasons of course the Pacific Northwest has such excellent data about all their bycatches and how much is thrown back is because there is almost universal observer coverage on all the boats; that are paid for by the boats. And I have loans in Alaska also. I think in this present situation the

New England Fishing Industry cannot afford to have an observer program, not that they pay for themselves. But I do think that part and parcel with buy-back programs when people make the voluntary effort to remain in the fishery that I think that you can hook them at that point to say there will be observer coverage for the few people that remain.

My customers are not going to be happy to hear I said this but I think it is a perfect opportunity to say with the buy-back program that the industry is going to have to pay for enforcement. You do not hear too much comment here about how much is thrown over in New England because nobody knows; because people do not come in and brag about how much small haddock they caught to try to catch 10 pounds of codfish. This is a real opportunity that I hope the Fishery Management Council with the buy-back provisions, if one is developed and implemented here, can occur easily.

Senator STEVENS. Mayor Tobey?

Mr. TOBEY. Thank you, Mr. Chairman. I will be brief. I have got to be—I have got to level with you. When we hear tell of throw-back programs and more enforcement in the city of Gloucester people's backs go up because what we see being put on the table here once again is the Federal regulatory attitude that fishermen are the enemy. They are bad people. And that is not what is going on here. What we are trying to do is to find ways to craft solutions so that hardworking, honest people can continue to ply a trade.

Let me put three options on the table. We are trying to develop an auction in Gloucester. It has worked for other folks. It puts the emphasis on quality, not quantity. You do not want small fish. It floods the market and crushes the price. It gives an incentive for folks to catch the larger quality fish, and by the way, day fisheries.

Senator KERRY. Mayor Tobey, let me just ask you what happens when they catch small fish? I mean, the nature of the fishing industry, the type of catch is not discriminatory. You put a net down. Depending on the mesh of the net you pull up X, Y and Z species. Now, what do you do when they pull them up?

Mr. TOBEY. Some of them throw them back, but what happens to the fish, they are dead. What happens to the protein resource? It is gone. Cardinal Law has been wonderfully forthcoming for the proposition that they will be glad to take the fish and help people who need the food source have the food source. But if we give folks the incentive for quality to be inshore and not off on the banks, the problem diminishes. So I think it is a useful approach to take.

Mr. PALOMBO. Excuse me. Can I just interject? The only reason they do not bring in the small fish is their size limits. They would bring in the small fish. Do not think they would not. The reason they do not bring in the small fish is their size limits. They are catching them, they will bring them in. They will not get as much money and they will not get into that selective fishing which I have talked about. It is true in the future they will get into the selective fishing but that is a little way down the road.

And I think that as management plans develop a lot fishermen will gravitate to the lobsterman's attitude. The lobstermen have been known to be conservationists and not because they are any better than other fishermen. It is because lobsters are an easy thing to measure, and no one can possess an undersize lobster. But

now the mentality has developed in lobstermen that they notch female lobsters so that they never can land a notched lobster. Lobstermen do not scrub. There is a mentality that develops and I believe as you just start working on it, not having a size limit, on thinking conservation, on thinking total picture, of bringing in all the fish, then the mentality of an honest fishermen will develop. They will drop a dime on dishonest fishermen. They will. But when the system is like it is, it will not happen.

Mr. TOBEY. If I can just wrap up, Mr. Chairman. I will be fast. Two other alternatives for example—obviously the buy-back for folks who do not have the option of somehow surviving if that offshore fleet has got nowhere to go, you do not want them inshore. You do not want the gear conflicts. That is when enforcement may make sense. The buy-back is going to have to happen.

The third option though, let us talk about conservation again and keep giving folks an option to keep fishing. Predator species, a lot of dogfish out there, a lot of dogfish out there. But there is no market incentive to be catching them and certainly real serious obstacles to processing them in the port of Gloucester. They are a messy, messy fish to cut and process. So if we could come up with additional abilities on the Federal Government's part to help small ports like Gloucester with pretreatment considerations so they can process these fish so that the guys can go out and catch them and bring them in and have a market, then you do not have the predator species out there eating the spawn and you see regeneration occurring.

Senator STEVENS. I want to get to Congressman Frank here but I must say, you know, that the Magnuson Act was originally designed to preserve the species. It really did not assume a Federal responsibility to preserve fishermen or the communities that support fishermen. It created a regional concept where we delegated a portion of Federal powers to the region and asked the States to delegate a portion of their powers to the region. The idea was that the region would find a way to achieve the Federal goal of preserving the species with both the State and local goals of encouraging their own commerce and assisting their fishermen.

So, if we now shift the concept of the Magnuson Act to give the Federal Government a role of preserving fishermen or assisting communities that support them, I have got to tell you. Come with me down to the Gulf to look at the shrimp industry. Go to California and look at the fishing industry there. I mean, gentlemen, the area that is going to give support is the regional council. I do not think, under the current circumstances, you can look for the kind of assistance I am hearing about, and that the Federal Government would be called on to give.

Now, I do think it is our duty to find some solution and maybe we should also be looking at a disaster act modification rather than a Magnuson Act modification because it is true, when you have reached a disaster proportion, then there is, if it is a natural disaster, another area for call on the Federal Government. But I hope we keep in mind that we keep the disaster act separate from the concept of the preservation of the species which was really the Magnuson Act goal.

Congressman Frank, I am sorry to have held up your participation.

Mr. FRANK. No, I am glad you did, Senator, because I think what you said really gets to the heart of this issue. And I was going to pick up where Mayor Tobey left off because I very much agree with him.

To the extent that the fishermen think they are regarded hostilely by the Federal Government, then the problem is insoluble and I think that is what is become clear here. There were just too many people who are very innovative and very entrepreneurial and very hardworking. And we are talking about too vast an area to police this in any really effective way overall. It is like the tax system. Unless we have a very, very high degree of voluntary compliance, nothing is going to work.

And so the reason I say I am glad you said what you said, Senator, I think you have really put this in the proper policy of the Magnuson. I think that is the answer, that the Magnuson Act can be a regulatory act in normal times. But as you hit a situation where there is such an emergency that large numbers of people are losing their livelihoods, communities feel threatened and then a vicious cycle starts. Because as people are under economic pressure, they are going to do everything they can to try and protect their families. These are not—nobody is hitting anybody over the head here and nobody feels like they are criminals. They are guilty of working too hard. They are guilty of doing dangerous and difficult work too efficiently and too frequently.

Now, that does happen to violate the law but obviously all of us think this is very different than taking a gun and going and sticking somebody up. And that means the enforcement is very different. And so that as we get into the kind of physical situation we are in now with the scarcity of the resource, you are going to have an increasing problem like that.

So I think that what you have said is exactly the case that we cannot just look at reauthorization of the Magnuson Act in isolation. It has to be part of an overall approach where we say people, fishermen and their families and the communities dependent on them and the economic institutions that have built up around them has to get some consideration. Even if equity does not drive that, practicality ought to. Because I am convinced, and I listened again today and I have become even more and more convinced, that people who have been fishing for all these years are too hardworking and too ingenious and too knowledgeable for us to make them do anything they are not willing to do as a collective group. And if they as a collective group are not willing to support—and that does not mean everybody a hundred percent. But if you get the overwhelming consensus that individuals can be better policed, then we are going to have to do this. So I think that is the—that just gets reinforced and it does become our job at the political levels to come up with some of the resources.

Now, I believe we can come up with some of these resources in the short-term. We are going to have to make some hard decisions about it. One thing that just occurred to me is Mr. Morse mentioned that a lot of these loans are already guaranteed. When we price out what a buy-back costs we ought to see what the congress-

sional budget office is already charging us for this program because to the extent that the congressional budget office has figured in a loss ratio and has assumed, as a charge to the budget, that we are going to lose a certain amount, literally I think under our budget procedures we are entitled to deduct that from the net incremental cost of a boat buy-back because that is already there. To the extent that you are doing that, you are displacing a loss that is already being projected into the budget.

So, one other point I would just make and that is really to Rollie Schmitt and others. One thing we ought to do is to avoid unnecessary aggravation and irritation. You know, when a fisherman, because of safety, decides to transit through an area where he is not supposed to fish and he gets prosecuted for doing that, it is really stupid. It is not only unfair to that fisherman but it is precisely the kind of wrong message that you say to a man who is trying to make sure that he carries out his responsibility to protect his life and the life of the people on his crew. But then he is going to say we have got a case pending like that now, so once you drop that case, that is good way to start killing people that they are not being mistreated.

And I think that is the answer that this has to be looked at in an overall situation. The only other thing I would say is that I was glad to hear Mayor Tobey's support it seemed to me for the community reinvestment act remaining strong. And I think that is exactly what he is talking about, the kind of general—the specific point he was making with regard to fishing is one reason why we want to have the C.R.A.

And I was also glad to hear John Rita say a good word for the wetlands protection and the impact that ultimately has on the oceans because that is not doing so good in Washington these days. So I will go back and remind people that when we protect wetlands it is not simply an arbitrary decision but one that has an overall impact.

I yield back to the chair.

Senator STEVENS. All right, we have about 45 minutes left and I have just asked Senator Kerry—I want to recognize Senator Kerry for whatever comments you want to make but I would hope that we—well, let me just ask this, Senator. Would it be your desire, would you agree that we ought to see if people in the audience might want to make a comment or two before we are through?

Senator KERRY. I think it would be very helpful and I know there are some people here, Mr. Chairman, who would very much appreciate the opportunity to do that. I just want to follow up on a couple of things before we do it if I may, and we will have plenty of time.

Senator STEVENS. All right.

Senator KERRY. I agree with Barney completely that it is a great mistake to lump all fishermen into the same box. You cannot do that. The vast majority of people fishing are clearly conservationists, and the vast majority are willing to play by rules. The vast majority of fishermen work extraordinarily hard. If the rest of America worked as hard as they did, our society would not have a lot of problems.

But what has happened here is—with a shrinking economic pie and the pressures of paying your mortgage, doing for your kids what you want to do and keeping your family together—you feel the rules are somehow unfair and you should have a shot at making ends meet. And I think we have to, obviously, be very, very sensitive to that, and we are.

The problem is that that same economic drive can be the undoing of all your efforts. When everybody's boat and livelihood is on the line, that is when you get the kind of violence Mr. Palombo described and the attitude that, I am going to take care of mine. It becomes very primal. And so I think Senator Stevens has very accurately and helpfully helped to focus what Magnuson can do versus what something else might do.

Now, that is precisely why last year I had a colloquy with Senator Byrd on the floor of the Senate that opened up the possibility of using emergency disaster funds. And the thirty million dollars that we got last year came specifically through the disaster assistance effort. So I think Senator Stevens is appropriately focusing on that.

But one other focus has not been made. And that is that there is a State and local responsibility here, a regional responsibility within the States. You cannot ask the Federal Government to balance its budget at the same time as you are asking the Federal Government to cover every penny of everything you want. And here is another example. There is also a State responsibility to help in financing a buy-back process in establishing the economic framework to rebuild the fishery. You cannot say no mandates, no regulations in the same breath as you are saying solve our problem. And it seems to me there is a responsibility here for a Federal/State/local partnership in the effort to try to deal with these economic realities.

If you are going to look exclusively to the Federal Government to solve the economic problem, you also have to expect appropriate Federal regulation so the government is not wasting taxpayers money or throwing it down a drain. So there must be a fair balancing of those requisites.

Now, I was just interested, Mayor, in one comment you made in your four points. They are very good points, I think, particularly the foreign aid link and so forth. However, I wanted to have a better sense of what you were saying about reprocessing and primary treatment so that we can understand your expectations with respect to the environmental concerns and the Clean Water Act.

Mr. TOBEY. There are all kinds of issues. One for example is the extent to which processors who have to use a lot of water when they process have the ability to use, in the case of Gloucester harbor water, filtered, drawn out, filtered, used, refiltered, put back. It is not allowed now. That could help reduce its load into the waste water plant. And by the way, since the water that goes back in they want it cleaner than before it came out, it enhances water quality.

Senator KERRY. So what you are suggesting are variances to the current sort of strict regulatory scheme that would permit you to remain within the standards but simply to do something that is currently just not permitted?



Mr. TOBEY. Correct. Another example would be on the kinds of standards that are set for bio-oxygen on demand, B.O.D. When we discharge to Mass. Bay as we do in the city of Gloucester because we spent a lot of money on an extended out-fall out to the open waters of the bay, we believe that the receiving waters would have the capacity to handle more than the standards might currently allow.

