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PREVENT THE USE OF FISH FOR FERTILIZER

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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

SIXTY-THIRD CONGRESS  
SECOND SESSION

ON

H. R. 7774

A BILL TO REGULATE THE INTERSTATE TRANSPORTATION OF  
FISH OR PRODUCTS OR COMPOUNDS WHEN INTENDED  
TO BE USED FOR FERTILIZER OR OIL OR IN THE  
MANUFACTURE OF FERTILIZER OR OIL

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FEBRUARY 18, 1914



WASHINGTON  
GOVERNMENT PRINTING OFFICE

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

WILLIAM C. ADAMSON, Georgia, *Chairman.*

THETUS W. SIMS, Tennessee.

J. HARRY COVINGTON, Maryland.

WILLIAM A. CULLOP, Indiana.

FRANK E. DOREMUS, Michigan.

J. HENRY GOEKE, Ohio.

GEORGE F. O'SHAUNESSY, Rhode Island.

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DAN V. STEPHENS, Nebraska.

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ALBEN W. BARKLEY, Kentucky.

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ANDREW J. MONTAGUE, Virginia.

PERL D. DECKER, Missouri.

FREDERICK C. STEVENS, Minnesota.

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JOSEPH R. KNOWLAND, California.

EDWARD L. HAMILTON, Michigan.

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WILLIS J. DAVIS, *Clerk.*

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## TO PREVENT THE USE OF FISH FOR FERTILIZER.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., February 18, 1914.

The committee met at 10.30 o'clock a. m., Hon. J. Harry Covington (acting chairman) presiding.

### STATEMENT OF HON. J. CHARLES LINTHICUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND.

Mr. LINTHICUM. I desire to read to the committee and insert in the hearings the bill we have before us this morning, H. R. 7774, which is as follows:

[H. R. 7774, Sixty-third Congress, first session.]

A BILL To regulate the interstate transportation of fish or products or compounds thereof when intended to be used for fertilizer or oil or in the manufacture of fertilizer or oil.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful for any person to introduce into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or export or offer for export to any foreign country, any fish, parts of fish, or products or compounds composed in whole or in part of fish, intended to be used for fertilizer or oil, other than those commonly known and designated as menhadens (also known as pogies, fatbacks, and mossbunkers), sharks, dogfish, skates, rays, sea robins, and sculpins: *Provided, however,* That this act shall not restrict the use of fish not herein excepted by any industry now established, or which hereafter may be established, when disposed of as by-product of such industry incidental to its principal business.

SEC. 2. That whenever any fish, parts of fish or products or compounds composed in whole or in part of fish are used in the manufacture of fertilizer or oil, every unit of shipment of such fertilizer or oil so manufactured, before the same is shipped into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or exported or offered for export to any foreign country, shall have securely attached thereto a label in the manner and form hereafter to be prescribed by the Secretary of Commerce, certifying that the contents of such unit of shipment contains no fish, parts of fish, or products or compounds composed in whole or in part of fish, except such as are permitted by this act to be used for fertilizer or oil.

SEC. 3. That any person violating any provision of this act or any regulation made thereunder, or falsely labeling any unit of shipment for transportation hereunder, shall be guilty of a misdemeanor and fined not exceeding \$200 or be imprisoned not exceeding one year for the first offense, and upon conviction for each subsequent offense not exceeding \$500 or be imprisoned not exceeding three years, or both, in the discretion of the court.

SEC. 4. That the Secretary of Commerce shall make such rules and regulations as are necessary for carrying out the provisions of this act.

SEC. 5. That this act shall not become effective for industries now established and in operation in the Territory of Alaska until the last day of January, nineteen hundred and seventeen, but shall become immediately effective for any such industries hereafter established.

Before submitting for your consideration the statements of others, I wish to explain that this measure is intended to regulate the interstate transportation of fish or products or compounds thereof when intended to be used for fertilizer or oil or in the manufacture of fertilizer or oil. The object of this bill is to discourage the turning of food fish into fertilizer or oil, and, through the interstate clause, to prohibit the transportation from one State to another of fertilizer or oil products or compounds composed in whole or in part of food fish.

We are informed that great catches of fish which ought to be used as food fish are turned into fertilizer, and this bill is to prevent that. Now, the gentlemen in these menhaden fisheries interested in the fertilizer business contend that but few food fish are turned into fertilizer by them. We say, if that is the case, then there ought to be no objection to this bill; but we are informed, and we know quite conclusively, that many food fish of the waters of the Chesapeake Bay, principally herring, for instance, are turned into fertilizer, and this bill would prohibit that. This bill, however, would not prohibit the turning of any by-products into fertilizer. That is to say, where the fish is used by a packing house for food purposes the heads and tails and any other part of the fish, or the by-products from those fish, could be turned into fertilizer or any disposition made of them they might wish to make, and this bill would not prevent it; but it will prevent the turning of any fish which are food fish into fertilizer, thus destroying what the people ought to have to eat.

I think, Mr. Chairman, that this statement about sums up the purpose of the bill.

Mr. MONTAGUE. Have you any laws in Maryland to reach the same end prescribed in this bill?

Mr. LINTHICUM. We have no laws in Maryland against the use of food fish for fertilizer because we have but one small fertilizer factory in our State, and there never has been any necessity for such laws. But boats come into our waters, purchase in great quantities good food fish from our fishermen and take them into Virginia—a part of which State I believe the gentleman has the honor to represent—and there they are turned into fertilizer.

I have a statement here which I should like to incorporate in the hearing. It is by the Bureau of Fisheries, of the Department of Commerce, and shows the menhaden industry of the Atlantic coast in 1912. It shows that this business is developing into quite a tremendous industry.

*Menhaden industry of the Atlantic Coast States in 1912.*  
 [Statistical Bulletin No. 295, Bureau of Fisheries, Department of Commerce. Hugh M. Smith, Commissioner.]

Items.	Connecticut and New York. <sup>1</sup>		New Jersey and Delaware.		Virginia. <sup>2</sup>		North Carolina and Florida.		Total.	
	Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.
<b>PERSONS AND WAGES.</b>										
Persons engaged:										
In offices and factories.....	576		317		1,010		256		2,159	
On vessels fishing.....	1,094		357		1,820		464		3,735	
Total.....	1,670		674		2,830		720		5,894	
Wages paid:										
In offices and factories.....		\$234,711		\$78,228		\$198,737		\$49,158		\$560,834
On vessels fishing.....		398,218		112,769		426,832		80,331		1,018,150
Total.....		632,929		190,997		625,569		129,489		1,578,984
<b>INVESTMENT.</b>										
Cash or working capital.....		101,679		83,184		197,842		78,700		471,405
Factories.....	8	1,400,119	7	509,401	20	1,307,128	13	409,335	48	3,625,983
Vessels:										
Steam:	39	1,103,500	12	338,000	62	1,737,592	5	124,200	118	3,303,292
Net tonnage.....	3,984		1,262		6,970		729		12,945	
Gasoline:										
Net tonnage.....		25,000		25,000		2,000		126,500		153,500
Purse seines.....	78	78,000	39	34,000	33	123,000	40	36,000	621	271,000
Seine and striker boats.....	117	26,015	42	9,010	189	37,335	38	10,775	386	83,135
Total.....		2,709,313		1,008,595		3,404,897		785,510		7,908,315
<b>EXPENSES.</b>										
Taxes and insurance.....		51,473		30,311		65,064		7,582		154,430
Subsistence of employes.....		141,232		35,786		154,206		13,641		4,344,925
Fuel.....		138,323		34,963		200,333		40,688		4,404,007
Shipping packages.....		58,813		23,772		51,836		4,779		145,200
Acids.....		6,115		3,946				750		10,811
Total.....		385,956		134,478		471,499		67,440		1,059,373

<sup>1</sup> Includes 1 factory in Maine operated only a few weeks during 1912 and a floating factory now dismantled, both owned by a New York company.

<sup>2</sup> Includes 1 small factory in Maryland.

<sup>3</sup> Includes buildings, grounds, wharves, machinery, horses, wagons, and small boats used about the factories.

<sup>4</sup> Total for factories and vessels.

## Menhaden industry of the Atlantic Coast States in 1912—Continued.

Items.	Connecticut and New York.		New Jersey and Delaware.		Virginia.		North Carolina and Florida.		Total.	
	Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.
<b>FISH HANDLED AT FACTORIES.</b>										
<b>Menhaden:</b>										
Caught by own vessels.....	307, 798, 000	\$687, 869	108, 935, 800	\$232, 242	471, 421, 000	\$987, 146	68, 952, 500	\$95, 903	957, 017, 300	\$2, 003, 160
Bought from other vessels.....	9, 507, 300	17, 034	28, 581, 600	56, 928	38, 740, 050	76, 614	14, 393, 500	28, 351	91, 222, 450	178, 927
Bought from shore or boat fisheries.....	190, 400	336	11, 000, 000	24, 050	900, 000	1, 800	1, 513, 600	1, 802	13, 604, 000	28, 078
Total.....	317, 495, 700	705, 239	148, 517, 400	313, 220	511, 061, 050	1, 065, 560	84, 859, 600	126, 146	1, 061, 843, 750	2, 210, 165
<b>Other species:</b>										
Scrap fish and alewife cuttings, pounds.....					4, 900, 000	59, 404			24, 900, 000	59, 404
Sea boms, do.....	30, 000	68							30, 000	68
Skates and swellfish, do.....	150, 000	225					16, 000	50	150, 000	225
Sharks, do.....									16, 000	50
Total.....	180, 000	293			4, 900, 000	59, 404	16, 000	50	5, 096, 000	59, 747
Grand total.....		705, 532		313, 220		1, 124, 964		126, 196		2, 269, 912
<b>MANUFACTURED PRODUCTS.</b>										
Oil.....	3, 613, 500	838, 216	957, 337	247, 831	1, 907, 083	426, 948	173, 283	38, 905	6, 651, 203	1, 551, 930
Dry scrap, tons.....	2, 242	68, 256	2, 923	91, 740	40, 255	1, 208, 321	5, 465	164, 678	50, 885	1, 532, 904
Acidulated scrap, do.....	26, 132	416, 048	9, 744	158, 874			1, 660	28, 524	37, 536	603, 446
Crude or green scrap, do.....			99	1, 725					99	1, 725
Total.....		1, 322, 519		500, 170		1, 635, 269		232, 197		3, 690, 155

1 637,106,250 pounds

2 Consists chiefly of alewife cuttings from packing houses; scrap fish are alewives and perch bought from pound-net fishermen.