But on the other side, I would repeat the theme that if we could find ways to creatively work together on helping to assist financing of the necessary pretreatment that is still going to be required, for example, processing dogfish. The city is going to be working with a private firm in Gloucester that wants to process dogfish, and Mr. Schmitten, listen up, under the second round of F.I.G. grants to see if we cannot do a pilot pretreatment system on specific dogfish so that we can hit it on both ends.

Senator KERRY. Um-hum. Well, I think that is very fair. I think it is appropriate. I know we are going to be reviewing the regulatory process. We have a task force in the Senate, and the House has already acted on the whole regulatory relief issue. If you could give us more detail and give us a list of your concerns, it would be very helpful in this effort.

Senator STEVENS. That is the Anchorage problem you are talking about.

Senator KERRY. If I may, Mr. Chairman? Just briefly, Mayor Tobey, is not it accurate to say that Gloucester is held to a higher standard for discharge into the harbor than Boston, that it is not the same because Gloucester Harbor is in better shape right now? Is that not accurate?

Mr. TOBEY. That is right. We get whipsawed.

Senator KERRY. Yes, I think that the major's point is an important one. Thank you very much, Mr. Chairman.

Senator STEVENS. Thank you. We have a little form here that, if anyone wishes to submit written materials, I would urge you to get this form from the staff so that we can identify the materials when it comes in. When the comments come in, the staff will know exactly where it should go.

Now, we do have some time, and I was little offensive to this gentleman. I did not mean to—

Senator KERRY. Rollie Schmitten has a comment. He wanted to respond to Mayor Tobey.

Senator STEVENS. Well, just let me finish this, if I may. I would like to identify the people who would like to testify. If you could just come down here and talk to Tom on our staff, we would then know the numbers we are dealing with. We are getting close to the point where we have got to allocate between people who might want to make some comments to us here orally. Thank you very much. Rollie?

Mr. SCHMITTEN. Mr. Chairman, I was just going to pick up on the four points that Mayor Tobey made. I too listened closely, and interestingly enough three of those the new F.I.G. grants will cover. Let me mention: First, he said target the fishermen, not grant writers. I totally agree with that. Second, he said, market development for unutilized species. And then the third point of four that I picked up on is certainly the buy-back.

We have three focuses for the new round of F.I.G. grants, the \$4.5 million. First, to assist more directly fishermen and their needs. I hope we are responding to what you have asked for. Second, develop fisheries and markets for unutilized species. The third area is to reduce bycatch. I think that we learned from that first round. We are hearing the community and the fishermen, and we are trying to apply these grants where they really would do the most good.

Senator STEVENS. Thank you very much. Now, being cognizant of the fact that there are some cameras out there that might want to cover whoever wants to make comments to us, Mr. Drew has kindly and voluntarily relinquished his seat. But I do want those of you who want to testify to come up and to use the microphone there where Mr. Drew was sitting. Please give us your name, if you will, and make sure that we have this little sheet for our records so we can identify the person who made the comment. We have about a half hour now and would be willing to let you all have 3 or 4, but not more than 5, minutes. I think I counted six people there. Am I right, Tom? Have we got six?

Tom: Yes.

Senator STEVENS. Yes. So, would you tell us who you are and proceed. If you take 2 or 3 minutes, maybe you might spur some questions. We would like to be able to ask you a question, too, if we can. Let us proceed on a 2-minute basis and see how it works. Now, who are you, sir?

Dr. BUCHSBAUM. I am Robert Buchsbaum. I am with the Massachusetts Audubon Society and I am a resident of Beverly, Massachusetts. I want to just briefly mention that my organization represents over fifty thousand families. It is the largest environmental organization in New England. And our interest in this issue of fisheries is for a variety of reasons. Our priority is biological conservation and we see overfishing as the most intense human-induced impact to our coastal marine's ecosystems. I think it far surpasses the effects of pollution, and this is something that National Marine Fisheries Service and some of their scientists have been saying for a while. So this is really the critical New England issue in the marine area.

Our general themes, in terms of the Magnuson Act reauthorization, is that biological and ecological considerations should be given priority over economic ones. It is obviously essential to maintain healthy populations and a thriving marine ecosystem in order for commercial fishing, and a fishing community dependent on it to be viable.

Decisions should be risk averse. The framework should be, that the burden of proof should not be on scientists to prove that a catch should be lowered but should be done so that we avoid the risk in the past. In the past the problem has been when we did not have enough information the catch was allocated often at the upper limits that the scientists might have thought successful. As has been pointed out here, there is a lot of uncertainty in the scientific information and so we need to be risk averse. I suggest that as a change in the general theme of the Magnuson Act.

In terms of how to strengthen the Magnuson Act the point on overfishing—A lot of things are in S. 39 there that we agree with.

Overfishing needs to be clearly defined and a timetable developed for recovery to the maximum sustainable yield. And we believe it is never justified to take beyond the scientifically acceptable catch level for economic or social reasons for the reasons we mentioned before, that this is what the fishing community depends on.

Along with that, we need to incorporate a margin of safety in setting total allowable catch. This will address the scientific uncertainty and stock assessments. Management again should err on the side of conservation. Another margin of safety is to allow actions by the Secretary of Commerce if a stock is approaching the overexploited condition, in other words, it is a lot easier to manage a fishery if it has not already been overfished. But we have to manage never to get to that overfished condition because it is harder for something to recover than it is to maintain it.

In terms of bycatch, we agree with having a national standard to reduce bycatch to the lowest possible level, a level approaching zero. We agree with incentives to encourage the reduction of bycatch and we also agree with the need for more research on this topic, for example, the effects of different gear types and other things that were mentioned before.

I am somewhat grant savvy myself and I agree with the comment that a lot of the money that came through that initial \$30 million, from what I could see as a resident of the North Shore, did not go to the people it was intended to, but it went to people who were good at writing grants. So I think some kind of assistance to the fishing community in writing grants is very appropriate. It would be very helpful.

Senator STEVENS. Thank you very much. Let me see if we have got some questions here for you now. Do any of you gentlemen have questions for the witness?

All right, then you have a couple more minutes.

Mr. BUCHSBAUM. OK. The Fisheries Management Councils, there is an obvious need in our opinion to eliminate the conflict of interests that have plagued Fisheries Management Councils. We certainly agree that the representation should be largely members of the fishing industry. We certainly think that is appropriate. They are the people with the expertise in the industry. But we would also like to see representatives who have no direct financial interest in the fishing industries but who are either knowledgeable about fishing issues or are reasonable and respected for their judgment and fairness, not necessarily used car salesmen or snake oil salesmen. I think there has been precedent with other regulatory agencies.

Mr. FRANK. Let me ask you, what about the buy-back? What kind of support would—do you think we could get? Because I think if some of the conservation organizations would join in here, that would be helpful. And I would hope people would see the buy-back not simply as a favor to the fishing industry, but as the essential element in trying to get the kind of public opinion and specific opinion that we need to make conservation work.

Mr. BUCHSBAUM. Well, we think that is—we definitely support the buy-back program and would certainly—

Mr. FRANK. You can help with that because you can make it clear that this is—well, obviously the boat owners will be the first

direct beneficiaries, make it clear that they brought a public purpose to be accomplished here.

Mr. BUCHSBAUM. Right.

Mr. FRANK. You and your colleagues are in a good position to do that.

Mr. BUCHSBAUM. Yes and we would be happy to do that. We agree obviously that the most critical way to restore the fishing industry is to reduce effort on the fish by the fishermen particularly in New England and the buy-back is the most obvious way to do that and we certainly support that.

Senator STEVENS. Thank you very much. The next witness. Where is the next witness.

Sir, we will allot you 5 minutes. We are going to stop you at the end of 3 and see if anyone wants to ask you any questions. If not, you can have the other 2 minutes. Tell us your name, please?

Mr. BRAMANTE. Good morning, Senator. My name is James Bramante. I am a commercial fisherman out of Boston. And I am sorry that I did not bring any papers but like a lot of other fishermen the only thing I brought is my mind because we have a limited education most of us. I came here this morning to hear about the buy-back program but yet we hear about gear conflicts and more construction up in Gloucester for processing. We support the buy-back program.

However, the main thing is conservation and anybody in the fisheries today can tell you the key to conservation is to do away with the cookie-covered ground cable, the rubber ground cable. It is the single most destructive thing used in the ocean today. It is being used more and more. It came out around 1982 in this country. Just when the fish stocks were starting to climb up, we get this new technology to destroy the habitat. That is the key to conservation. If we can do away with the cookie ground cable, the rubber-covered ground cable, we will leave the fishery alone for 3 years and see what happens. I think that the whole thing will come back by itself.

Senator STEVENS. Any questions, gentlemen? Let me tell you, my son's been the captain of a king crab boat out of Dutch Harbor for over twelve years. I hear a lot of comments from people who are out there and actually involved in fisheries. I have not heard of this cable, however, in our context. I would be very interested to hear more about it.

Senator KERRY. Can you describe it a little more? Describe what it does and how it works.

Mr. BRAMANTE. Well, originally the boats used to use what was called a ground cable. It was a piece of cable probably about 120 feet long. Then we got this technology from Europe where if we covered this cable with pieces of tire and increased the size of that and made it even longer, now as long as 1800 feet long on each side, we would catch more fish. You may be catching 10 percent more fish but the rest of the fish you went over that you did not catch are beat to death. The habitat you destroyed is unbelievable and the amount of tire—

Senator KERRY. Because it is dragging on the—

Mr. BRAMANTE. It is dragging on the bottom.

Senator KERRY. And it just churns up the bottom.

Mr. BRAMANTE. Correct, and the amount of tires that are being discarded in the ocean because of this process is unbelievable. You could just go down to New Bedford and see how many of these things are used.

Senator STEVENS. Have you spoken to the regional council about it? The regional council has the power to limit gear.

Mr. BRAMANTE. I have spoken to plenty of people about it, but it always falls on deaf ears. This technology came into use in this country around the early 1980's. It came from Europe, this technology. It is the single most destructive thing in the ocean today. The cookie ground cable, a rubber-covered ground cable, it should be done away with immediately and leave all the other restrictions in effect for 3 years and see what happens. I believe that the fisheries will come back by themselves.

Senator STEVENS. Thank you very much. I think that is a significant contribution. Next witness, please.

Senator KERRY. Thank you very much.

Senator STEVENS. Can you get the National Marine Fisheries Service to give us some sort of an understanding of how extensively that is used? I do not recall tires being used in Alaska.

Mr. PALOMBO. Yes, it is used everywhere, Senator.

Senator STEVENS. The tire concept is used?

Mr. PALOMBO. Every dragger uses it.

Mr. SCHMITTEN. Mr. Chairman, I will come back and report with a brief summary to the subcommittee, and I will give you a brief or two, its national significance, its use and I will do that year by year.

Senator STEVENS. The regional council has the capability of limiting that.

Mr. SCHMITTEN. Yes, sir.

Senator STEVENS. Yes, sir. Tell us who you are, please?

Mr. FOOTE. Yes. Thank you, Senator Stevens, and I am glad that you are the father of a fisherman because I am the son of a fisherman too. And I would like to say that I am—my name is Gus Foote. I am a member of the Gloucester City Council and prior to that I have done commercial fishing for 30 years. And for Mr. Palombo, the fine port of Newport, my father's boat left there in 1960 and the Agnes Murney was lost with all hands. So I come from a great fishing family as Mayor Tobey knows.

My concern is this here and I know that the Gloucester City Council took a vote on Thursday opposing a buy-back for the simple reason that we were only notified that there was going to be a meeting. All right. So we were not up on what the things were going to be and certainly some of the things can be talked about whether it is voluntary or not.

But my main concern is this here, that coming from a very good fishing family, a good fishing port of Gloucester, knowing many of the Italians and Portuguese and the few of us Newfoundlanders that are left, that one of the things I disagree with some of the things that were said here today, and Mr. Morse certainly I read your statements there, and I would just like to iterate a little bit on it that.

The fishermen of Gloucester are not going to abandon their boats. They are not going to sink their boats. And the boats if you

have known in the past that have been sunk and the last one or two have gone down with all hands so these are not sinkings. These are hardworking men out there trying to make a living.

And as far as the fishermen losing their dignity, they lost their dignity, and believe me, because of all the government regulations that were put on them. It was not done early enough perhaps but the whole thing is that they wanted fair regulations. They did not want to have regulations where they were put out of work completely. And what I heard up here tonight is that we are going to have regulations. We may even close off the entire area or have no fishing at all.

And what we have been told by government and we have been told by the National Marine Fisheries that you have got to go to other species of fish to catch them. And now we are hearing that you send us off to other species and now we are hearing we have got to regulate them so in the event—in the long run I imagine you will put the fishing industry out of business.

And I can assure you, Mr. Palombo, that the Gloucester druggers or any of the druggers are out there to make a living. They work very hard as Mr. Frank has said, Congressman Frank. And they work, and you know it as well as I do, that they work very hard out there to make a living. They are not out there to tear up your gear and they are not there to point a guilty finger at one or the other. The unity part of the fishermen, we never had that and we are getting a little closer to it each day as things get tougher. But the unity is not the thing that the druggers are doing this and the druggers are doing that and the lobstermen are doing this.

I have gone lobstering, Mr. Palombo, on the Evelyn Brown, on the Judith Lee Rose before she was arrested. I was not on that trip, OK. And I have gone lobstering and I know what lobstering is, fishing out of the Halfagranity Canyon or on the northern part of George's or any part else, that we have gone lobstering in the deep water.

And I learned this here and this here is only—this here is I would have to say, Senator Stevens, 25 years ago that we brought into the Bay State lobstering 10,000 pounds of lobsters when our brother dragger was sitting alongside of us with 35,000 pounds of lobsters. So something was wrong. So when the one boat tied up I went on the other boat and I found out what was wrong—that they all had air hoses. They blew the seeds off them. They all had different things to make a living. And I do not want to plead guilty, but we went along to make a living too. And I will tell you the fishermen, and Senator Stevens, he knows this—

Senator KERRY. I want to interrupt you to see if anyone wants to ask you a question?

Mr. FOOTE. OK. I get carried away and I got a pacemaker and I can talk a little longer.

Senator STEVENS. We have got four more people to go.

Senator KERRY. I do not want your pacemaker to get agitated here, but let me just ask you a question in a serious vein. At the end of your comments, you described what people did to get along and go along, but at the beginning you said the problem was really the government regulation. What the government did originally under the Magnuson Act was to set up the councils and give them

freedom to make decisions. Washington did not make the decisions. The regional council was supposed to make the decisions and the council was made up in large part, of fishermen.

Now, we have gotten to a point where, because you folks had inadequate regulation, fish stocks were overfished. So there is a point where somebody had to step in and say we have got to save the resource.

Mr. FOOTE. But I think what I said, Senator Kerry, was that you stepped in too late. That if you had stepped in earlier and we had—

Senator KERRY. Well, but the whole point—the whole point was that we were trying to honor the notion of local decisionmaking. The whole theory was to not have the Federal Government put its cotton-picking, messy hands on yet another local decision. Let us manage our own fisheries. So everybody held back and held back and held back to let the decisions be made but the decisions were not forthcoming until Conservation Law Foundation finally went to court and said we have got to stop overfishing.

Mr. FOOTE. Yeah.

Senator KERRY. So I am very sympathetic to what you are saying but I would like to follow-up with you in the days ahead to figure out how we can deal specifically with the crisis we have now.

Senator STEVENS. Yes, I add to what the Senator says. My area seized that regional council concept and made it very strong and used its closure powers, used its powers to limit entry, and we do not have one single species in the North Pacific that is overutilized. But our fishermen did that. Government did not do that. We passed the Magnuson Act almost 20 years ago. It was not the government that did not step in. It was your own fishermen that did not protect themselves. So I hope we find a way to do that. We will have to call the next witness now. Thank you very much.

Senator KERRY. Thank you very much.

Senator STEVENS. Your name please, sir?

Senator TARR. Thank you, Mr. Chairman and through you to the members. I am State Senator Bruce Tarr. I represent 17 communities and one city in the First Essex and Middlesex District of Massachusetts and the one city is the fishing port of Gloucester and I am very proud to represent that port and very appreciative for your coming here today to listen to us and also for the continuing work of Senator Kerry and Congressman Torkildsen and being responsive to the needs of our port.

I want to touch on a couple of things and specifically refer to the reauthorization of the Magnuson Act. I have written testimony which I have provided Senator Kerry's staff with. I apologize for not bringing more copies but will try to make them available to you.

In my role as State senator I wear one hat but I am also the president of a group called Gloucester United which is an organization designed to create unity among the various interests in this industry and as well among the industries that are affected by the fishing industry which, in Gloucester, is a great number of those.

One of the things that is particularly difficult and was discussed here already today is the fact that fishermen have a difficult time complying when they think that a program is being designed by

academia and without benefit of practical knowledge. And while I respect the statements that Senator Kerry has made about the regional councils and we certainly support them and hope that they continue, I would suggest that it oftentimes is difficult for us to do that particularly in light of the fact that we demonstrated that the current groundfish plan, amendment 5, was violative of not only the Magnuson Act but also the Paperwork Reduction Act, seven executive orders, some four at least national standards and other various rules that were designed to make sure that the plan was fair and equitable across the board. And when that does not happen it is very difficult for us to obey it.

I would say that S. 39, and particularly it moves us in the right direction in many areas. And while I know that the original intent of the plan was to protect the fishery and not necessarily the fishermen, I think the idea of an additional standard, Standard 8, which talks about fishery-dependent communities is a sound one.

I think the idea of developing transitional assistance for fishermen trying to move from one step to the next is a sound one. And I would suggest that the two goals of fisheries management and the saving of fishermen and the preservation of fishing opportunities are closely interrelated. Because if we do not allow for reasonable transition, then we get the noncompliance, we get the device that Captain Bramante was talking about which is more commonly known as a rock hopper which allows gear to go into places where gear has never been before and we get into a variety of problems.

The next area that I think we need to talk about once we make the assumption that there is that interrelation is that the suffering of economic waste ought not to be a goal of the Magnuson Act and it ought not to be a goal of this country. And when we talk about bycatch, I think we get into that issue very, very directly. And I would suggest to you that we ought to eliminate bycatch to the extent that we ought to be able to retain whatever it is that we catch. And Mr. Schmitten will tell you—

Senator STEVENS. Let me interrupt you there, Senator, and see if there is anyone who has any questions. Senator? Peter?

Mr. TORKILDSEN. All set.

Senator STEVENS. The second 5 minutes—2 minutes. You have got 2 more minutes.

Senator TARR. I will take the 5, Mr. Chairman.

Senator STEVENS. No, 2.

Senator TARR. Thanks, Mr. Chairman. To continue where I left off, I think that Director Schmitten would tell you that one of the great fears about a program where we retain all bycatch is the potential of getting into a directed fishery. And avoiding a directed fishery on juveniles means that we need to find a way to disincentivize the taking of juveniles solely for the issue of taking the juveniles.

And I would further suggest to you that we can work that out. And we can work that out in a way that allows those fish to be retained but that not a hundred percent of the value of those fish to be retained by the individual harvester. And I would offer to work with you on that issue.

Last but not least, we have also talked at least preliminarily today about buy-backs and I think that buy-backs hold a great



amount of promise toward the reduction of the effort. But I think when we talk about buy-back we need to realize all of the impact that it is going to have. A buy-back simply will not help people who have worked in this industry for their entire lives as crew members.

A buy-back will not help a boat owner who does not have the transitional capital to be able to get into something else and otherwise will result in an unemployed fisherman who we are going to have to provide State services for.

And a buy-back is certainly not going to help the overall economic dependency of a program. And unless the fishermen who are bought out are allowed the right of reentry if and when the stocks rebuild, a buy-back may set the stage for a consolidation of this fishery into the hands of a few large corporations and eliminate the ability of our fishing families to go on as they have.

I know I am coming close to the end of my time so I do want to touch very briefly on State activities. And, Senator, I agree with you that we have a shared responsibility here. I would say that preliminarily that responsibility falls on the Federal Government because it has undertaken the jurisdiction of these fisheries.

But that notwithstanding, most recently in the open space bond bill, the Governor of this Commonwealth proposed \$10 million to assist communities that were impacted by the fisheries closures. We have since amended that with the help of the legislative delegation from Representative Frank's district as well as Representative Burgen, my colleague from Gloucester who joins us today, to increase that funding to \$15 million. Unfortunately, we have had a difficult time in passing that but we hope for renewed vigor.

And I would also say that we can expect in the very near future an announcement from the Administration of the Commonwealth of an interest in buy-back programs and trying to partner with you in resolving that issue because I think it is a very important issue.

So we have a lot of work cut out for us but I would hope that we could do better at working together and I think crises necessarily pull people together and I would hope that we would have a cooperative effort toward realizing that it is in all of our interests to recognize that fishermen are the truest conservationists because of their direct economic stake in the fishery and that we all can work together to make this transition into a better time than we are in today.

Senator STEVENS. Thank you very much. Any comments, Senator?

Senator KERRY. I have nothing.

Senator STEVENS. Peter? We appreciate your participation.

Senator TARR. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, Senator. Another witness? Sir, tell us who you are, please?

Mr. SPALT. Yes, I am Peter Spalt, a fleet captain for Cape Oceanic Corp. and we are located, our main office is in Hyannis.

Senator STEVENS. What do you run? What kind of boats?

Mr. SPALT. Scallopers.

Senator STEVENS. What is the size?

Mr. SPALT. Between 95 and 110 feet.

Senator STEVENS. Thank you.

Mr. SPALT. I just want to touch base on a couple short things I jotted down as I was sitting in the audience. The priority issues that we see is we would like to see a national universal fishing policy for the country. The State-by-State regulations are so complex and unfair to people that are fishing in Federal waters that we think that it could be cleaned up considerably. Two—

Senator KERRY. Do you mean you would do away with the the councils? Is that what you are saying?

Mr. SPALT. I do not—

Senator KERRY. Or you want to see the council's policies clarified?

Mr. SPALT. I think you need some type of regulatory body. I am not trying to say we need it to be taken away but what we need is something that it will work for all which is not working right now. It is failing. The system is failing.

Senator KERRY. What is the discrimination that you feel as a scalloper?

Mr. SPALT. Such as differences of competing to the grounds is deviating right now from one competitor to the other. One person gets more time on the grounds than another, unfair competition. Fish, the ability to either take fish or lobsters in each State is not set as a standard which needs to be done. You can be fishing right alongside another competitor and he can keep the fish that he sees fishing basically in the same fishery you are and that we feel is very—

Senator KERRY. Simply because he comes from another State?

Mr. SPALT. Right, from another State which should not be the case.

Senator STEVENS. Well, you are right. It should not be the case under the current situation. That is what the regional council is for. We had the same situation on the Pacific Coast, only worse. We had people coming up from Oregon and Washington to fish in Alaska waters. We had people going from Washington down to fish in California waters. But we have worked it out on a regional basis. I am not certain we can avoid all conflicts. But go ahead. We are interrupting you. Sorry about that.

Mr. SPALT. OK, the other areas, with all the regulations that we have been dealing with here we think there is one simple—we would like to keep it as simple as possible and one rule would fit all and do it all justice out there. And that is we want—we only want to know one thing and that is the amount of seafood or the species that we can harvest off the bottom. That is it, just one thing. Give us one thing and one thing only and regulate us with that, not with the different types of gear and how many men and it just—there is so many regulations. Every month they are changing. We just cannot keep up with all the micromanagement ideas. It is just so complex and you cannot stay with it.

Senator STEVENS. Fair enough. I hear you loud and clear.

Mr. SPALT. The last area is in the buy-back which is being discussed here. We would like to see the idea of the biggest bang for the buck idea, for the dollar to go the furthest and not the dollar to get lost in the Administration process and have that dollar go for the buy-back boats and not be lost someplace in the Administration.

Senator STEVENS. Did you understand the comment that came from the witnesses that indicated that—to the extent that we buy back boats—the remaining boats will just increase their technology and their efficiency and that, before the buy-back is completed, they will be able to harvest as much or more than the boats did before the buy-back started? You understand the problem we face in terms of the developing technology in the fisheries?

Mr. SPALT. Yes, I do.

Senator STEVENS. Are you adopting new technology in your operations? Better fish-finders, better equipment, better gear?

Mr. SPALT. Well, in the last few years we have not but that is common nature. Man is only going to get better at what he does. That is the idea of everything you do is increase—make it more efficient or better for the people that are working with you.