In Virginia, for instance, we find that there were 471,000,421 menhaden bought, and the value of the fertilizer produced was \$987,146, nearly \$1,000,000 worth. But this measure does not seek to prohibit the catch or menhaden, although it is claimed by some that the industry being carried on to such a large extent is depriving many food fish of what they feed upon, as some food fish feed upon these menhaden and travel along in the schools with them. But we are not trying to prohibit that; that is an established industry and we are not endeavoring to do anything to its injury, but what we do want to protect is the food fish.

Mr. MONTAGUE. Your bill, as I understand it, does nothing else but prevent the manufacture of food fish?

Mr. LINTHICUM. It is to discourage the turning of food fish into fertilizer and oil.

Mr. MONTAGUE. You prohibit food fish, and food fish alone, from being manufactured into fertilizer and oil?

Mr. LINTHICUM. Those alone. We have no desire to interfere with the use of other fish not generally used for food purposes. You will find that pogies, fatbacks, mossbunkers, which are but other names for the menhaden, are excepted, as are also sharks, dogfish, skates, rays, sea-robins, and sculpins. It does not interfere with the use of them.

Mr. ESCH. Is the fish oil as valuable to human kind as the meat itself? If so, ought it not to be barred by statute?

Mr. LINTHICUM. We think you can get an abundance of fish oil from these other fish. These menhaden, known also as pogies, fatbacks, and mossbunkers, etc., are the ones which contain the greatest quantity of fish oil, and you can get an abundance of that from those without using the herring, which are splendid food fish and which our people have used for food purposes for many years.

Mr. COVINGTON. The second section of your bill provides the method of making effective this proposed regulation, that the Secretary of Commerce shall attach to each unit of shipment a tag or other suitable method of designating the shipment as actually containing no fish of that sort. How do you propose that that regulation shall be enforced?

Mr. LINTHICUM. I should rather that be answered by Dr. Smith, of the department, but my understanding is that it would be enforced by inspectors who will inspect the fish that come there, and see that there are no food fish used in those units intended for interstate shipment.

Mr. COVINGTON. But, for example, suppose that these fish are located in Virginia and that they take fish that are caught within the waters of Virginia and also fish caught within the waters of Maryland, and after the product has been entirely converted from fish into fertilizer, how do you think that is going to be affected by the fact they are required to attach a certificate or tag to an article that is about to enter into interstate commerce, under those circumstances?

Mr. LINTHICUM. Do I understand the chairman to mean that if fish, both food fish and other fish, are caught in the waters of Virginia—in the absolute State waters of Virginia—and also in the State waters of Maryland; how do I propose to regulate that?

Mr. COVINGTON. Yes, sir.

Mr. LINTHICUM. If there are food fish contained among them?

Mr. COVINGTON. What method would you propose to pursue?

Mr. LINTHICUM. I would propose through a corps of inspectors under the department, that those fish shall not be shipped except—that that fertilizer shall not be shipped into any other State. If the State allows its food fish to be caught and turned into fertilizer, destroying the conservation which we are endeavoring so strongly to build up, if any State allows that under its laws, then we propose, under this law, to prohibit them shipping it into other States, and thereby to narrow their market, and in that way to the extent of our means deterring them from the wrongful use of the food fish of the people.

I want to bring that point out very distinctly. You must recognize that we can not enter into any State to regulate its laws, but we contend that no State ought to expect this Government to lend its hand to the shipment of fertilizer manufactured out of food fish, even though such fish come out of the waters of that particular State.

Now, I understand that some contend that the use of food fish for fertilizer and oil purposes does not affect the food-fish market. In answer to that I want to introduce into the hearing a letter I received from a gentleman, now a member of the House of Delegates of Maryland, and, may I say, from the district of the gentleman from Maryland, Mr. Covington, I believe—he can answer that.

ANNAPOLIS, January 26, 1914.

HON. CHARLES J. LINTHICUM.

DEAR SIR: I have noted with interest the many letters in the open-letter column of the Baltimore Sun the last six months concerning the fish question in Maryland.

Furthermore, I have read the bills you have introduced in Congress, and, after giving them careful consideration, I feel that if passed and become laws they will be a great protection to our food fish.

In reference to the herring that are being disposed of for fertilizer, I, a member of the Sherwood Packing Co for the past few years, have been placed in a position to take more interest than I would otherwise have taken. Our business of the past year, like many others, was a very short pack compared with previous years. Fish were very scarce. We had several freight boats searching for herring in the Chesapeake Bay. About April 20 we received word there was a run on at Turkey Point. I chartered a boat and went the next day and to my surprise found 18 or 20 steamers loading for fertilizer factories. I offered 50 cents per thousand more than they were paying and had to leave without a fish. This made a great impression on me, and I felt something must be done to protect our food fish and feel that your bill means as much for the fisherman as the packers. In fact, I have talked with quite a number of the fishermen themselves and find that they are in sympathy with the two bills.

Yours, truly,

ROBERT S. HARRISON,  
*House of Delegates.*

Mr. LINTHICUM. He uses the word "good" fish here. I think he means the word "food" fish.

Mr. D. V. STEVENS. Do you happen to know why he could not get the fish when he offered 50 cents a thousand more for them?

Mr. LINTHICUM. I had a talk with Mr. Harrison and I put that very question to him. He said the reason given him was that they had been in the habit of dealing with the fertilizer people and as they had plenty of boats there they could sell to them at all times, and they did not care to break up their trade with these people by selling the fish to others.

Mr. MONTAGUE. What sort of fish were these?

Mr. LINTHICUM. These were herring.

Mr. MONTAGUE. You said Turkey Point.

Mr. LINTHICUM. Turkey Point.

Mr. MONTAGUE. Where is that?

Mr. LINTHICUM. That is up near the Susquehanna, just below the mouth of the Susquehanna River.

I want to say further that I had a talk with Mr. Harrison several days ago when I was in Annapolis, and he told me not only were they selling these fish to the fertilizer people cheaper, but they were selling them by the tub, and whereas a tub is supposed to contain 1,000 fish, yet as a rule they contain somewhere around 1,300 to 1,500 fish, and for the price they were selling to the fertilizer people the fertilizer people were getting some 1,200 or 1,300 fish for 1,000, yet he could not buy any fish there, and there was vessel after vessel loading to carry the fish to the factories of Virginia.

Mr. ESCH. Have you another bill?

Mr. LINTHICUM. Yes, sir.

Mr. ESCH. What is the number.

Mr. LINTHICUM. H. R. 7775.

Mr. ESCH. Was that the bill referred to this committee?

Mr. LINTHICUM. That is not before this committee. That is before the Committee on the Merchant Marine and Fisheries, that regulates the catching of fish mainly, in what manner they should be caught, and the season.

In connection with Dr. Smith's reference to the sturgeons I want to introduce into the hearing at this point "The story of the sturgeons" as he gave it to me. I call attention to this article because it carries with it a valuable lesson, foreshadowing the ultimate extinction of other species of food fish if we continue to permit their wanton destruction:

#### THE STORY OF THE STURGEONS.

[By Hugh M. Smith, United States Commissioner of Fish and Fisheries.]

The story of the sturgeons is one of the most distressing in the whole history of the American fisheries. These large, inoffensive fishes of our seaboards, coast rivers, and interior waters were for years considered to be not only valueless, but nuisances, and whenever they became entangled in the fishermen's nets they were knocked in the head or otherwise mortally wounded and thrown back into the water. I have seen the shores of the Potomac River in the vicinity of Mount Vernon lined with the decomposing carcasses of these magnificent fishes, witnesses to the cruelty, stupidity, and profligacy of man, and the same thing has been observed everywhere in our country.

The next chapter in the story was the awakening of the fishermen to the fact that the eggs of the sturgeons had value as caviar and that the flesh had value as food. Then followed the most reckless, senseless fishing imaginable, with the result that in a comparatively few years the best and most productive waters were depleted, and what should have been made a permanent fishery of great profit was destroyed. Even after the great value of the sturgeon began to be appreciated by everyone no adequate steps were taken by the responsible authorities or insisted on by the fishermen, and the fish-eating public remained callous.

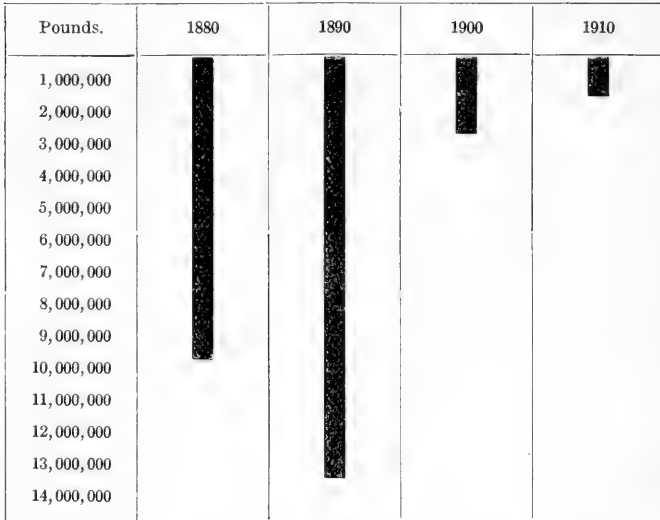
For a long time after the failure in the fishery had begun and was apparent to everyone the immature and unmarketable fish incidentally caught in seines, gill nets, and pound nets received no protection whatever in most waters, and were ruthlessly destroyed as nuisances, the decline thus being doubly accelerated.