Senator STEVENS. Do you have an observer on your boat?

Mr. SPALT. We have taken Manomet observers from the bird observatory is it?

Mr. DREW. Yes.

Senator STEVENS. In our area the fishermen pay for their observers. Are you prepared to pay for an observer to keep the right to go fishing?

Mr. SPALT. If need be, yes.

Senator STEVENS. OK. Senator?

Senator KERRY. I do not have any questions. Thank you.

Senator STEVENS. Thank you very much. Appreciate it—do you have anything else? I do not mean to cut you off. We took a lot of your time.

Mr. SPALT. No, no. That is—I appreciate you letting me talk.

Senator STEVENS. All right.

Mr. SPALT. Thank you.

Senator STEVENS. Thank you very much. I am going to call on Congressman Torkildsen and then Senator Kerry to see if they have any final comments, and then I will make a final comment.

Mr. TORKILDSEN. Thank you and again my thanks to you, Senator Stevens and Senator Kerry, for hosting this hearing here in Boston.

Just quickly the final point I would reemphasize is that all any one in the fishing industry has ever asked for is the chance to make an honest living. And certainly that is become more and more difficult. There are going to be painful steps ahead. I do not want to kid anyone on that. I think the reauthorization of the Magnuson and the changes we have to make within it should help us keep that in mind.

People want to make an honest living. There is no reason that with better management we cannot see that happen. It should be obtainable. So that is the prime goal I will be looking at as we vote on it in the House and work with the Senate to see Magnuson reauthorized. And then also take the additional steps we need to help those families who have been really dislocated from their livelihood here in New England. Thank you.

Senator STEVENS. Senator, thank you very much for coming.

Senator KERRY. Senator Stevens, thank you very much. Peter, I am delighted as always to work with you on this issue.

It is very interesting. Senator Stevens has made a couple of observations here, perhaps one of the values of having somebody from another part of the country come and kind of listen to the local population talk and get a sense of our problems. But I thought it was very interesting to hear him underscore a point that I have observed personally, sometimes with criticism directed back at me, regarding the workings of our council up here.

I listened and I am sure you did with interest to hear him say that in the North Pacific they have no species that is in jeopardy and that their council has made some tough decisions and worked out management plans among States.

The job of the New England delegation here is to share the truth with people, not just to cover it over. And part of the truth is that for whatever reasons we have not been able to make some of those decisions here in this region, not very easily and often too late, if at all. Now, we have a very difficult task ahead of us as Peter has said and as we all know. I am absolutely convinced that we can deal with this. New Englanders have a great conservation streak and all of us care about this. We also have a history longer than any other part of the country that is based on fishing.

So we need to pull ourselves together and make it happen, remembering that the Magnuson Act is geared toward the preservation of the species. The future of fishing depends, not on the gear, not on the boats, not on the technology, it depends on the species surviving. And the species is going to survive if we can all join together to find a way to cushion the impact on people, recognizing that human beings' lives are at stake here, finding ways to move people out of the industry for those who want to or choose to.

For those who do not, we are not asking you to. That is not the goal of this program. The goal of the program is to try to leave free choice out there. And for those who want to fish in 5 and 10 years and in the ensuing years, we want to be able to respect that and have a fishery there for you to participate in. And we need to help provide to allow transition through this time of difficulty to be able to rebuild stocks and develop a sustainable fishery.

But it is going to take everybody thinking about something bigger than just themselves. We are going to have to think about the fishery and we are going to have to think about coming together during some difficult times to make it happen. I know Peter, Barney, Senator Kennedy and myself are all pledged to try to do everything we can at the Federal level. And I am deeply appreciative to Senator Stevens who really understands these issues. He is a salmon fisherman and prides himself on it. I have not yet partaken, but hope someday to get up to Alaska and get some of those salmon. But he is a person who really understands what is at stake here and we are very, very lucky to have him chairing the subcommittee, if we are so unlucky as to not have me doing it. So thank you very much.

Senator STEVENS. Well, thank you very much, Senator. It is nice to be with you and you, Congressman. I appreciate the witnesses coming to spend the time.

It is our goal to find a way to restore the fisheries throughout our country. I do believe we have to direct our attention to the difference between a national disaster and a natural disaster. I do be-

lieve the loss of the fisheries' capacity of the Northeast fisheries is a national disaster. We have to find a way to have the nation participate and, to the extent we can, restore the opportunities for future generations to be involved in the fisheries here. It is not going to be easy on this generation to do that, and it is going to take cooperation within each State, within each region, and between the regions nationally and the Congress to work on some of these issues.

I have been involved down in the Gulf where we lost substantial amounts of our shrimp capability. We know what has happened in California, as I indicated. We have got a lot of problems in terms of the intersection of some of the mammals and fisheries that we will not even get into today. We certainly need to have a better understanding of one another in terms of how these issues affect us. I hope the answer will be to maintain a national approach which encourages regional diversity in solving our own problems, but which, at the same time, offers the help of the Federal Government in making certain that the solution works.

So I think all of you have helped us. We are supposed to walk out of here at 11:30, and I think we will do it. Thank you very much.

Senator KERRY. Thank you.

[Whereupon, at 11:31 a.m., the subcommittee was adjourned.]

## APPENDIX

## PREPARED STATEMENT OF GREENPEACE

On behalf of the 1.5 million supporters of Greenpeace in the United States, I want to thank you for the opportunity to submit our views on the reauthorization of the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act). We are pleased to see that the Magnuson Act reauthorization is a top priority for this committee and urge you not only to continue on your expedited schedule but to make the necessary changes to ensure that further overfishing is prevented, overfished fish stocks are rebuilt, bycatch is reduced and privatization through individual transferable quotas (ITQs) is not authorized.

Greenpeace has worked with members of this subcommittee for many years in the battle to ban large-scale high seas driftnets that were being used by fishing fleets from Japan, Taiwan, South Korea, France and Italy. It was the continual passage of progressively restrictive legislation, by the former Merchant Marine and Fisheries Committee, that put the United States in a position of leadership in the fight to ban this indiscriminate gear. The commitment of this body toward ending the use of this devastating gear successfully culminated in the passage of the United Nations resolution calling for the current moratorium on their use on the high seas.

We are happy to report that two years after the moratorium was put in place, the North Pacific seems to be free of the large-scale driftnet fleet that once numbered more than 550 boats and used 20,000 kilometers of fishing net every day. The news from the Mediterranean is not quite as good.

The 600 boats using large scale high seas driftnets from Italy continued to fish in 1993-1994. Dismissing the law passed by this body, the Administration refused to certify Italy as a driftnetting country even though the government sanctioned this continued fishing. In the late fall, there was a glimmer of hope as the Italian government, responding to pressure from other European governments, began a program to buy back these driftnet boats. We are hopeful that this program can serve to rid the high seas of the last significant driftnet fleet.

**GREENPEACE'S FISHERIES CAMPAIGN**

By 1986, it became clear, that as an organization, Greenpeace needed to become involved in fisheries management on a broader scale. We recognized, at that time, the tremendous potential to work with sectors of the industry that shared our common goal of having fish around for future generations. We believed that continued overfishing (the catching of more fish than can naturally be replaced) and increasing bycatch levels (the catch of non target species) were two of the biggest obstacles to sustainable fisheries management. Therefore prevention of overfishing, the rebuilding of overfished fish stocks and the reduction of bycatch became our top priorities.

To achieve those goals, the organization began working to reform the New Zealand fisheries policy, the Common Fisheries Policy in the European Community and the Magnuson Act during its reauthorization of 1989-1990.

Additionally, we undertook work at the United Nations, ICCAT and the IATTC to address fisheries in international fora as well. Currently, we are working within the framework of the United Nations Conference on Highly Migratory Species and Straddling Stocks.

In 1992, after unsuccessfully attempting to amend the Magnuson Act in 1990, Greenpeace helped form the Marine Fish Conservation Network. This unprecedented network of 80 environmental and commercial, recreational and sport fishing groups united around a common agenda for changing U.S. fisheries management.

In 1994, the Network drafted a comprehensive package of amendments that were embodied in H.R. 4404 introduced by Congressman Wayne Gilchrest. This package, which included amendments on overfishing, bycatch, habitat protection, council reform, protection of large pelagics and enhancement of enforcement and monitoring, was cosponsored by 90 members of the House (45 Republicans and 45 Democrats). We encourage the committee to take a close look at these amendments, and urge you to incorporate these changes into the final committee bill.

For Greenpeace, our priorities remain preventing overfishing, rebuilding depleted fish populations and reducing bycatch. We also urge the committee to hold the line against authorizing ITQ schemes.

**THE NEED FOR A CONSERVATION-ORIENTED ACT**

Since the passage of the Magnuson Act in 1976, U.S. fisheries have experienced a major transformation. Nineteen years ago, the fisheries along U.S. shores were being exploited primarily by foreign fleets. Today, the "Americanization" of U.S. fisheries—a primary objective of the Magnuson Act—has been achieved.

However, the success of Americanization and the development of the U.S. commercial fleet has brought new challenges. Instead of competing with foreign fishing fleets plying off the coasts, U.S. fishermen are now competing with each other. The familiar cry of overfishing and concerns about excess capacity and destructive and wasteful fishing, are now being said by U.S. fishermen about U.S. fishermen.

As the Magnuson Act allowed for the rapid economic development of the U.S. fishing industry, conservation issues were put to the wayside. The result is clear. The problems facing our national marine fisheries are more severe today than during the tumultuous years prior to the Magnuson Act, and the status of fisheries in this country has worsened. In 1972, it was determined that 39 stocks were over-utilized. Today, the National Marine Fisheries Service (NMFS) believes that 64 of 153, or roughly 43%, of the known managed fish stocks are over-utilized. An additional 25% of the known stocks are considered to be fully-utilized.

Now that most major fish stocks in the United States are either fully or over-exploited, policies that once promoted the growth of the U.S. fishing industry must be replaced by policies to contain the capacity of modern fishing technology and conserve fishery resources. Consideration must be given to the effects of fishery removals on the future viability of the fisheries and of the marine ecosystem as a whole.

As we have recently witnessed in New England, there are both strong economic as well as environmental arguments for taking this approach. If not apparent before, New England has demonstrated that the health and survival of the fishing industry and fishing communities depends on the long-term sustainability of fish stocks.

#### RESOLVING THE BYCATCH PROBLEM

Bycatch is the general term used to describe the catch of unwanted fish and other marine species taken during fishing operations. Typically bycatch is discarded overboard dead or dying. Due largely to unselective fishing practices, vast quantities of fish are caught and wasted each year. The reason fish are wasted is because they are the wrong sex, the wrong size, or the wrong species for the target fishery. The level of bycatch is different from fishery to fishery, from gear type to gear type and even from vessel to vessel. In most fisheries, bycatch is unwanted and discarded due to regulation or because of low economic value. It is important to understand, however, that one vessel's bycatch may be another vessel's target catch.

Many of our nation's fisheries are allowed to continue irrespective of the wasteful manner in which they are prosecuted.

For example, in 1993, in the groundfish fisheries of the North Pacific, over 740 million pounds of fish were discarded. Approximately 76% of this figure was contributed by the factory trawler sector alone. In our view, bycatch may be one of the single greatest threats to the long-term viability of our fish populations. Yet, the Magnuson Act is silent on bycatch.

Therefore, we urge Congress to amend the law not only to include a new national standard to reduce bycatch in all fisheries, but to tighten requirements under the fishery management plans to ensure that bycatch reduction programs are established, and the goal of reducing bycatch is achieved.

To this end, conservation and management measures in fishery management plans should focus on preventing bycatch.

Furthermore, programs to address bycatch should work towards reducing all bycatch, not just the bycatch of regulated and commercially-valuable fish. Currently, in both bills before Congress in 1995, H.R. 39 and S. 39, only species which are managed under a fishery management plan would be fully addressed by measures to reduce bycatch. Under this scenario, numerous species which are caught as bycatch and are not subject to fishery management plan would not be afforded adequate conservation and management under the Act. There is little or no data presently of the impact that this type of bycatch would have on these stocks or the ecosystem of which they are a part.

In addition, Greenpeace does not believe that programs to utilize bycatch are solutions to the problem. Known collectively as full utilization, such programs will not reduce bycatch, but instead sidestep the issue, by promoting the creation of and markets for low-value products such as fish meal.