On the Atlantic coast the catch of the sturgeon fell from 7,000,000 pounds to less than 1,000,000 in 15 years; on the Pacific coast the same meteoric history was enacted, a catch of over 3,000,000 pounds annually in the early nineties being followed by a few hundred thousand pounds in later years of the same decade, with no improvement since that time, while on the Great Lakes the yield declined more than 90 per cent in 18 years. In the American waters of the Lake of the Woods, one of the most recent

grounds for the exploitation of the sturgeon, the catch decreased over 96 per cent in 10 years, notwithstanding a more active prosecution of the fishing.

The approximate sturgeon catch of the entire country at 10-year intervals, beginning in 1880, is shown in the following diagrams:

*Approximate sturgeon catch of the United States.*



Everywhere there is a steady downward trend in the catch. Some rivers that formerly supported a flourishing fishery are now absolutely depleted. The scarcity of the sturgeon and the demand for their flesh and eggs have run up the price to an extraordinary figure, never attained by any other fish, either in America or anywhere else. A mature female sturgeon often brings the fisherman more than a hundred and fifty dollars, and it is a poor fish that can not be sold for twenty to thirty dollars on the rivers of the east coast.

The most serious aspect of the sturgeon fishery is that, owing to the decimation of the schools of breeding fish and to peculiarities in spawning habits, it has been impossible as yet to inaugurate sturgeon culture anywhere in America. Attempts at artificial propagation have proved utter failures on the Great Lakes, Lake of the Woods, Lake Champlain, Delaware River, and other waters, and the expenditure of considerable sums of money by the Federal Government has sometimes failed to yield a single batch of eggs suitable for incubation.

Everywhere in America, under existing conditions, the sturgeons are doomed to commercial extinction, and it requires no prophet to foresee that in a comparatively few years sturgeons will be as scarce as the dodo.

What is demanded in every State in which these fishes exist or have existed is absolute prohibition of capture or sale for a long term of years, certainly not less than 10. Any less radical treatment would be only trifling with the situation.

For the information of the committee I desire to insert in this hearing the following communication from Mr. P. H. Pemberton, secretary of the fishermen's association at Mathias Point, Va. It reflects the attitude of the fishermen toward the proposed legislation:

MATHIAS POINT, VA., July 9, 1913.

HON. CHARLES LINTHICUM:

DEAR SIR: At the last meeting of the fishermen's association; also the farmers' club, it was agreed without a dissenting voice to ask you to have all fishing rights taken out of the hands of Virginia and Maryland and vested in the control of the National Government, as both States only use the right to build up some political fence without any regards to the food supply of fish. Our National Government is the right party to control all rivers, creeks, and bays, as she has to hatch fish and keep these rivers

dredged out. We are sorry to say it, but we have not a man in Congress from tide-water Virginia but we believe is connected with those fish factories, and that is why we all turn to you. The farmers of Maryland and Virginia are with the fishermen, heart and soul. As the price of salt fish is going up every year, the bay fishermen, who fish for those guano factories, do not care how high fish go to, and they will not let herring and shad get to fresh water. If you can put all fishing rights under the National Government control you will do more for the common people than any man has ever done before, and ninety-five out of every hundred men would call you friend.

P. H. PEMBERTON,  
*Secretary Fishermen's Association.*

This letter from Mr. J. E. Hall, of Westmoreland County, Va., secretary of some farmers' association, indicates how widespread is the belief that remedial legislation can be secured only through Federal control:

WESTMORELAND COUNTY, VA., *July 31, 1913.*

HON. J. CHAS. LINTHICUM.

DEAR SIR: The farmers' meeting to-day of 400 (397) voted to ask you to have the United States Government to take entire charge of all the fishing rights.

The whole people are disgusted with the way the States are doing. Let the National Government have the whole power over all fishing rights. If left in the hands of the States, fish will soon be a thing of the past. No one is against Government ownership except those who are in the fish Guano Trust.

J. E. HALL, *Secretary.*

The accompanying letter from Mr. Harry A. Slattery, secretary of the National Conservation Association, tells of the interest of that association in this measure. I had hoped to have before this committee the president of the association, Mr. Gifford Pinchot, but owing to death in Mr. Pinchot's family I understand that he will be unable to appear and give the committee the benefit of his knowledge of the subject.

NATIONAL CONSERVATION ASSOCIATION,  
*Washington, D. C., October 29, 1913.*

HON. J. CHARLES LINTHICUM,  
*House of Representatives, Washington, D. C.*

DEAR MR. LINTHICUM: Your letter of October 22, with copies of proposed bill and your admirable speech on the "Protection of our food fish" are received. I shall hope to get in touch with you at an early date to discuss the proposed legislation. We have been interested in this question for some time and believe that legislation to prohibit the use of food fish as a fertilizer is one of the most vital features of the conversation and protection of our fisheries.

Sincerely, yours,

HARRY A. SLATTERY.

The following letter from Mr. G. W. Williams, of Port Deposit, Md., is offered merely for the purpose of showing the attitude toward this measure of those who possess a practical knowledge of the subject:

PORT DEPOSIT, MD., *February 9, 1914.*

HON. J. CHAS. LINTHICUM.

DEAR SIR: In the spring of 1913 in the upper part of Elk River the fishermen did nothing, as when herring are scarce they don't get only in the mouth of the river, but always quite a large quantity of white and yellow perch, and the fishermen shipped tons of them by steamer to Virginia to be ground up into fertilizer.

I believe in State rights, but if the State fails to act, then the Government should. It was a curse to allow pound nets to have ever been set in the United States. I fished a hauling seine before there was a pound net and have fished pound nets ever since 1876 and paid as much as \$250 rent for a season.

I have seen our rock fish, white perch, also white catfish gradually disappear; also, yellow perch, until there are none except what are hatched, and they are caught before they are big enough to market only as fertilizer.

I also hope you will succeed in shortening the season for shad and herring to the 1st of June in each year and not allow any fishing until the 1st of October in each

year. The cat fishermen during the months of June and July catch small fish, which, when skinned, it takes as many as 16 to make a pound. If the Congress is going to act, it should before this season opens up, as it will save millions of our herring and be the means of our farmers getting fish to eat.

Yours, very truly,

G. W. WILLIAMS.

**STATEMENT OF MR. TALBOTT DENMEAD, 213 ST. PAUL STREET, BALTIMORE, MD.**

Mr. DENMEAD. I represent the Maryland State Game and Fish Protective Association. I have been an official in the Maryland Game and Fish Protective Association in one capacity or another for about seven or eight years, and being an ardent fisherman I have had opportunity to study this question from one viewpoint in our Chesapeake Bay. Of course, my references will be confined to a great extent to the conditions on Chesapeake Bay, but I think the conditions on the Chesapeake are pretty much the same as they are in any of the States that border on or where the waters pass through any two States.

There is no question, gentlemen, and I do not think any of the people will deny, that food fish are used in the State of Maryland for fertilizer, and by food fish I do not mean entirely herring. Of course, there is a great demand on the part of the fishermen in Maryland to use the herring. I think the gentlemen will claim that herring are not entirely a food fish. I disagree with them there. I think herring should be protected. But they can not also deny that these scow loads of fish, shipped from Maryland to the Virginia fertilizer factories, not only contain herring, but also contain our small white perch and small yellow perch, hardly out of the State hatcheries. We hatch these fish out of the State and Government hatcheries for these gentlemen to turn into fertilizer. That certainly is not right. There is no question that they do it.

Mr. COVINGTON. Have you any reliable statistics showing the proportion of the so-called fry? I believe that is the term applied to them.

Mr. DENMEAD. You mean perch, etc.?

Mr. COVINGTON. Was the fry distributed by the Maryland State fisheries or by the United States Bureau of Fisheries?

Mr. DENMEAD. I can not say. Probably both. The system is this: The Virginia people send their boats to the head of our bay at intervals of, maybe, two or three weeks, and in the meantime the fishermen put all the fish which they can not sell or use into scows. You can smell them or see them any time you go there. And those scows contain, if you examine them, not only herring, but white perch and yellow perch. One scow may contain a few and another scow may contain none. There are fishermen there who are violently opposed to white and yellow perch being used for fertilizer, although they may do so legally and honestly; and it is impossible for me to state how many fish of that description go to the Virginia fertilizer factories.

I requested the Baltimore News to send a man to the flats of Havre de Grace last summer and investigate the situation for themselves, and the News published a very lengthy article—a column and a half—on that subject, and they said that they saw evidences of

at least 5,000,000 having gone to the Virginia fertilizer factories in the season of 1912, and at that time—about the middle of May—over a million herring had already been shipped to Virginia for use in the fertilizer factories; also many perch and other food fish.

Of course, that continues every season in which the herring run, and I am speaking more particularly of the herring, because there is always a glut of herring at the head of the bay in the run.

Mr. MONTAGUE. What do you mean by that?

Mr. DENMEAD. You can not keep the fish from going up the rivers to spawn, and they accumulate in large masses at the head of the bay, and at such times it is impossible for these gentlemen to use those herring for food fish. I admit that, but at the same time that this glut is taking place at the head of Chesapeake Bay, there are men who have nets in our large rivers who can not get herring enough to supply their own tables, and that is caused by the fact that practically every river in Maryland is stopped up at the mouth with a string of pound nets, and the herring which come up the bay simply can not get up these rivers. They finally push up until they get to the head of the bay, and that causes the glut.

Mr. D. V. STEVENS. Have you no State legislation regulating that?

Mr. DENMEAD. We have to a certain extent. I am sorry to say we are far behind in the matter of fish protective legislation.

Mr. D. V. STEVENS. Are the people opposed to it? Can you not get it?

Mr. DENMEAD. We are trying to get those things. We have no law prohibiting the use of food fish for fertilizer.

Mr. D. V. STEVENS. But you are trying to get it?

Mr. DENMEAD. Yes, sir; I filed a bill last year—

Mr. COVINGTON. Is not the situation in regard to the shad fisheries partly due to those long pound nets?

Mr. DENMEAD. They are after every shad they can get, and the shad question is a very serious one.

Mr. COVINGTON. But the herring are blocked as an incident to the immense shad fisheries?

Mr. DENMEAD. They take the herring into these pound nets as well as the shad.

Mr. COVINGTON. But the shad are the cause of the blocking in the mouths of the rivers. There are pretty stringent regulations in regard to the shad fishing? The very nature of the shad fishing, through requiring the use of longer hedging, as they call it—

Mr. DENMEAD. The hedging should be regulated. Of course, the shad would go up the Patuxent River to spawn, if permitted, but the nets are so thick and extend so far out into the bay that the shad have either got to go into those nets, or go up to the head of the bay. The nets are there, and the fish want to get up the river.

Mr. MONTAGUE. Let me ask you one question. Do you use the word "blocking"?

Mr. COVINGTON. That is the word I used.

Mr. DENMEAD. Blocking the mouths of the rivers.

Mr. MONTAGUE. By these pound nets?

Mr. DENMEAD. By these long nets.

Mr. MONTAGUE. You mean, to obstruct the river?

Mr. DENMEAD. That is it, exactly. These long nets extend out below the mouth of the river so that the fish coming up the bay can



not get into the river. Of course, the fishermen's argument along that line is if steamboats can get up this river, why can not the herring, but the herring has not chartered these nets; the nets are fixed to stop him, so he must either go into the nets or go by them.

Mr. D. V. STEVENS. Is the supply of herring diminishing in the bay?

Mr. DENMEAD. Yes, sir; there is no question about that.

Mr. D. V. STEVENS. Because they can not get to their spawning grounds?

Mr. DENMEAD. I have not got the figures. Our friend, Dr. Smith, has; but the shad industry in Maryland and the shad industry in other waters is decreasing. I have a clipping in my pocket in regard to the shad industry on the Hudson. I did not take up the question of shad, because that is a food fish; it does not enter into the question of fertilizer. You can get more for shad as roe shad than for fertilizer. I understand the shad industry is dead, absolutely, in the Hudson River; no more shad go up the Hudson River, and every year fewer shad come up our bay.

Mr. COVINGTON. Keep on with your explanation with regard to the conditions at the head of the bay.

Mr. LINTHICUM. May I say right there, as a suggestion to the witness, that so far as the shad industry in Maryland and Virginia is concerned, for the last 12 years it has diminished from 12,000,000 pounds to 2,000,000 pounds.

Mr. DENMEAD. I presume that is a very conservative estimate, but I did not care to quote the figures from memory. Also I have gone over the figures in regard to herring; but where there were 5,000,000 herring used in the season of 1913—

Mr. MONTAGUE (interposing). Before you leave that subject as to the constant falling off of the supply of shad or herring—do you not have this blocking process on the ocean at the mouths of your bays?

Mr. DENMEAD. At the mouth of Chesapeake Bay? That is in Virginia waters, and I am not quite as familiar with just what they do as I am with the upper waters.

Mr. MONTAGUE. Do you have these pound nets all up and down the coast?

Mr. DENMEAD. Yes; but we do not have so many of them along the coast in the ocean; they will not stand it to any great extent there.

Mr. MONTAGUE. If you take the steamer at New York and ride to Norfolk, Va., you will see them all along the coast.

Mr. DENMEAD. Yes; but I do not think they stop the fish coming in the mouth of the bay. I am not exactly familiar with the Virginia laws in regard to that, but I understand they are more strict in regard to their pound nets than we are, and our pound nets are just one after the other all the way up the bay. I think that is one reason why these herring are glutted at the head of the bay, and why they are used as fertilizer.

It seems to me that the use of herring for fertilizer should not be allowed. This gentleman over here [indicating] suggested whether oil was not more valuable than the fish as a food. I think the highest utility to which any food fish can be put is for use as food. There are plenty of oils on the market; there are plenty of fish oils, and some of these fish factories in Virginia pay 100 per cent on their capital



from fish they get out of the ocean, and there are plenty there, plenty of sharks and things of that sort that they can get for their oil, and the herring should not be allowed to be used for oil.

Mr. RAYBURN. Do such fish make as good grades of oil?

Mr. DENMEAD. I am not prepared to say. I am not an oil expert. I do not know exactly what the quality of these oils is. Of course, this is good oil. The menhaden and the herring are both of the same family and I presume the oil is about the same. The principle fish is the menhaden, and they—the boats—follow the shore of the ocean. The Virginia fertilizer factories not only get them from Maryland, but all the way up the coast to the Banks. They are not after any food fish. They do not use any food fish of that sort; I do not think they catch many, but they purchase them from the head of the bay; purchase our food fish and use them in fertilizer factories. The menhaden that come up the bay are smaller than the menhaden you get at the mouth. Ex-Senator Dennis has a large fish factory at Crisfield, and they fish around there, but I do not think they come very much farther up the bay for menhaden. These boats do not come up the bay to catch fish; they come up to buy them.

We have in Maryland about 10,000 fishermen who make their living catching fish. We have a population of over 1,000,000 in our State, and I think we should legislate for the protection and benefit of the people of Maryland and not entirely for the benefit of the 10,000 fishermen. I come in contact with these fishermen. I like them. They have always been nice to me, and I do not care to interfere at all with their business. They have a right to their living, but these fish they catch they do not sow. They only reap. They are fish which belong to the million people, and I respectfully submit that food is the highest utility to which these fish can be put, and I think that this bill of Congressman Linthicum's will probably prevent a certain amount of these food fish of ours going into use as fertilizer.

I am told that the State of Virginia is going to pass a law at this session—they have already decided upon it—to prohibit the use of herring, which use they now allow, for fertilizer, so that, of course, will protect Maryland against itself, because then these gentlemen will not be allowed to sell herring for the use of the Virginia fertilizer factories. Virginia now permits the sale of herring to the fertilizer factory, but prohibits the purse netter from catching them for such purpose.

I think this is about all I wish to say. Maryland is trying to protect these fish the best it can. We can not do so. Virginia and Maryland have always been scrapping about Chesapeake Bay, which they jointly own, and I think that a bill which will protect these fish the way this bill does would be of very great advantage to this fish industry. I thank you very much.

Mr. COVINGTON. How about the sale and manufacture for fertilizer of the herrings that are stripped for the production of the roe?

Mr. DENMEAD. And the balance of the herring is used for fertilizer?

Mr. COVINGTON. Yes.

Mr. DENMEAD. I think they had better use it for fertilizer in our own State than throw it away.

Mr. COVINGTON. It is a fact, is it not, that the most valuable commercial part of the herring is the roe, which is put in the cans?

Mr. DENMEAD. Yes, we have two or three factories in Maryland which simply can the roe.

Mr. COVINGTON. Very large quantities of it?

Mr. DENMEAD. Yes, and then they sell the refuse to the fertilizer men.

Mr. ESCH. It would be difficult, would it not, to distinguish the oil of the menhaden from the oil of the herring?

Mr. DENMEAD. I could not tell you that.

Mr. ESCH. It goes to the practical operation of your law. A factory or a fertilizer plant may put oil on the market from these two species. Now menhaden is all right. The oil from the herring you want to prohibit?

Mr. DENMEAD. Yes, sir.

Mr. ESCH. How are you going to determine that when it gets into the channels of interstate trade?

Mr. DENMEAD. I do not know. I do not think it would be possible to tell, under present arrangements, because they use every available fish. I think they just put the loads of mixed fish together and turn them into oil or fertilizer. I do not think they separate the different kinds of fish at all.

Mr. ESCH. As soon as it becomes oil it would be impossible to distinguish?

Mr. DENMEAD. So far as I know you are absolutely correct on that.

Mr. ESCH. Therefore the enforcement of the law would have to depend on inspection at the source?

Mr. DENMEAD. It would be of absolutely no value unless you could prevent the fish being used at the source, and after they were turned into oil it would not do the fish any good. I think it should be stopped by inspectors right at the source.

Mr. D. V. STEVENS. What is the chemical element of fish which is desirable for fertilizer?

Mr. DENMEAD. I do not know. The menhaden is a very greasy fish. You can handle it and see it is greasy, and the herring is of the same family.

Mr. D. V. STEVENS. You do not know whether it is phosphorus or nitrogen or what makes it desirable for fertilizer?

Mr. DENMEAD. I do not.

Mr. COVINGTON. Do you not think a large part of this matter ought to be regulated by more effective legislation by the Legislature of Maryland?

Mr. DENMEAD. Yes; we should unquestionably have a law in Maryland which prohibits the use of food fish for fertilizer, and our State laws in regard to nets are very imperfect and we must have that rectified; but if the United States would give us a start on this thing we may be able to tell our legislature in a practical way what they should do.

Mr. COVINGTON. But if the State of Maryland would take that step and the State of Virginia take that step, would not the practical effect be that the entire use of herring for fertilizer in Chesapeake Bay would be stopped?

Mr. DENMEAD. If every State would do the same thing and place the same laws uniformly on their statute books, we could control that matter; but the States will not do it.

Mr. COVINGTON. I am speaking now of the industry as it would be affected in Chesapeake Bay. Could not the legislatures of the two States of Virginia and Maryland pass laws that would be ample to solve the whole problem?

Mr. DENMEAD. No; I do not believe they could. They could pass the laws, but they would not be able to stop interstate commerce. I think this legislation is absolutely necessary in addition to our State legislation.

Mr. COVINGTON. You would not have to stop interstate commerce?