Greater consideration should be given to programs which seek to avoid the catch of unwanted fish in the first place. Efforts must be made in the area of gear selectivity in order to improve the types of fishing gear used as well as fishing methods. We support the development of a harvest priority system which would provide incentives to promote clean fishing. As an example, fishermen agree collectively on a bycatch rate. Those who fish cleanly would be rewarded with an extra fishing season, or perhaps an extra allotment of fish. Those fishermen who did not fish cleanly would be penalized by not receiving this additional opportunity to fish. The intended goal is to provide a system whereby fishermen design a better way to fish, improv-

ing the selectivity of gear to catch the target species and avoid the non-target species.

#### THE NEED TO PREVENT OVERFISHING

One of the primary goals of the Magnuson Act, as originally authorized, was to halt the overfishing of U.S. fish stocks. As noted above, the law, to date, has largely failed in this regard. In fact, as written, the law does not prevent overfishing.

A critical problem affecting conservation of fish resources is that fish stocks are currently managed to provide "optimum yield." Optimum yield is defined with an emphasis on economic benefits to the nation which often results in catch levels being set higher than maximum sustainable yield (MSY). Due to the uncertainty of fisheries science, the level of overfishing for many fish stocks is also not known. Therefore, we believe that the definition of optimum yield should be changed to allow for a greater conservation buffer in the face of uncertainty.

Moreover, the concept of MSY assumes that each fish stock behaves independent of other fish stocks and other species in the marine ecosystem. Recently, scientists have begun to focus on the importance of better understanding marine ecosystem dynamics in order to more effectively conserve fish stocks. Toward this goal, Greenpeace believes that efforts should be made to move away single-species fisheries management and instead focus on a more holistic ecosystem approach.

Finally, the yield of a fishery must be defined in terms of long-term sustainability. Since marine ecosystems are dynamic and fish populations are subject to natural fluctuations, in the face of scientific uncertainty, fisheries management must err on the side of conservation when determining levels of fishery removals.

Greenpeace supports language in the Magnuson Act which would define optimum yield as follows:

The term optimum, with respect to yield from a fishery, means the amount of fish—

(A) which would provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) which is prescribed as such on the basis of the sustainable yield from such a fishery, as lowered by any relevant economic, social or ecological factor;

(C) provides for rebuilding of depleted and overfished fishery resources to a level consistent with providing sustainable yield.

#### LIMITING ACCESS IN OUR NATIONAL FISHERIES

The majority of fisheries managed in federal waters are conducted under what is termed "open access" systems. Under open access, any vessel may participate in any fishery as long as the vessel has a valid fishing permit. In concept, open access was completely compatible with the desire to Americanize U.S. fisheries and develop a globally-competitive fishing fleet. However, as there is no limit to the number of participants in a fishery, open access has resulted in overcapitalized fisheries and competition between vessels, racing to catch as much fish as possible. This system has also exacerbated overfishing and increased bycatch and waste.

Presently, the debate on open versus limited access is focussed on a highly controversial management scheme known as individual transferable quotas (ITQS). Under an ITQ system, each vessel owner would be permanently granted a percentage share of the fishery's overall annual quota. Quota shares would be based on the vessel's catch history for a given time period, and once allocated, could be bought, sold or otherwise traded. The only way for new participants to enter would be through the purchase of rental or existing quota shares.

In order to understand the current pressure that is being exerted to legislate ITQs during this current Magnuson Act reauthorization, it is important to understand the history that brought us to this point.

In the mid-1980s, a joint industry-government task force was convened to develop a plan for the future of groundfish in the North Pacific. Their report, issued in 1988, recommended among other things that entry in the fishery be limited. However with numerous new vessels under construction, the North Pacific council was unwilling to recommend cut-off dates for entry, and no sector or individual was willing to limit its own participation.

As a result, between 1986-1992, the number of 200-400 foot factory trawlers increased from 12 to over 60. Many of these vessels came on-line after the report was issued. These boats were built on the basis of a ten month fishing season, but in 1995 will fish barely two months. This part of the fishing industry, the main proponents of ITQs, is failing financially. Therefore, having failed to convince the North Pacific council to bail them through an ITQ program for North Pacific groundfish, the factory trawlers have set their sights on Congress.

While Greenpeace recognizes that there may be a need to limit access in certain fisheries in order to improve conservation and management, it must also be accom-



panied by a reduction in fishing effort. While ITQs may reduce overcapitalization, they do nothing to reduce fishing effort. Whether its the enforcement nightmare facing the North Pacific Halibut-Sablefish ITQ program or the depletion of the New Zealand Orange Roughy stock which has become depleted since the fishery went ITQ in 1983, it is clear that ITQ programs carry with them heavy ecological, social and economic costs. The problems existing in these ITQ programs prove that:

ITQs will not achieve conservation of fish stocks, or maintain the role of the small-scale fishermen and the coastal communities dependent on them.

ITQs will not address the environmental impacts of wasteful fishing practices, specifically the problems of bycatch and discards. To the contrary, ITQs will reward those who fished least conservatively with the largest quota share. The fact that ITQs will provide a greater incentive to discard fish which are not the right size, sex, or quality desirable for maximum profitability, will further exacerbate this problem.

ITQs will concentrate fishery resources into the hands of large corporations which can afford to buy up quota shares. This process will force individual fishermen out of business, and threaten community-linked fishing operations.

ITQs will, in most cases, be granted only to vessel owners, not captains or crew members.

Estimated costs of monitoring and enforcing an ITQ program are two to three times greater than costs under present fishery management systems. With the longer fishing seasons, the opportunities for high grading and poaching will increase further exacerbating the problems of overfishing.

Finally, ITQs will fundamentally change the nature of fishery resources. ITQs will take what is presently a resource belonging to all U.S. citizens and transform it into private property that belongs to only a few select individuals or corporations. Once the Nation's fisheries are privatized, fishing will no longer be a privilege—the fish will become private property and fishing a property right.

In order to improve marine resource management in the United States, numerous changes must be made in the status quo. Economic efficiency can no longer be the impetus for improving the status of fisheries.

#### CONCLUSION

In 1975, when the U.S. fishing industry came to Congress asking for an end to overfishing by foreign industrial fishing fleets off the coasts of New England, Congress rose to the challenge with the passage of the Magnuson Fishery Conservation and Management Act of 1976 which did, among other things, end FOREIGN overfishing. In 1995, with the closure of Georges Bank in New England, the Red King Crab Fishery in Alaska and declining catches around our coasts, U.S. fisheries are once again in a state of crisis. If the U.S. fishing industry is to survive, Congress must enact the comprehensive reforms that will change the Magnuson Act from its current role of development of U.S. fisheries to one of long-term sustainability.

#### PREPARED STATEMENT OF STATE SENATOR BRUCE TARR

##### I. OVERVIEW.

Mr. Chairman, Senator Kerry, thank you for the opportunity to share with you this morning my thoughts relative to the reauthorization of the Magnuson Fisheries and Conservation Management Act.

I am State Senator Bruce Tarr, and I am also the President of Gloucester United, a Community-based Organization to revitalize the economy of the City of Gloucester. Presently, our more than 200 Members are focused on the fishing industry, although our ranks include retailers, attorneys, insurance professionals and people from nearly all walks of life. We have united around the fishing industry because of its economic, social and cultural importance to the City of Gloucester and the Commonwealth of Massachusetts.

The opportunity you afford me today comes at a pivotal time for the future of fishing as an economic force and a way of life in Gloucester and Massachusetts. Reauthorization of the Magnuson Act presents us all to review fisheries management practices in our Nation. Doing so will allow us to approach the next century with a statutory framework for a transition to prosperity in our fisheries.

Reaching that goal will necessarily mean bringing together the expertise of those in the academic field with the invaluable practical experience of those who harvest our precious fisheries resources and those who process them into an essential protein resource for our Country and our world. Critical to the inclusion of these components in public participation.

I can conceive of no better means presently available for soliciting participation than our Regional Management Councils. Although they may at times be criticized,

the Councils reflect the essence of our democracy. Through their work the views of the public are solicited, assimilated and reviewed in representative fashion. Just as our Federal and State Governments rely on representative democracy to secure the basic rights and privileges of our society, so should we also guard our precious fisheries resources with democratic vigilance.

A true democracy accepts all participants, without separation by category. Similarly, we should avoid unnecessary categorization of Council Members. Consider, for example, those who would argue that Regional Councils should have an increased number of members with environmental or conservationist concerns. These are terms which describe our seafood harvesters and processors, and are therefore redundant. Fishermen, concerned with their future and that of their children, have conservation on today's list of priorities.

Preserving the strength and effectiveness of the Councils means also preserving their integrity by limiting the extent of intervention by the Secretary of Commerce and other bureaucratic Officials. Certainly the Secretary and others have a role to play. Yet, overruling or contravening the Councils frequently will lead only to a weakening of the process and the continued mistrust in the present and future Federal management schemes.

Vigorous Council activity, with public participation, will pave the way for the framework to which I have referred. Such a framework will provide the means to flexibly preserve and build the stocks while balancing economic and conservation concerns. Properly framed, it will also require the Federal Government to recognize, in real terms, its obligation to support conservation plans with financial resources.

Finally, we are quickly approaching the point when a consensus and vision must be reached for the future of our fisheries and the commercial enterprises which they support. Through a comprehensive vision process our ports can develop specific products and markets to maximize optimum utilization of species and minimize duplication.

Several months ago this process began in Gloucester with a "Harbor Conference" which I sponsored along with twenty or thirty other members of our Community. Using a total quality format, that planning committee oriented participants to the process from each waterfront user group. The result was an enormously successful conference with more than 280 participants. Three hundred cooperative ideas for conservation and development were put into a database and are being catalogued for future use.

I continue to believe that this process, or a similar effort, must be undertaken pursuant to the Magnuson Act by the Federal Government. Each port should be empowered to resolve conflict, reach consensus, and be prepared to take its rightful place in this framework for transition. Toward that end, Gloucester is moving forward once again in a "Vision 2020" process which involves participants from all walks of life. Together, we are working to develop a plan for a prosperous future. These types of efforts should be recognized and supported by the framework of the Magnuson Act.

## II. REGULATORY RECOMMENDATIONS.

### A. Regional Councils

Many recommendations relating to the Magnuson Act reauthorization appear to be intent on preserving strong Regional Councils, and they are appropriate. Maintaining an open, representative process is the only way to ensure fishery management plans which are comprehensive and respected by those who will be regulated.

Along these lines, modifications to prohibit conflicts of interest are in order. Caution must be used, however, in defining when these conflicts occur. Eliminating members who earn their living (directly or indirectly) from the sea would strip the Council of its credibility and effectiveness.

There is a particular danger in seeking to exclude such persons in order to increase the number of knowledgeable but uninterested persons on the Councils. Active involvement in a fishery is not necessarily a disability. Rather, it is evidence of commitment to its future.

Council participation and membership should be open to as many parties as possible, but without seeking in advance to, wittingly or unwittingly, promote a particular agenda.

Moreover, the reauthorization of the Act should leave the Councils poised to consider the entire environment in which regulations are undertaken. Beyond strengthening the Fisheries Management Plan requirements that socio-economic impact studies be conducted prior to adoption of amendments, a reauthorized Act should also cause the Councils to make specific recommendations as to the resources necessary to enforce new regulations and mitigate socio-economic damage to communities impacted by these regulations.

This holistic approach will give Council members a greater sense of the practicability of new regulations, and should allow them to communicate directly to the Secretary of financial ingredients for success to any new plan.

#### B. Secretarial Actions.

Intervention into the workings of the Regional Councils by Governmental Agencies and the Secretary of Commerce should be minimized. When present, government intervention leads to a "short circuiting" of the Council's authority and diminishes the public hearing process which is critical to positive rebuilding efforts forward in our fisheries.

Specifically, the suggestion of "interim measures" which would extend for a period of up to one year unnecessarily remove the public from the regulatory process. This would amount to no more than an emergency action for a 360 day period.

Perhaps a more reasonable approach would be a 100-120 single emergency action period, to be followed by a Public Hearing.

#### C. Fees & Taxes.

Any increase in fees or taxes upon the seafood harvesting should be flatly rejected. Currently, the industry has been promised some \$30 million in financial assistance to be invested in economic transition and diversification.