Mr. DENMEAD. No, sir; if the Legislature of Maryland would prohibit the use of food fish for fertilizer and enforce it; but the State of Maryland has not enforced its laws which they have on their books, and we have not passed any such law at present. And the same question arises, if I may go into the situation, that we had in regard to migratory birds, in regard to which Congress passed a law a short time ago. Certain States protect their fish and certain States do not. These fish migrate from State to State. These menhaden come up through Virginia into Maryland, and I think it is an interstate matter, and I think the United States Government should take a hand, as they have in the bird bill. That is the way it appeals to me.

Mr. ESCH. There is very little oil extracted from the herrings, is there not?

Mr. DENMEAD. Sufficient for them to pay \$2 a barrel for them for the fertilizer factory.

Mr. ESCH. Their principal use would be for fertilizer. It would be just as difficult to determine whether food fish like herring were used for fertilizer as to determine whether a food fish was used in making an oil, would it not?

Mr. DENMEAD. Yes, sir.

Mr. ESCH. And it would have to be determined through inspection not on the product in interstate commerce but at the factory?

Mr. DENMEAD. I should say where the fish were obtained, not at the factory. That would be the place where we, as an association interested in the conservation of fish, would like to see all the laws enforced, where the fish are caught, so those desirable fish could be turned back into the water.

Mr. RAYBURN. Where could you tell where a fish was going?

Mr. DENMEAD. We can tell in a way. If the fish are caught at the head of the bay and thrown into scows and lay there in a rotten condition for two weeks, we know where they are going. They are going into a fertilizer factory. If the fish were to be used in the market as food they would be shipped very quickly to the market. They would not be allowed to stay around very long.

Mr. COVINGTON. You do not pretend that there would be a presumption that fish caught at the head of Chesapeake Bay were going down into the fertilizer factories, and that therefore Federal inspection could be made on the chance that they might get into interstate commerce?

Mr. DENMEAD. I have not gone into the question of the enforcement of this law, but it seems to me it would not be necessary to investigate every load of fish, but if there was a general trend to violate the law, why it would be up to the inspector to find out that

at the source, not at the factory. I do not believe he could ever find it out at the factory.

Mr. COVINGTON. You will have the opportunity to correct and revise the remarks you have made.

Mr. LINTHICUM. Before you put another witness on the stand, I should like to say apropos of your suggestion that Maryland and Virginia agree on a law in regard to food fish, that from the time of George Washington down to two years ago Maryland and Virginia have tried to get together on the oyster question in the Potomac River, and only last year did agree upon a law, after over 100 years trying to get together on the oyster question. And they never would have got together even then were it not for the fact that the oysters are all practically gone from the bottoms of the Potomac River. I do not suppose they would ever have gotten together if there had been any oysters left.

I want to ask Dr. Smith of the Bureau of Fisheries to speak to you a few minutes and answer any questions you may have to ask.

#### STATEMENT OF DR. H. M. SMITH, COMMISSIONER OF FISHERIES, WASHINGTON, D. C.

Mr. LINTHICUM. We are considering H. R. 7774, and I have produced as a part of the hearing the statement issued by the Bureau of Fisheries as to the menhaden industry. I would like to have you tell the chairman and gentlemen of the committee what you know about the fertilizer industry and the ultimate effect of the use by that industry of food fish in the manufacture of their products.

Dr. SMITH. I have no argument of any kind to make. I should just like to say that I am familiar with the provisions of this bill. I think the bill will have a beneficial effect; it will correct some abuses which now exist, and prevent the occurrence of abuses hereafter; and, in my opinion, it will disturb no existing industry of a legitimate nature.

Our interest in this matter in the Bureau of Fisheries arises from the fact that we do not like to see any fish or other water product that is suitable for human food diverted, and, furthermore, we do not think we are justified in maintaining hatcheries on Chesapeake Bay, or anywhere else, for the propagation of food fish which are going to be caught in an immature state and converted into oil and fertilizer.

Mr. COVINGTON. I will ask you to answer the question I asked Mr. Denmead. What is your information as to the extent of the so-called fry fish, the young fish you turn loose, which are now caught and used in the fertilizer factories?

Dr. SMITH. The only case to which I could refer with any degree of certainty is that at the head of Chesapeake Bay, where stationary apparatus catches a very large quantity of small perch of two species, which fish are being artificially propagated at the hatchery which we maintain in that same region.

Mr. COVINGTON. Are you not maintaining a fish hatchery at the mouth of the Susquehanna River—a Government hatchery?

Dr. SMITH. Yes, sir. It has been there for many years; and recently, at the request of the fishing interests, we have extended the operations, which were formerly confined to shad and striped bass, to

white perch and yellow perch, which are very desirable minor food fishes.

Mr. ESCH. You do not propagate the herring?

Dr. SMITH. It has not, up to this time, been necessary to propagate the herring. The spawning habits of the herring are decidedly in its favor. The eggs are of a peculiar nature, and even when the ripe fish have been caught and are retained in a pound net or gill net the eggs will attach themselves to the netting and are there often incubated and hatched out quite as successfully, perhaps, as we could undertake in the hatcheries.

Mr. ESCH. Nature is very kind.

Mr. WILLIS. Before you complete your statement, would you care to make a statement in reference to food fish used as fertilizer taken from the waters of Alaska? I remember we had a discussion of that in the House a year or two ago. Probably this committee would like to hear some statement in regard to that.

Dr. SMITH. The principal abuse in Alaska is of long standing and is confined to the herring. It is not the herring of Chesapeake Bay, but the sea herring, which is similar to the sea herring of the North Atlantic. That herring industry in Alaska, however, has been recognized as legitimate up to this time. Certain people went to a remote part of the territory, established their works at great expense, and have been utilizing the herring. They could not find a market for them in that region, or in any other part of Alaska at that time.

Mr. WILLIS. Is that an edible fish?

Dr. SMITH. It is a highly edible fish. It is one of the most valuable of all the food fishes. In fact, the herring of that species and the herring of the North Atlantic are the most valuable fish in the whole world.

Mr. WILLIS. I asked you that question because in a hearing before the Committee on Territories a number of gentlemen appeared and undertook to tell the committee that those fish were of no account as food fish. I wanted your expert opinion.

Dr. SMITH. Practically the identical fish brings \$10,000,000 a year to the Scotch fishermen. This fish supports enormous fleets and thousand of fishermen all over western Europe.

Mr. WILLIS. Information was also brought to us that other kinds of fish, the salmon and others, which are undoubtedly food fish, were taken and—

Mr. COVINGTON. I expect we should not go too far into this Alaska situation, because there are a number of gentlemen to be heard.

Mr. WILLIS. Then the bill takes in other fish industries as well as those on Chesapeake Bay.

Mr. COVINGTON. I misunderstood the gentleman.

Mr. WILLIS. It takes in all within the scope of this bill. Do you know to what extent salmon and other fish were taken? They say that all that came to their nets were herring; they did not make any distinction whatever; they all went into fertilizer.

Dr. SMITH. In this Alaska fishery practically the only fish taken are herring. The salmon are too valuable to be converted into oil and fertilizer, and we have no information that this is going on.

Mr. HAMILTON. What are the spawning habits of the Chesapeake herring?

Dr. SMITH. There are two species of herring in the Chesapeake of somewhat different appearance and spawning habits. These fish are improperly called herring. They are alewives, or river herring.

Mr. D. V. STEVENS. Are the Chesapeake herring confined exclusively to Chesapeake Bay?

Dr. SMITH. The Chesapeake herring range from Florida to the Canadian Provinces.

Mr. D. V. STEVENS. It is not the same, is it, as the North Atlantic herring?

Dr. SMITH. It is an entirely different fish from the herring of the North Atlantic, which does not run into fresh water at all, while the alewife or Chesapeake Bay herring, and the herring of the eastern rivers, are migratory fish which spawn in fresh water. They come up in the spring. One species appears a little in advance of the shad, and the other with the shad or following the shad. They have different spawning grounds, but for all practical purposes they are identical, even to the fishermen themselves. In many places the fishermen do not distinguish between the two species.

Mr. HAMILTON. Have they the habit of returning to the parent stream or to the place where they spawn?

Dr. SMITH. I think that is true of all migratory fishes of that character; not perhaps because they have any instinct of nativity, but because the parent stream is the one they are most likely to go into. After their winter sojourn in the sea, they are more likely to be attracted by the fresh water coming out of the parent stream than from any other stream.

Mr. HAMILTON. The Alaska salmon is said to have an instinct. I think you used the term, "instinct of nativity," did you not?

Dr. SMITH. Yes, sir.

Mr. HAMILTON. It is said to have that instinct; it is said that it goes back by almost infallible instinct to the parent stream. You say these migratory fish have that same instinct, although not so largely developed?

Dr. SMITH. I think it is very highly developed, but I would not ascribe to the fishes any higher order of intelligence than is possessed by human beings.

Mr. HAMILTON. You are talking about instinct, not intelligence?

Dr. SMITH. Instinct is intelligence in human beings.

Mr. HAMILTON. That would be starting a psychological discussion.

Mr. COVINGTON. What have you to say about the practicability of the enforcement of the provisions in this act?

Dr. SMITH. I think, Mr. Covington, the bill would have to be enforced through inspection of the fertilizer plants. I fail to see how the product could be recognized after it entered into commerce.

Mr. COVINGTON. How many inspectors would that take throughout the United States?

Dr. SMITH. There are 75 or 100 plants of this kind, but many of them are bunched. There may be half a dozen on one small body of water.

Mr. KNOWLAND. Are there many of them on the Pacific coast?

Dr. SMITH. There is only one fertilizer plant for food fishes upon the Pacific coast.

Mr. KNOWLAND. Where is that located?

Dr. SMITH. That is located at Killisnoo in Alaska, and I might say that legislation pending in the Senate has taken cognizance of this sacrifice of herring in Alaska, and a bill that has been tentatively agreed upon by the Senate committee permits that plant to close out after a certain number of years.

Mr. COVINGTON. Was that the reason for fixing the date of January 31, 1917, in this act, as the last day that fish should be caught for that purpose?

Dr. SMITH. That is my impression.

Mr. HAMILTON. Doctor, do these fish spawn more than once a year?

Dr. SMITH. Only once a year, and perhaps not every year.

Mr. HAMILTON. Do the fishermen have a habit of intercepting these fish on the return to the spawning places? Is it a part of their policy to do that?

Dr. SMITH. The fishing for these migratory fishes is prosecuted only on their return to the spawning ground.

Mr. HAMILTON. Then, they take advantage of this custom we are talking about to catch these fish when they return to spawn, as is the case with the catch of Alaska salmon?

Dr. SMITH. Yes.

Mr. WILLIS. Can you give the committee any information as to the amount of revenue or rental, so called, that the Government of the United States receives from this Alaska fertilizer company for the consumption of fish?

Dr. SMITH. It is published annually in our report, but I would not be able to give it to you offhand. It is not a very large income, however.

Mr. WILLIS. You do not recall the amount of fish they take for that purpose?

Dr. SMITH. I could not give it from memory.

Mr. WILLIS. When you get those figures, insert them in your report.

Mr. MONTAGUE. You spoke of the two classes of herring. You say, for instance, that which is called herring in Chesapeake Bay some of the other witnesses here said was not herring, but it was an alewife.

Dr. SMITH. That is what I said.

Mr. MONTAGUE. Is that the herring we usually call Potomac herring?

Dr. SMITH. Yes.

Mr. MONTAGUE. It is an alewife, then. Is the herring in the North Atlantic a larger fish or a smaller fish than this?

Dr. SMITH. It averages a little larger than the river herring or alewife. In Chesapeake Bay and other southern waters the confusion of names is accentuated by calling the alewife herring and the menhaden alewife.

Mr. MONTAGUE. Sometimes we call them bug-heads and fat-backs?

Dr. SMITH. Yes; and there are about 30 other common names for this one fish, the menhaden.

Mr. MONTAGUE. Is the north Atlantic herring as full of bones as the alewife?

Dr. SMITH. All the herrings are notorious for their boniness.

Mr. MONTAGUE. Is the sardine a herring?

Dr. SMITH. The sardine is one kind of herring. It belongs to the herring family.

Mr. O'SHAUNESSY. Did I understand you correctly about the herring industry up in Alaska? Did you say it was sacrificed now? You spoke about the revenue that Scotland derived from the herring industry of \$10,000,000 a year.

Dr. SMITH. A least \$10,000,000 a year, and the other countries of western Europe around the North Sea get as much more—perhaps twice as much more.

Mr. O'SHAUNESSY. Tell us what you can in a brief way about the herring industry in Alaska. You say it is sacrificed. In what way?

Dr. SMITH. I said the herring itself was being sacrificed for oil and fertilizer, when it might be prepared for human food.

Mr. O'SHAUNESSY. That would be more profitable to Alaska?

Dr. SMITH. It will from now on be more profitable. It would not have been more profitable at the time the herring industry was established in Alaska, because there was no local or export demand for that kind of fish.

Mr. O'SHAUNESSY. But it can be made a source of great profit to Alaska, can it?

Dr. SMITH. Undoubtedly. Alaska can be depended upon to support a herring fishery perhaps more valuable than that of any other country. I should not be at all surprised if by the introduction of the same methods that are followed in western Europe, and to some extent in Newfoundland and in our own Eastern States, an industry worth \$5,000,000 might be developed there.

Mr. TALCOTT. Doctor, how long has that herring work been going on in Alaska?

Dr. SMITH. At least 15 years and perhaps longer. The amount of money that has been invested in the plant is considerable, and it was thought only fair to let the people gradually drop out so as not to sacrifice their investment.

Mr. TALCOTT. That plant has been conducted for about 15 years?

Dr. SMITH. It has been in existence for at least that long.

Mr. LINTHICUM. Are there not many herrings brought down from Newfoundland to our country and sold?

Dr. SMITH. There is a very large fishery carried on by Massachusetts vessels in winter. Sometimes a fleet of 30 or more vessels goes to the treaty shores of Newfoundland, and at the end of the fishing season the fish are brought down in either a frozen or a salted condition. These fish enter into our food supply.

Mr. COVINGTON. Does that conclude your statement, Doctor?

Mr. WILLIS. Just a moment—

Mr. LINTHICUM. I want to say that I think this is a matter of great importance, and we do not like to hurry through it.

Mr. COVINGTON. I asked the doctor whether he had concluded his statement.

Mr. LINTHICUM. I understood the chairman to say I was to produce my witnesses, and we would have full time to put this matter before you. It is of very great importance.

Mr. COVINGTON. The committee, though, has to reserve to itself the right to determine whether a man has finished his statement or not. If the doctor has not finished, he may go on at length.



Mr. LINTHICUM. I was about to ask the doctor something in reference to the blueback.

Mr. COVINGTON. As a matter of fact, I have to state that the practice of this committee has always been for the man to make his statement, and at the conclusion of it if there are any questions that it is desired to ask that may be done.

Mr. LINTHICUM. Questions have been asked all along. I took it that I would be afforded the same privileges of which the other gentlemen have availed themselves.

Mr. COVINGTON. You will, but I wanted him to finish his connected statement first, because that is the only way we can handle it.

Go ahead, Doctor, and finish your statement. Then Mr. Linthicum, or any member of the committee, can ask any questions they care to ask.

Dr. SMITH. I thought it might be of some interest to the members of the committee and to those who are interested in this matter to know the real food value or market value of these alewives or herring in Chesapeake Bay. Within a few days I have made some inquiries of a practical fisherman in Maryland, and he tells me that these alewives, such as are being caught in Chesapeake Bay and its tributaries, when cut by the removal of their head and viscera, are worth \$6 a barrel as the average retail price; these fish run about 650 to 700 to a barrel. The herring, which are salted whole, as is a rather common practice, the scales simply being removed by a stirring process, are worth from \$3.50 to \$4 a barrel to the fishermen—400 fish to the barrel. Fresh herring sold on the shores where they are caught in seines or otherwise, mostly to farmers who come down there from the surrounding country to get their winter fish supply, bring from \$4 to \$5 a thousand on an average.

At Washington and Alexandria, on the Potomac River, where a considerable quantity of herring is sold in bulk to salters, the price received is \$2.50 to \$3.50 per thousand. Early in the season, at the city markets here, from \$5 to \$10 per thousand is received by the fishermen for these herring from the Potomac River; but later, when the catch becomes larger, the price drops to \$2.50 to \$3 a thousand in bulk.

The retail prices to the consumer at the wharves in Washington are \$5 to \$10 per thousand, and about 10 to 12 fish would make an average meal for an average family.

That is all I have to say.

Mr. LINTHICUM. Doctor, I merely want to ask you two questions. Congressman Gardner, of Massachusetts, has an amendment he desires to submit to the committee this afternoon, if the committee is in session, excluding bluebacks, as he calls them. Will you kindly tell the committee what kind of fish that is?

Dr. SMITH. The blueback is one of these same herring that run in Chesapeake Bay.

Mr. LINTHICUM. Is it an edible fish?

Dr. SMITH. It is a highly edible fish, and is eaten in Mr. Gardner's own State, and also throughout New England after it gets into the rivers.

Mr. LINTHICUM. There is one other question I want to ask you. That is in reference to the catch of shad. Will you not introduce

that [producing a paper] into the hearing so as to have some record of it?

Dr. SMITH. Yes. This appears to be a memorandum that I sent to the Secretary of Commerce under date of July 15, 1913, calling attention to the fact—shall I read it?

Mr. LINTHICUM. You had better read it.

Dr. SMITH. It reads:

[Memorandum for the Secretary.]

DEPARTMENT OF COMMERCE,  
BUREAU OF FISHERIES,  
Washington, July 15, 1913.

We have just received from Neitzey Bros., old and experienced fishermen of the Potomac River, a comparative statement of the catch of shad and herring in their haul seine at Ferry Landing, Va., for a period of five years ending in 1913. The figures are so suggestive and so confirmatory of the position of the department that I think you will be interested.

Year.	Number of fish taken.	
	Shad.	Herring.
1909.....	9,000	1,400,000
1910.....	4,200	517,000
1911.....	1,450	310,000
1912.....	900	145,000
1913.....	700	60,000

The seine used in this fishery is 1,200 fathoms long, and requires 45 men and two steam engines to operate it. The entire catch of the two seasons of 1912 and 1913 was not more than one day's catch in former years.

H. M. SMITH, *Commissioner.*

That is, the number of shad caught dropped from 9,000 in 1909 to 700 in 1913. The number of herring dropped from 1,400,000 in 1909 to 60,000 in 1913. The entire catch of the two seasons of 1912 and 1913 was not more than one day's catch in former years.

Mr. MONTAGUE. That was an experiment made, was it not?

Dr. SMITH. No; that is an established fishery. That seine has been hauled there for about 75 years.

Mr. O'SHAUNESSY. That is proof that there is a decimation of the herring due to these practices you want prevented?

Dr. SMITH. I would not have you understand that we are claiming that the decrease in the supply of shad and herring in the tributaries of Chesapeake Bay is due to the use of those fish for fertilizer. It is due to inefficient protective laws.

Mr. O'SHAUNESSY. Where? In Maryland?

Dr. SMITH. In Maryland and Virginia.

Mr. O'SHAUNESSY. How long have you been trying to get better laws in Maryland?

Dr. SMITH. Ever since I have been in the Bureau of Fisheries—about 30 years.

Mr. O'SHAUNESSY. What is the trouble, are the fishermen stronger than the people?

Dr. SMITH. The fishermen are the people.

Mr. ESCH. Have you records of the catch of shad and herring in Chesapeake Bay?

Dr. SMITH. We have, for a long series of years, going back at least as far as 1880, and possibly to 1870.

Mr. ESCH. Does that record show a gradual diminution?