When the seafood industry finds itself in this critical time of diminished cash flows, significant indebtedness and the need for renewed investment, taxation or the removal of financial resources is completely counter-productive.

In fact, such action may well cause the exacerbation of the losses in gainful employment which have been caused in the past decade by federal action and other factors.

Conservation of marine resources appears to be rapidly ascending as a national priority. Should it in fact become a priority, then the Department of Commerce and the Interior should be prepared to allocate budgetary resources to advance that priority.

Simply examining the issue of by-catch reveals the current economic waste being suffered by harvesters at the direction of the government. By allowing them to retain landed and expired fish, more needed economic resources could be retained within the industry.

#### D. Science & Technology.

The requirement of best scientific information available poses a daunting and unnecessary challenge for the Council, the Secretary, and others. Subjective intermingling of what is best will necessarily lead to conflict and contention.

Clearly, harvesters must play a role in the development of accurate scientific information. While sea sampling, log books and observers presently provide them with a role, it is limited.

Recently implemented Fishing Industry Grants point the way toward increased support for harvester-based research. Similarly, it appears that Saltonstall/Kennedy Grants are beginning to be redirected toward their original and necessary intent of *applied* research.

A reauthorized Magnuson Act must carry this trend further. First, funds should be guaranteed for additional harvester-based research. Second, partnerships with institutions of higher learning should be encouraged. Third, a requirement that "all available scientific information" should be considered, and should be instituted. Further, the Council and/or National Marine Fisheries Service should be required to document in writing the differences among presented information and reasons why any presented information was not included in the decision-making process.

Last, those research projects which solely affect the seafood industry, such as vessel buy-back programs, should be reserved for industry-based research and development. Accordingly, funding such as that described above can be properly applied to develop commercially practicable solutions.

### III. BIOLOGICAL RECOMMENDATIONS

#### A. Habitat

Much of the destruction or habitat loss has occurred within the fisheries which are within our near shore or coastal habitat areas. Under the Atlantic Coastal Fisheries Cooperative Management Act, P.L. 103-206, a major objective is to direct the responsibility of managing the Atlantic coastal fisheries and the states through the Atlantic States Marine Fisheries Commission. Thus, the Atlantic States Marine Fisheries Commission and both the Secretaries of Commerce and Interior are mandated presently to improve the process for mutual state implementation of necessary fishery management measures, including the loss of vital habitat areas. P.L. 103-206 provides a strong means to manage both fisheries and habitat within the important inter-coastal state areas and jurisdiction beyond territorial waters. Clearly, extending this Act to include all Commissions throughout the nation will bring about

habitat protection without encumbering the Magnuson Act. Additional funding, however, would be required.

#### B. Overfishing and Recovery Plans

The 602 guidelines should be maintained as informal guidelines established under the present Magnuson language, Sec. 301 (b), *advisory* guidelines. I support the Council's position that the Secretary can reject any recommendation which does not conform to the Guidelines and the National Standards. I believe any overfished fishery must undergo a rebuilding approach; however, I do not agree with a legislated rebuilding program (recovery program) that ignores the social needs of the fishing public. Any rebuilding program must be designed to maintain the maximum fishing infrastructure of a fishing community. More importantly, a rebuilding program must establish a level that rebuilds fishing stocks at a steady pace, yet maintains the maximum amount of job opportunities.

#### C. Bycatch/Waste/Gear

I request the elimination of the amendment's language which attempts to reduce bycatch to insignificant levels approaching zero. Instead, I recommend modification of the bycatch policy, as such, ". . . to reduce bycatch to the minimum extent practicable, based upon existing demonstrated technological developments." I do support the Subcommittee Staffs' recommendation that during the preparation of Fishery Management Plans, councils would be required to note bycatch fisheries and develop reduction methods/measures. Due to the interrelationship of bycatch, which is either directly or indirectly related to fishing gear, I support the continual gear or conservation engineering studies.

I support the concept of positive incentive programs to avoid bycatch and waste, and strongly recommend working with entire fishing communities to achieve this goal. Gear research will play the most significant role in the restoration of our resource stocks during the next decade and eventually, for the future of all renewable stocks. More so, I support the ability to determine technological changes that are evolving within the harvesting community and the council and National Marine Fisheries Service must have the ability to anticipate gear changes/impacts on present and future management measures.

#### IV. BUY BACK PROVISIONS

Among the greatest challenges facing government in regard to the current crisis is the possibility of a vessel buy-back program. Presumably such a program holds the potential to reduce fishing pressure by reducing the harvesting capacity of the existing fleet. Numerous obstacles, however, arise with regard to the use of this tool.

A prime concern is the overall impact on the New England Fishing Industry of using vessel reduction to control effort. While vessels may be successfully removed from the fishery, they represent a single component of a more complex economic unit. Businesses engaged in the support of fishing vessels (i.e. the sale of gear, fuel, ice and other materials) may be placed in increased jeopardy of survival with no corresponding relief.

Similarly, buy-back programs assist vessel owners and financial institutions, but do little to ease the plight of crew members who will be displaced. Extinguishing vessels will leave fewer at-sea employment opportunities and no additional resources for entrepreneurs to initiate new opportunities.

Resources targeted at the fishing industry in general must be carefully disbursed, leaving the question open as to where buy-back programs fit into the overall context of government assistance. We must strive to prevent resources from being diverted from potentially successful programs designed to permanently diversify the fishery and avoid overfishing in the future.

In this vein, current proposals to convert funding from the Northwest Atlantic Fisheries Reinvestment Act (NAFRA) from investment in re-tooling to vessel buy-back programs are illustrative. While the relatively low appropriation for the NAFRA can have a significant impact on retro-fitting, it would be largely inconsequential in reducing effort through the purchase of vessels.

This points out the necessarily significant cost of any buy-back program, which cannot be allowed to undermine attention to the more immediate needs of the commercial fishing industry. A properly balanced program would remove vessels from the fishery while promoting diversification and stabilizing the financial condition of fishing families.

Accomplishing all of these objectives will mean realizing in some way the value of the vessel and its permit. This will not be simple given the potential future value of a permit in a limited entry system where stocks are predicted to rebuild within the foreseeable future.

Two key elements of any buy-back program should be a re-entry priority system and transitional capital. Said differently, those who have earned a living from the

industry should be given priority to re-enter the fishery if they have sold a vessel and eventually stocks rebuild.

In the interim, it must be realized that a basic cost-only buy-back system would only facilitate exit from the fishery. Vessel owners would be left with little or resources to explore new commercial ventures. In order to prevent buy-back programs from necessitating further assistance, they should provide transitional capital. Such funding would assist vessel owners in securing their own employment as well as promoting employment for others. A useful adjunct to this funding would be the availability of re-training and small business development programs.

In short, many issues arise when contemplating a vessel buy-back program. Creative tax policy holds potential funding solutions for some programs. Yet in general the commercial fishing industry itself would be perhaps the best architect of any commercially practicable program.



# APPENDIX

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## ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



### Massachusetts Lobstermen's Association, Inc.

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March 8, 1995

Mr. Thomas O. Melius  
United States Senate  
Committee on Commerce,  
Science, and Transportation  
428 Hart Building  
Washington, D.C. 20510

Re: S.39, The Sustainable Fisheries Act

Dear Committee Members:

The 1100 member Massachusetts Lobstermen's Association would like to submit our comments on several of the proposed amendments to the Magnuson Fishery Conservation and Management Act as presented in S.39, the Sustainable Fisheries Act.

#### FISHERY HABITAT:

In addition to what is proposed regarding protection to habitat, there is a need to evaluate existing gear types and not just newly introduced types. There exists gear types such as heavy scallop dredges, and "Rock-Hopper" roller gear for trawlers that currently adversely impact habitat and upset juvenile populations. Additionally, the regular bottom dragging-trawling gear type itself is capable of upsetting habitat particularly once it moves off the mud and sand bottoms and moves through cobble bottom or with the use of rollers (roller gear) actually fishes in broken and very rocky bottom. There is no escape. These vessels can go just about anywhere. Prior to the use of this type of gear, the bottom trawling (draggers) nets were restricted to flat bottom but not anymore. We are very concerned that the use of bottom trawling to catch lobsters will increase as these fin-fish vessels redirect their effort. Habitat destruction will increase as they intensify the use of current gear types in areas that they hadn't fished in before.

The lobster trap fishery is already under a mandate to reduce their effort on the only species they fish for while mobile gear is free to expand its attack on the lobster and its habitat. Effects on the currently "in use" bottom trawls, sweeps and doors, roller gear and scallop dredges should be analyzed as well.

#### CONFLICTS OF INTEREST:

We are very concerned that at present the majority of the membership of the New England

Fishery Management Council represents either directly or indirectly, the ground fish industry. The lobster industry has been unable to get any decision past the Council if it limits the groundfish fishery in any way. Since we have little to no representation on the Council level, we obviously feel very outnumbered on any proposal we put forward. **We must reluctantly agree with the conflict of interest proposal.**

**We are supportive of the negotiated rule making proposal.** We believe the establishment of negotiation panels to help develop specific conservation and management measures for a fishery would be a good idea.

#### INDIVIDUAL TRANSFERABLE QUOTAS:

The Massachusetts inshore lobster fishermen do not support any form of ITQ's for their fishery at this time. It should be noted that the vast majority of lobster fishermen, even those who are federally permitted as well as state licensed, are inshore, day boats and are, relatively small operations. This is probably true for the entire range of this resource north of New York.

#### BY-CATCH (?):

We are not sure if this issue belongs in this section or not. The problem of redirection of effort by the mobile gear, multi-species, groundfish fleets into a more directed effort on lobsters is of deep concern to us. The redirection has already begun and while by-catch, discards, and concerns about increased effort on "other fish stocks" seem to be heading the agendas of many meetings, no where does there appear to be any concern for a redirection by these vessels on the lobster stocks. The current wording of By-Catch in the proposals seems to allow lobsters to be upgraded from by-catch to directed fishery. The lobster has been designated as being "overfished" by the NMFS biologists. Lobster fishermen are in the middle of effort reduction plans for the trap fishery although they do not agree with the NMFS assessment. There is, however, no serious attempt by "the government" to stop the increase in effort on the (overfished?) lobster by the mobile - gear sector. Why is that? **The redirection of effort on to the lobster resource should be stopped.**

The only effective way to accomplish this is by stopping the landing of lobsters by vessels rigged for dragging or by limiting the landings by these vessels to a small incidental by-catch allowance which would prevent a directed fishery. This would keep catches within the perimeters of a true by-catch.

#### THE 602 "SNAFU"

The 602 provision should remain a guideline and not be made a rule. We also feel that the New England Council and NMFS should be informed that Congress means what it says; ie: "This provision does not have the force of law".

The lobster industry is currently embroiled in "mandated" effort reduction plans that are caused largely because the N.E. Council and NMFS do already consider this part to be "law".

Because of their interpretation, the industry has been mandated to produce "concrete" measures to reduce effort at arbitrarily chosen percentages which have been based on "Jell-O" like statistics on the status of the lobster stocks. Encouraging reductions in effort that are not tied to specific percentage levels would be appropriate. Making the 602 guideline, *the 602 rule* would mandate the currently unfair policy being leveled on the lobster industry at this time. The current policy by NMFS and the Council, which is not consistent with the present wording in the Act is tearing the industry apart now and is likely to provoke calls for Congressional intervention down the line.

This less desirable course of action could be avoided by either eliminating this provision or

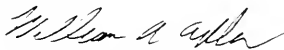


by keeping the current wording and insisting that the Council and NMFS abide by the "not having the force of law" part of this section -- 'nuff said!

We would urge you to consider our thoughts on these amendments as coming not only from the 1100 members of this Association, but also as coming from many other coastal lobster fishermen from New York through Maine that share our concerns for the same reasons. Please remember that as the Magnuson Act and its Lobster Management Plan development goes, we are dealing with small fishing businesses that number close to 9,000 as opposed to groundfish operators that may only number a few thousand. We need to be able to accomplish something for the resource that is acceptable to a large number of participants. This is not going to be easy, particularly when they have disagreed from the beginning with the whole concept that they are overfished. Similarly Congress, when looking at these changes to the Act, needs to be cognizant of the fact that these thoughts come from a large number of participants in the fishing community. Our comments regarding the Magnuson Act's Amendments as presented in S.39 (Sustainable Fisheries Act) are designed to ease potential strife when dealing with so many as we proceed to develop conservation measure to protect and enhance the lobster resource of New England.

We thank you for your consideration on this issue.

Very Truly Yours,



William A. Adler  
Executive Director

WAA/med

enclosures

cc: Senator John F. Kerry  
Senator Edward M. Kennedy  
Congressman Gerry E. Studds

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March 9, 1995

United States Senate  
Committee on Commerce, Science and Transportation  
428 Hart Building  
Washington, D.C. 20510

Attention: Mr. Thomas O. Melius

Re: Letter of Comment on behalf of the Fishermen's Ad Hoc Committee (New Bedford)  
concerning Re-authorization of the Magnuson Act

Dear Mr. Melius:

Please be advised that I represent the above named Committee which presently consists of 40 fishing vessels engaged both in the groundfish and sea scallop fishery primarily out of the port of New Bedford, Massachusetts. Our Committee has been represented from time to time in person and with comment letters before the New England Fishery Management Council. It is quite concerned with the present state of the Magnuson Act and the manner in which provisions and dictates of that Act have been carried out over the years since its inception in the 1970s.

In the Northeast United States fishery today, it appears to be the public perception that the present crises in the groundfish and sea scallop fisheries is a result of careless and selfish over-fishing by commercial fishermen who knew or should have known that they were precipitating a crises in the fishery. Nothing could be farther from the truth! With the closure of the Northeastern United States fisheries to foreign fishing in the late 1970s, the federal government embarked on a program to encourage the domestic fishery by guaranteeing fishing boat loans at low interest rates and by creating substantial tax benefits through the use of investment tax credits. This encouraged a large investment in fishing vessels by non-fishermen business interests. While doing this in one branch of the National Marine Fisheries Service, it failed to carry out the mandate of the Magnuson Act by bringing forward the best scientific evidence available with regard to the fishery and did not act in a responsible way to conserve the fishery. The commercial fishery itself was without and has always been without the organization or the resources to develop the scientific evidence with regard to the conservation and protection

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of the fishery. Under the Magnuson Act, the government had assumed that obligation and has only recently with drastic, draconian conservation measures attempted to rectify the depletion of the United States fishery resource. Even at this late date it is questionable if we are utilizing the best scientific information available as mandated by the Act. It would appear that other fisheries in Canada, the United Kingdom and Norway are far ahead of this country in that regard.

If we are to preserve both the fishery and the fishermen, the Magnuson Act ought to have an overhaul both in its language and its method of operation and in the mind set of the agencies and the persons carrying out the mandates of the Act. Over the last several years the first mandate of the Magnuson Act under section 301(a)(1) has not been carried out. That mandate reads . . . "Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield for each fishery for the United States fishing industry." It appears that the federal government has only reacted after the crises occurs. It is common knowledge in the Northeast of the sad state in which commercial fishermen now find themselves.

Our Committee has several suggestions and comments which we ask that your Committee consider in its review of the Magnuson Act:

#### "BUY-BACK"

The Committee is in favor of a government "buy-back" program whereby vessels in the fishery concerned along with their fishing permits would be purchased by the federal government with the vessel and the fishing permit then being retired. The funding for this could be done with a government appropriation which could be repaid over a period of years by assessing a small percentage of the gross proceeds of fishing trips to come from those vessels remaining in the particular fishery who are directly benefitted by the retirement of competition. Such a system would ensure the survival of a fleet in the fishery while effecting a quick conservation goal in reducing the immediate strain on the fishery. After a "buy-back" program has been implemented and adequate scientific information has been gathered and considered, a strict quota system could then be employed on the vessels remaining in the particular fisheries. This would become feasible when the National Marine Fisheries Service under the Magnuson Act is able and confident enough to predict the year by year anticipated yield in the particular fishery and assign a strict non-transferrable quota to those licensed vessels remaining in the fishery.

A "buy-back" program has been estimated by some persons in the Northeast in considering that fishery in the neighborhood of 100 million dollars or conceivably slightly more. It is interesting to note that as members of our Committee met to prepare this letter it was announced that the federal government had just appropriated 100 million dollars for the education of women from third world countries.

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"Buy-backs" have been implemented in other fisheries. At the present time, as reported in the February 19, 1995 issue of the National Fishermen, Canada's Department of Fisheries and Oceans is appropriating 300 million dollars Canadian to reduce harvest capacity. Included in that plan is a voluntary license buy out and early retirement features intended to give fishermen an incentive to leave the industry. The Canadian Department of Fisheries has set up harvesting adjustment boards to review existing harvesting capacity in the fishery and those boards are to administer a voluntary "reverse auction" license buy out program in which license holders will be given an opportunity to submit a buy out bid reflecting the holders estimate of the license. The Board will then strive to buy out the greatest amount of harvesting capacity within the funding for the program.

Our Committee believes that allowing the transfer of licenses and/or days at sea (DAS) under the present conservation system would be self-defeating. It would not ease the pressure upon the fishery and we believe it will result in a very few holding all the fishing licenses and fishing times. Presently regulations in the sea scallop fishery would allow a single individual to hold 5% of all permits. If a transfer of licenses and/or days at sea were to be allowed, it would be a short time within which 20 persons or corporations would control the entire sea scallop fishery.

In the groundfish fishery there does not appear to be a limit as to the amount or number of licenses an individual might hold. In that case, conceivably one person or corporation could control the entire fishery. Such a result would appear to be contrary to the Magnuson Fishery Conservation Act section 301(a)(4) which requires any fishery management plan (FMP) to be . . . "carried out in such manner that no particular individual, corporation, or other entities acquires an excessive share of such privileges."

A "buy-back" plan is far superior to such a measure as "consolidation". The Fishery Resource Conservation Council of Canada in its November 1994 report to the Minister of Fisheries and Oceans makes the statement that . . . "sometimes the transfer of licenses rejuvenates latent effort and in the view of many fishermen, is an affront to conservation".

A "buy-back" would not only immediately reduce the pressure on any particular fishery but it would also take care of the "displacement" problem whereby vessels presently immediately move to fishing unregulated species whenever allotments run out. This puts a great strain on those unregulated species fisheries and brings about an almost immediate reaction to further regulate them. In addition, when vessels are "displaced" from the groundfish fishery on George's Banks and the sea scallop fishery they are forced to other waters and further problems are created when fixed fishing gear becomes damaged and those fishermen, usually in small vessels closer in-shore, are further impacted by that displacement. With the present tinkering

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in the various conservation management proposals, every adjustment appears to result in a reaction that further exacerbates the problem. The retirement of vessels and fishing permits on a permanent basis goes a long way toward relieving the pressure and gives the National Marine Fisheries Service the time to study the problem in its totality so that the stocks of all species can be replenished.

The transfer of days at sea (DAS) is in no way a conservation measure. The same is true of the individual transferable quota. Under either system you would effectively retain approximately the same impact on the fishery, only substituting one vessel doing the fishing time of two. On their face the use of transfer of licenses or of days at sea or of quotas purports to be an attempt to help some fishermen survive and make them economically viable by increasing their fishing time. Our Committee believes that this is a reaction to the wishes of a few involved in the commercial fishery who appear to possess sufficient funds or the availability of such funds to consider the purchase of licenses or additional days at sea or of quotas. This puts the majority of boat owners at a disadvantage since in these hard economic times the vast majority of the fishermen are unable to come up with the wherewithal to purchase additional licenses or days at sea or quotas. This type of action or reaction to the present problem is an affront to conservation and is a thinly disguised attempt of a few to gain control of the entire fishery.

#### FLEXIBILITY AND IMPLEMENTATION

The implementation of conservation measures while keeping in mind the economic impact upon the commercial fishermen and giving that some consideration is laudable. But the implementation and the adjustment of conservation measures ought to be more flexible than it has been. An example of this is the sea scallop count system which was implemented in the Northeast with some support from the fishery itself. Almost immediately after its implementation it was discovered to be an ineffective and inefficient means for conservation.

The theory of the scallop count system recognized that in catching scallops with the gear in use consisting primarily of dredges it was difficult, if not impossible, to exclude small scallops. The grand idea was to allow the fishermen to mix the scallops between larger and small and to set a "count" whereby only so many scallop meats would be allowed per pound. The small number of scallop meats allowed per pound would result in large scallops with higher number of scallops allowed per pound allowing the catch of small scallops. Almost all commercial sea scallop fishermen recognize that once a scallop is landed on board, it is for all intents and purposes dead and will not survive if thrown back into the sea. With the state of the fishery, it soon became apparent that there were many more small scallops which the conservation authorities wished to save through conservation measures and yet it took more than three years of steady effort by the commercial fishermen themselves to get some reaction to

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throw out the scallop count system. While the system was in effect it encouraged the catching of small scallops and required a mix so that scallops had to be taken from the fish hold and small scallops mixed with large scallops in order to make the "count". This was labor intensive as well as unsanitary. In addition it fostered and encouraged a special market of small scallops. Inevitably, it had to come about that a vessel would end up with small scallops on board without sufficient large scallops to make the "count" in a mix. If the scallops were thrown over board it was a waste of resources and certainly the antithesis of conservation. If the small scallops were retained it was a terrible risk with penalties that accelerated rapidly that consisted of seizing an entire fishing catch and imposing fines and permit sanctions which approached \$200,000 and 5 years for a permit sanction for individual vessel violations.

In enforcing the scallop count system, methods were employed by agents of the National Marine Fishery Service and by the United States Coast Guard that approached a zealous enforcement team engaged in suppressing drug and narcotics activities. It had soon become apparent to all that the count system was ill-conceived, difficult to enforce and in no way did it encourage conservation. In fact it encouraged the catch of small scallops. The slow reaction by the federal government and the NMFS to abolish this system was an example of a short sighted anti-conservation measure.

#### PUBLIC COMMENT AND INPUT

The various fishery management councils and their subcommittees as presently set up and operated to attempt to encourage comment and participation from the industry but the system makes it difficult for participation from the industry.

The Council meetings and the meetings of its subcommittees generally occur as designated at locations close to the offices of the National Marine Fisheries Service and the Northeast Fishery Management Council. Small allowance is made for some subcommittee meetings calling for participation from the industry. However, most commercial fishermen are engaged on the day to day business of fishing and find it difficult and expensive to travel to the various meetings. As presently carried out the system allows a few who either have the financial means or are retired to take the time to travel and in many cases stay over night in attendance of the various meetings. There does not appear to be sufficient concern for the Council and the subcommittees to meet at times and places more convenient to the people in the industry such as locations close to fishing ports like Plymouth, New Bedford, Point Judith, Portland, Maine and the like. There should be more flexibility in the scheduling and of the places chosen for meetings. Further effort should be made in encouraging knowledgeable experienced people from the industry to participate.

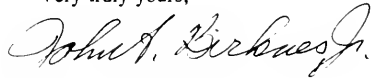
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## SEALS

Our Committee understands that seals may be a protected species within the so-called Mammal Protection Act under Federal Statute. We note that the abundance of seals along the coast has dramatically increased in the last two or three years. We further note that statistics in the Canada fishery on the East coast have reliable data showing that at least 20% of the depletion of their cod fishery is accountable to seals and the Canadians have recently taken steps to address this problem. We appear to ignore it as if it is not a problem. One of the results the Canadians have seen is that after two years of very strict closure of fishing grounds there was no appreciable improvement in their groundfishery. A good deal of this is attributable to the prey upon fish by different species of seals which have been allowed to propagate freely over the past years.

There appears to be sufficient data to show a knowledgeable person that seals are a factor that ought to be studied and considered with some action taken if you are to avoid a substantial loss of the groundfishery. Data available does suggest that seals particularly feed on types and sizes of fish that would tend to propagate the fishery and the protection of seals set back the propagation of fish while improving the propagation of the seal. In readdressing the Magnuson Act some accommodation should be made in this regard with other federal statutes protecting other types of species such as seals.

Very truly yours,



John A. Birknes, Jr.

JAB/rar

cc: Fishermen's Ad Hoc Committee



## Massachusetts Audubon: North Shore

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March 21, 1995

Senator Larry Pressler  
Russell Senate Office Building  
Washington, DC 20510

Dear Senator Pressler,

The Massachusetts Audubon Society requests that the following material be included in the printed record of the Senate Hearing: "On the Reauthorization of the Magnuson Fisheries Conservation and Management Act" held on March 4, 1995 in Boston, MA. This material, which expands on our oral comments at the hearing, was included in a letter we sent to Senator Kerry dated March 15, 1995.