Dr. SMITH. The history of the shad fishery in this region is very interesting. About the year 1880 there was some such condition as is now existing, the supply of fish falling off to such an extent that the abandonment of the fishery was seriously contemplated. About that time Congress directed the establishment of shad hatcheries on these streams, and there was some improvement in the legislation, and there was an almost immediate response on the part of the fish; so that by 1885, and from then on for a number of years, the catch was perhaps larger than in any recent time; but for at least 10 or 15 years there has been a steady decrease in the run of shad and herring and other migratory fishes in Chesapeake Bay and tributaries.

Mr. HAMILTON. After you established the hatcheries, did the fishermen increase their means of catching the fish, so as to keep pace with the increase of fish, so that the result was a decrease of the supply of these fish?

Dr. SMITH. Twenty years ago there were not to exceed 1,000 pound nets between Washington and the mouth of Chesapeake Bay on the Virginia side. Last season there were probably 4,000 such nets, some of them extending in unbroken lines for 7 or 8 miles from shore.

Mr. HAMILTON. Have you any recommendations to make as to what sort of law there should be passed, or whether the Federal Government can intervene to protect the people against the reduction of the food supply by the destruction of fish?

Dr. SMITH. I have had numerous conferences on this subject with the Secretary of Commerce under whom this matter would come. He is very loath to undertake Federal control over the fisheries in State waters, and he would undertake it only out of a sense of responsibility to the people and of duty to the industry. We do not see how governmental interference can be indefinitely deferred if the States are going to remain apart, as have Maryland and Virginia in Chesapeake Bay; Delaware, Pennsylvania, and New Jersey in the Delaware Basin; and Washington and Oregon in the Columbia River Basin. Some kind of governmental control is apparently going to be imperatively demanded unless the States do differently from what they have in the past. They have either been unable to get together and stay together, or they are indifferent.

Mr. COVINGTON. Doctor, since you have adverted to that subject of diminution of the fish supply, if it has not been due to their destruction by fertilizer factories, what has the immense diminution of the shad and herring been due to?

Dr. SMITH. The undue destruction of migratory fish on their way to spawning ground.

Mr. MONTAGUE. The shad are not used in the factories at all for fertilizer, are they?

Dr. SMITH. I have never seen any shad used for that purpose. They have too a high a value in the market.

Mr. HAMILTON. Can you state to the committee the constitutional grounds upon which you advise Federal regulation and control?

Dr. SMITH. The apparent inability of the States to enter into any permanent agreement for the conservation of a product that does

not belong to the States but is the property of the whole country, and it is not within the jurisdiction of any State during the greater part of the year.

Mr. HAMILTON. I simply wanted to get that into the record.

Mr. WILLIS. Doctor, before you finish I want to make a suggestion. A little while ago I asked a question which was rather unfair as to the number of million pounds of fish taken out of Alaskan waters by the Alaska fertilizer company, and the royalty or rental that the Government received from those. Will you kindly, when you revise your testimony, put that in so that we will have it in our hearing?

Dr. SMITH. I will do so.

*Operations of Alaska Oil & Guano Co. at Killisnoo, Alaska, for years 1912 and 1913.*

Year.	Catch of herring.	Oil product.		Fertilizer product.		Herring salted for bait.		Herring for food.		Due Government for tax.
		Gallons.	Value.	Pounds.	Value.	Pounds.	Value.	Pounds.	Value.	
1912	Pounds. 11,140,000	235,000	\$51,700	2,580,000	\$38,700	160,000	\$1,600			\$728
1913	12,654,000	260,000	32,000	2,400,000	33,000	400,000	4,000	112,000	\$4,200	760

<sup>1</sup> Approximate.

Mr. MONTAGUE. I should like to ask you a question in regard to a very interesting example you gave of a certain fishery. You said the number of fish had fallen off so much.

Dr. SMITH. This was a seine fishery on the Potomac River below Washington.

Mr. MONTAGUE. You gave the actual number of fish.

Dr. SMITH. Yes; the actual number.

Mr. MONTAGUE. Did you count those fish?

Dr. SMITH. The fish are counted at the fishing shore. The shad are so valuable that they are counted by hand. The herring are measured; the fishermen know how many go in a barrel or tub.

Mr. MONTAGUE. You approximate the herring by measurement, but the shad are actually counted?

Dr. SMITH. Yes, sir. The fish are sold by count. Even the herring, which are brought up to the city in bulk, in bins, or in the holds of vessels, are sold by count at so much per thousand.

Mr. MONTAGUE. In this particular fishery did they send any of their herring into the fertilizer industry?

Dr. SMITH. I have no information on that subject, but as there are no fertilizer plants very near Washington, and as the price of these fish is so high, I am inclined to believe that all of them come to the market.

Mr. MONTAGUE. How far from Washington is this particular net?

Dr. SMITH. It is about 17 miles—just below Mount Vernon.

Mr. MONTAGUE. I desire to ask you one further question. What effect upon the supply of the fish have the pound nets, seines, and other fishing appliances along the Atlantic coast had?

Dr. SMITH. That is a pretty broad question, sir, because you are dealing with so many kinds of fish that are subject to different conditions. There are certain fish that are caught in enormous quantities on the Atlantic coast in pounds and other nets whose supply remains

unimpaired, so far as we can see, fish like the bluefish, which spawn offshore—

Mr. MONTAGUE. Doctor, any man who fishes for sport, who handles a line or rod, knows that he can not now catch fish in Chesapeake Bay and its tributaries to anything like the amount he could catch 20 or 30 years ago. Take the trout—when you catch them in the sea what do you call them?

Dr. SMITH. Weakfish is the proper name.

Mr. MONTAGUE. Take the bluefish, take the spot, take the hogfish, or take any kind of fish in Chesapeake Bay, and the amount of catch now that any expert fisherman can make with his hands is insignificant as compared with what it was 20 or 30 years ago. To what do you attribute that?

Dr. SMITH. I have no doubt in the world that Chesapeake Bay is overfished. I think the whole history of the fishery in recent years goes to indicate that more fish are being caught than the stock can stand.

Mr. MONTAGUE. North of Cape Charles and south of Cape Henry you find these pounds, I think you call them, extending out in the ocean 3 or 4 miles, 2 or 3 miles, and a mile, just above and just below the Capes?

Dr. SMITH. I have been to such pounds.

Mr. MONTAGUE. You have seen them, have you not?

Dr. SMITH. I know of their extent and their location.

Mr. MONTAGUE. The fish are struggling to come within the Capes at certain seasons of the year?

Dr. SMITH. Yes.

Mr. MONTAGUE. What effect do these pounds have upon the supply?

Dr. SMITH. They are set for the purpose of intercepting the schools of fish that are bound into Chesapeake Bay.

Mr. MONTAGUE. They successfully do that work, do they not?

Dr. SMITH. They are exceedingly effective. The pound net is the latest thing in fishing apparatus.

Mr. MONTAGUE. Those fish are food fish in the main?

Dr. SMITH. Yes, and they are used for such purposes.

Mr. MONTAGUE. Do they not injure and kill innumerable quantities of fish so small that they would not be shipped for food supply?

Dr. SMITH. All kinds of net fishing are more or less destructive of the young. An apparatus has not been devised which will take simply the marketable fish. We have been solicitous about the destruction of the small fish in the pound nets, seines, and the other apparatus around Chesapeake Bay and off the mouth of the bay.

Mr. MONTAGUE. I asked the question not to divert the inquiries and observation of the department from the bay, but to ascertain, if you can scientifically, what effect the outside fishing apparatus—the coast fishing—may have upon the destruction of fish.

Dr. SMITH. The decline of the shad fisheries in the rivers around Chesapeake Bay is undoubtedly due to the great multiplication of the fishing apparatus in salt water.

Mr. MONTAGUE. In the bay or outside of the bay, or both?

Dr. SMITH. Both, and in the estuaries and in the lower courses of the streams, with the result that in some streams possibly 90 per cent of the run of spawning fish is intercepted before the spawning

grounds are reached. Of course under such circumstances the fish hatcheries are of no good whatever. Fish hatcheries can not operate unless they get eggs for hatching purposes. That is what we have been prevented from doing in the fish hatcheries in the Chesapeake Bay region.

Mr. HAMILTON. Are these pounds that Mr. Montague referred to planted there for the purpose of intercepting the fish on their way to the spawning ground?

Dr. SMITH. Absolutely.

Mr. HAMILTON. All the fish they catch under those conditions are stopped on their way to spawn, and they prevent, then, the reproduction of the fish to the extent that they catch these fish?

Dr. SMITH. That is the fact.

Mr. ESCH. That would be within the jurisdiction of the States?

Dr. SMITH. Undoubtedly, sir.

Mr. HAMILTON. It would also be within the jurisdiction of the Federal Government, would it not?

Dr. SMITH. Only to the extent that these fixed forms of apparatus interfere with navigation. The War Department, through the Engineer Corps, is going to be busy in Chesapeake Bay and its tributaries the coming season insuring the opening up of ways for navigation which will also be ways for the spawning fish bound to the headwaters. The work in behalf of the fish is only incidental, however.

Mr. TALCOTT. In the case of these salt-water nets would not the Government have jurisdiction outside of low water mark?

Dr. SMITH. The Government has never exercised such jurisdiction, and as these nets are attached to the bottom I think they would come within the jurisdiction of the State. They do extend for long distances from shore, as Mr. Montague has said. There are some below Cape Henry that go out at least a mile.

Mr. COVINGTON. Are they not exercising all the supervision they can constitutionally exercise when they seek to establish regulations through the War Department as to placing those pounds and other nets in the water to an extent that would obstruct navigation?

Dr. SMITH. That appears to be the only jurisdiction that the Federal Government can exercise at the present time.

Mr. COVINGTON. They are now exercising it to the limit of their constitutional jurisdiction by placing obstructions at the limits of the navigable waters?

Dr. SMITH. That is my understanding.

Mr. ESCH. When you revise your testimony, will you add the statistics of your office showing the catch of herring in Chesapeake Bay since 1880?

Dr. SMITH. Yes; for as many years as we have statistics.