The Massachusetts Audubon Society applauds the efforts of the Senate Oceans and Fisheries Subcommittee of the Committee on Commerce, Science, and Transportation in producing S.39, the Sustainable Fisheries Act (i.e., re authorization of the Magnuson Fisheries Conservation and Management Act). We think there is much merit in this bill and that it will lead to improvements in the way fisheries are managed in the United States. We offer the following comments and suggestions on a number of key issues:

### **1. Why the Massachusetts Audubon Society is interested in this issue**

The Massachusetts Audubon Society is a voluntary association of people whose primary mission includes the preservation of a Massachusetts environment that supports both wildlife and people. The Society's programs encompass three broad areas: biological conservation, environmental education and advocacy. The Society is one of the largest independent conservation organizations in New England with a membership of greater than 54,000 families.

We are interested in the re authorization of the Magnuson Fisheries Conservation and Management Act because the current fisheries crisis is the most significant issue affecting New England's coastal marine ecosystem. We have been involved in the fisheries issues in a number of ways:



- as a coplaintiff with the Conservation Law Foundation in the lawsuit that led to adoption of Amendment 5 of the Groundfish Plan by the New England Fisheries Management Council
- through our leadership within Massachusetts in the protection of coastal wetlands, such as salt marshes and eelgrass habitats, that serve as essential fish habitat
- through research by our scientific staff on estuarine fish populations.

## 2. General Comments

Despite its good intentions, it is obvious that the Magnuson Fisheries Conservation and Management Act of 1976 has not resulted in sustainable populations of commercial fish, a stable economic resource basis for fishing communities, and a healthy marine ecosystem. In New England, the crisis in the fishing industry has resulted in ecological damage to our marine environment, economic hardship to a valued industry, and social disruption to communities such as Gloucester and New Bedford that have long depended on fishing as a source of income and cultural identity. Rather than worrying about who is to blame for the current sorry state of the New England fisheries (and those in the rest of the United States), the Massachusetts Audubon Society believes that the re authorization of the Magnuson Act provides a unique opportunity to correct past problems and to initiate a policy on commercial fishing that sustains both the marine ecosystems and the economies of our fishing ports.

The Massachusetts Audubon Society urges that the re authorized Act clearly state that biological and ecological concerns take priority over economic and social ones. The economic and social stability of fishing communities is impossible without healthy marine ecosystems and sustainable commercial fish populations. It is painfully obvious that the new legislation setting national policy on marine fisheries management should have a much stronger emphasis on conservation than that in the older law. The regional Fisheries Management Councils set up under Magnuson Act of 1976 have not been able to prevent short term economic gains from taking priority over the long-term health of the resource.

Protecting fish populations needs to come first. Two general principles that would help to achieve this are as follows:

- **Decisions on how much fish to harvest need to be conservative and "risk averse"**. There is an inherent uncertainty in determining fish populations and extrapolating reasonable harvest levels, hence a margin of safety on the side of conservation should be part of every decision. In the Northeast, the Society's impression is that the New England Fisheries Management Council, when faced with scientific uncertainty on the status of populations, would invariably use the most optimistic figures favorable to the industry to set total allowable catch. This occurred despite ample warnings from NMFS scientists and others that a potential disaster was looming. The burden of proof should not be on scientists or cautious managers to prove that smaller catches are warranted., rather the other way around.

- **Scientific recommendations for harvest levels need to take priority over economic and social ones.** The decision about how much fish should be harvested each year should be based on the best scientific information as to what is sustainable and needs to be insulated from political, social, and economic concerns. The total allowable catch should never exceed the Maximum Sustainable Yield (MSY) recommended by scientists. The allocation of catch may consider social, economic, and ecological factors (as in the proposed amendment to Section 3 (7)(B)), however the absolute harvest allowed should be based solely on a scientific assessment of what the fish populations can sustain.

### 3. Overfishing

#### A. Defining overfishing and fish approaching an over fished condition

We applaud S.39 for mandating a clear definition of overfishing and for requiring a recovery plan with a definite timetable. We also support the requirement for a definition and actions on a species that is "approaching a condition of being over fished" (Section 112 (a)) because it is easier to prevent overfishing than to recover from an over fished condition. In addition to the recovery plan requirements for fish classified as "over fished", we suggest that Fisheries Management Councils be required to show what steps they have instituted to insure that the population of a fish "approaching an over fished condition" will recover without declining into an over fished condition.

#### B. Defining "Optimum Yield"

The definition of "optimum yield" must be based only on what the fisheries resource can sustain over a long period of time and clearly state that social or economic factors cannot be used to justify catch levels greater than the maximum sustainable yield. Harvesting at a level greater than the MSY can never be permitted.

We support the definition in S.39 (Section 103) that the "optimum yield" of overfished stocks provides for the rebuilding of such stocks to the level that will produce their maximum sustainable yield (Section 103,(7)(C)).

#### C. Reducing the size of the fleet

Overfishing is largely the result of too many fishing boats using increasingly sophisticated technology. The Massachusetts Audubon Society supports federal and local funding for buying out fishing vessels and supports the provisions in Section 119 (to be inserted in Section 315(b)) for insuring that such boats remain out of the fisheries. We are concerned that limiting federal support to 50% of the buy-out program may not be adequate since local funds are likely to be limited in regions where the fishing industry has declined to the point where a buy back program is necessary.

#### D. Limiting technology

A buy-out program and programs to limit access to fishing will fail if the fewer remaining boats simply increase their own catch by using more sophisticated technology. The increased ease of finding and harvesting fish has been a major factor in the current fisheries crisis. Fisheries Management Councils need to be able to mandate a certain

degree of inefficiency in technology if there is going to be sustainable fisheries. The new technologies to be encouraged by Fisheries Management Councils should be those that reduce bycatch.

We support the amended Section 305(d)(3) requirement in which new fishing technology cannot be used without the proponent first submitting a written request to the fisheries management council, which may then request the Secretary to ban such technology under his/her emergency powers if it threatens to compromise the effectiveness of conservation and management efforts. It should be clearly stated in the Act that only those technologies explicitly listed for each fishery can be used. We also urge that Fisheries Management Councils be required to regularly review and update the lists, taking into account recent scientific data, and be given authority to remove certain technologies from the authorized list, since the effects of certain types of gear on fish habitats, bycatch, etc., is not always apparent immediately. In New England, the use of roller chains on otter trawls has opened up to groundfishing rocky areas that probably served as refuges for cod and haddock thus further limiting the ability of these species to repopulate over fished areas.

#### E. Risk averse management

As mentioned above, we feel that a key to preventing future overfishing is to institute a national standard that harvest levels be risk averse.

### **4. Bycatch**

#### A. Development of a national standard

The Massachusetts Audubon Society urges that the re authorized Act include a national standard that bycatch be reduced to levels approaching zero. Under Section 111(a)(5)(12), the phrase "to the extent practicable" when referring to reducing bycatch is vague.

#### B. Marine mammals, birds, and reptiles

We urge that marine mammals, birds, and reptiles be included as another category of bycatch, in addition to economic and regulatory discards, under Section 103 (2) Definitions. There is an obvious need here for coordination with the Endangered Species Act.

#### C. Need for more research and data collection

It is clear from discussions of the New England Fisheries Management Council that more research is needed on the problem of bycatch with different gears and we agree with efforts in the Sustainable Fisheries Act to address this.

#### D. What to do with bycatch

At the Senate hearing in Boston on March 4, the question was raised whether we should be requiring or at least encouraging fishermen to bring in bycatch that will die anyway rather than discard it. We agree that it is a shameful waste to discard "regulatory" bycatch when these fish will not survive being returned to the sea, and that donations to

food shelters are appropriate, however there should be no economic incentive to bring in bycatch. We are concerned that allowing fishermen to profit in any way from bycatch may lead some to targeting these fish. New England is a particularly plagued by the bycatch problem since roughly 16 different species of fish, each with its own particularly life history, are caught by the same method, i.e. otter trawling. The solution is to provide incentives to develop more sophisticated, selective fishing techniques.

## 5. Fisheries Management Councils

### A. The need for broader representation

One of the reason the Magnuson Act has failed to achieve its goals is that it has asked industry to regulate itself, an unusual regulatory format. The Massachusetts Audubon Society continues to support the notion of regional management of fisheries with oversight by NMFS and the Secretary of Commerce but it is absolutely essential for the management councils to have a broader representation of interests and backgrounds. The Act should mandate that several council members on each council be individuals who have no direct financial interest in the fishing industry, but who are either knowledgeable about fisheries issues or are reasonable and respected for their judgment or fairness. This may include representatives of nonprofit organizations, universities, businesses, etc. The Act already suggests that some of its Advisory Committees (for ITQs and developing strategic research plans) contain such representation and there is no reason not to extend this to council membership itself. This would insure that the long-term health of the resource would take priority over the immediate concerns of the industry.

### B. Addressing conflicts of interest

S.39 addresses the question of conflict of interest adequately on specific issues that come before each council, but it needs to look at the larger question of council membership.

### C. Insulating Councils from pressures from the industry

Council members are inevitably under tremendous pressure from the industry when they institute necessary, but difficult conservation measures. It is a thankless job, since council members are often castigated at public meetings by their former fishermen colleagues and by self-serving politicians. We applaud the recent courage that some members of the New England Fisheries Management Council have shown in putting the long term benefits of the resource upon which the industry depends ahead of the short term economic benefits. We only wished that it had happened sooner. Having non-industry and non agency members on Councils would insure that decisions are more immune from such pressures.

## 6. Protecting Fish Habitats

### A. Identifying essential fisheries habitats

The Massachusetts Audubon Society supports the requirement that the Secretaries of Commerce and Interior along with individual Councils be required to identify essential fish habitat for all fisheries under Section 113 (Amended Section 305(c)). We support the definition of essential fisheries habitat in Section 103 and suggest a clarification that the habitats of important prey species of commercial stocks are also essential fish habitats for that stock. This would logically fall within the expertise of the National Marine Fisheries Service's Habitat Program. This is an ambitious requirement and will require substantial financial support that we hope will be forthcoming from Congress.

### B. Project review role for NMFS

We support the advisory role of the NMFS Habitat Program on federal and state projects that may impact essential fisheries habitat and habitats of anadromous fish (Section 305(c)(2)). This should also be extended to include the impact on habitats of decisions on gear developed within fisheries management plans.

### C. Wetlands protection

One major benefit to fisheries of protecting wetlands is the role these habitats play as habitats for fish, particularly juveniles. Clearly there is a link between the promotion of fisheries habitat protection in the re authorized Magnuson Act and the wetland protection provisions of the Clean Water Act.

## 7. Research

The Massachusetts Audubon Society supports the requirement for the development and periodic review of a strategic research plan on fisheries conservation and management, technology, data management, and bycatch (Section 205 and 206). Our concern is that this ambitious research program needs to be adequately supported financially by the federal government.

Scientists should be encouraged to interact with fishermen when appropriate in data collection, since there has often been a mistrust between the two. A prototype for cooperation is found in Newfoundland, where fishermen now provide scientists with data on the location of valuable fish habitat.

## 8. Aid to fishing communities

### A. The need for community assistance

Fishing communities need more than just a buy out program in these financially difficult times. The federal, state, and local governments need to cooperate in retraining fishermen for other occupations, whether fisheries-related or not.

### B. Grants to support fishing communities

Our observations in New England is that much of the recent \$30 million aid from the Secretary of Commerce went to organizations and individuals who are experienced in writings grants and did not necessarily benefit fishermen in the beleaguered groundfishing industry. There should be periodic reviews of these aid programs to insure that they are reaching the intended groups. There also needs to be grantsmanship training to fishermen who want to leave fishing or transfer to another type of fishery and want to apply for grants.

### C. Alternatives to fishing

In New England, aquaculture has recently risen to prominence as a potential occupation for people now affected by the decline in groundfish. However, expanding aquaculture may lead to conflicts over the privatization of public areas, particularly in Massachusetts, and may impact nearshore fisheries habitats that could be designated as essential habitats in the Sustainable Fisheries Act. We suggest that states need to develop aquaculture plans and that NMFS provide overall guidance on the potential for and appropriateness of different types of aquaculture.

We thank you for the opportunity to comment.

Sincerely yours,



Robert Buchsbaum, Ph.D.  
Coastal Ecologist



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