Mr. ESCH. If you can go back of that, that will be much better.

Dr. SMITH. I will do that if we have the figures.

I would not like to create the impression that I think this net fishing in Chesapeake Bay or anywhere else is improper. All that it needs is regulation, and on several occasions we have notified the State people that if they would be willing to let only 10 per cent of the spawning shad that they capture every year go by and reach the headwaters, the supply could be maintained. It is a very small thing to ask. All the fish need is a fair chance.

*Alewife catch of Maryland and Virginia for a term of years.*

Year.	Pounds.	Value.	Year.	Pounds.	Value.
1880.....	16, 129, 372	\$215, 967	1897.....	30, 828, 969	\$194, 294
1887.....	15, 463, 905	118, 858	1901.....	27, 660, 601	206, 732
1888.....	17, 964, 779	150, 660	1904.....	29, 088, 836	228, 715
1890.....	30, 408, 692	235, 467	1908.....	66, 690, 000	328, 000
1891.....	28, 432, 335	225, 150	1909.....	51, 447, 280	284, 039
1896.....	30, 011, 962	190, 064			

Mr. O'SHAUNESSY. That was in the nature of a request, was it not? What did they say to that?

Dr. SMITH. Actions speak louder than words.

Mr. O'SHAUNESSY. They are indifferent?

Dr. SMITH. The laws have not been materially changed, and the conditions have become more aggravated, so that more and more fish are being killed every year in Chesapeake Bay, and also in other waters, before they reach the spawning grounds, and unless the spawning grounds are reached by a fair percentage of the run each year the supply is bound to decline and ultimately disappear.

Mr. O'SHAUNESSY. That is a very big proposition.

Mr. COVINGTON. Doctor, the provision in this bill exempting the sale of fertilizer or oil produced from the by-products—is that intended to be broad enough to reserve the right to sell the herring that remain after the extraction of the roe therefrom and the roe is prepared for food purposes?

Dr. SMITH. I would not think that such herring should be converted into fertilizer. The shad, after the roe has been extracted, is a marketable food fish. The herring is a similar fish.

Mr. COVINGTON. As an entirely practical proposition, if the herring-roe industry is a large commercial industry and the packer of herring roe can get no market for the herring after the roe is stripped from it, would you say that should be thrown away rather than used for fertilizer or commercial purposes?

Dr. SMITH. I think the roe should be regarded as the by-product, and not the herring.

Mr. COVINGTON. The roe should be regarded as the by-product?

Dr. SMITH. Certainly.

Mr. COVINGTON. Do you think that language would so regard the roe as the by-product, when that is the principal part of the industry and not the incident of it?

Dr. SMITH. The fish itself is the principal part of the industry, except in certain isolated places.

Mr. COVINGTON. As a matter of fact, it is in those regions a very large industry—a large quantity of herring roe is now being canned, is it not?

Dr. SMITH. The industry has attained a considerable importance in certain restricted localities.

Mr. COVINGTON. And in those localities the principal business is the canning of the herring roe itself, and the fish itself is merely the by-product.

Dr. SMITH. That is the way they so regard it, but I think that is improper. In the case of various other fishes of which the roe is

saved, the roe is the secondary product. The fish themselves are utilized in a proper way.

Mr. COVINGTON. This section is not broad enough to permit the sale of the herring after the roe is stripped from it for canning purposes?

Dr. SMITH. I did not construe it to permit the sale of the fish for fertilizer.

Mr. LINTHICUM. May I ask the doctor just one question: Doctor, was not that same contention made with regard to the use of the roe of the sturgeon? They use the roe of the sturgeon for Russian caviar. What became of that?

Dr. SMITH. That is a similar case. Twenty years ago the fishermen generally on the Great Lakes, along the Atlantic coast, and in the Columbia River had a realization that the eggs of the sturgeon had a great market value.

Mr. O'SHAUNESSY. How many years ago?

Dr. SMITH. Just a moment—they began a very active fishery which had for its object the saving of the roe, while the fish were often thrown away or regarded as a subsidiary product. In a very few years the sturgeon ceased to be present in sufficient numbers to support any kind of fishery. In the Columbia River the sturgeon was wiped out in about three years by this very roe business, and now the sturgeon is so scarce everywhere that it has become easily the most valuable fish in our waters.

Mr. WILLIS. Whether we consider the fish or the roe the by-product, is it not a fact that this roe industry is extremely destructive, so far as the fisheries of the country are concerned?

Dr. SMITH. I should say it is very wasteful if the fish are caught exclusively for the purpose of saving their roe.

Mr. WILLIS. Even if they are caught for any purpose at that particular time when they are about to spawn, it seems to me would be extremely destructive. Is it not a fact—I am asking purely for information—that the roe industry is extremely destructive, so far as the fisheries of the country are concerned, whether we regard the roe as the main product or as the by-product?

Dr. SMITH. As I stated a while ago, these fishes, like the shad, the herring, the salmon, and the sturgeon, are caught only during the time when they are in roe. They are running into waters where they can be caught at that particular season. They must be taken then or not at all.

Mr. COVINGTON. Mr. Linthicum, have you any other questions?

Mr. LINTHICUM. No. I want Dr. B. Holly Smith, the president of the Maryland State Game and Fish Association, to make a few remarks.

**STATEMENT OF DR. B. HOLLY SMITH, PRESIDENT OF THE MARYLAND STATE GAME AND FISH ASSOCIATION, 1007 MADISON AVENUE, BALTIMORE, MD.**

Mr. COVINGTON. What is your occupation?

Mr. SMITH. I do what I please. If you are going to put me down for any particular occupation, I will say that I practice medicine and dentistry, and a few other things.

Mr. Chairman, I have been greatly edified especially by the technical information that I have received from my namesake. I am



only here in a sense as a figurehead, as the president of the Maryland State Game and Fish Association.

We have recollections of the days in the past when Maryland was looked upon with envious eyes by all the world where the connoisseur of all gastronomics lifted his hat and oiled his lips with compliments to us. That day is fast passing away until now there are perhaps none so poor as to do us honor. Our game fish and our game birds, especially our game fish, are butchered not to make a Roman holiday, but just a little mess of dung, and we protest. I thank you.

Mr. MONTAGUE. You spoke of the diminution of your fish supply. You suggested it rather, did you not?

Mr. SMITH. I intimated it.

Mr. MONTAGUE. Well, intimated it. You are willing to affirm it. That is a fact, is it not?

Mr. SMITH. I think I can.

Mr. MONTAGUE. To what do you attribute the falling off of the supply in the diamond-back terrapin that you said made the lips of connoisseurs water?

Mr. SMITH. I know three negroes that have farms that are worth now \$8,000 or \$10,000 apiece, that have poled diamond-back terrapins out of the marshes of my State until there is not another diamond-back terrapin left.

Mr. MONTAGUE. You mean they overfish it?

Mr. SMITH. It is overfished.

Mr. ESCH. Doctor, what has your association done in Maryland to secure legislation that would protect your fish?

Mr. SMITH. Enough to make it unpopular with all legislators. We have sought and sought and begged and begged, with small profit. We have done a great deal. We have had local laws, but now we are seeking, and I think perhaps now we have some prospect of securing uniform laws regarding the taking of game. We introduced mesh laws, but we have not succeeded in doing anything. We have arrested 30 or 40 men in Baltimore for having small fish in their possession, but we have not accomplished anything. We have been doing something all the time, but it seems to me that we have not done more than we have really not accomplished much in the way of legislation for the protection of our fish.

I wish you would come down to the legislature some time. It is a very nice place to go and attempt to get something. [Laughter.]

Mr. COVINGTON. That is a place some of us like to keep away from.

Mr. HAMILTON. Doctor, I gather that your legislature in Maryland is not inclined to be responsive to the demands of your people that your fish should be protected?

Mr. SMITH. Here [indicating] are the gentlemen who own the legislature. [Laughter.]

Mr. HAMILTON. I am judging from what you do.

Mr. SMITH. What are you going to do when you go up against a crowd like that? They stand solidly together—the captain, the shipmate, the steward, the lawyer, and the banker—absolutely together. We can not get anything from them. I would like to see anyone go down and get anything from that legislature. They are absolutely estopped. [Laughter.]

Mr. HAMILTON. They have a large number of fishermen as constituents, do they not?

Mr. SMITH. You know, in Maryland, when we have not anything to do we go fishing.

Mr. HAMILTON. We do that in Michigan.

Mr. SMITH. We go fishing. A large number of our citizens go fishing, sometimes for pleasure, but very often as a matter of profit, and the fishing interest is a very difficult thing to abridge or cut short. We do not like to do it, because these men make their living off of the water, and it is a hard thing to get their consent. We do not do things down in Maryland without consent.

Mr. HAMILTON. The protection of the fish would protect them in the long run, would it not, Doctor?

Mr. SMITH. If we could persuade them to that opinion, we would be delighted. That is what we have been endeavoring to do.

(Thereupon the committee took a recess until 2 o'clock p. m.)

#### AFTER RECESS.

The committee met at 2 o'clock p. m.

Mr. COVINGTON. Who wishes to be heard? Mr. Gardner, would you prefer to be heard now?

#### STATEMENT OF HON. A. P. GARDNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. GARDNER. Mr. Chairman and gentlemen of the committee, this is a matter which involves the livelihood of a large number of fishermen along my part of the coast of Massachusetts, and likewise affects some other industries. As this bill is drawn it will prevent the selling of the surplus catch of what is known as bluebacks or kyacks to fertilizer companies. It will also prevent a glue factory or an oil concern from buying the waste from fish canneries or packing houses. I assume the committee does not wish to hear my views as to the constitutionality of this bill. I shall discuss the measure on the assumption that it can be put into constitutional shape. I also assume that there is no intention of preventing a glue factory, for instance, from purchasing and using in the manufacture of glue the waste product of a fish-packing establishment. I think as the bill is drawn it will prevent that, but I take it there is no intention of doing that.

Mr. LINTHICUM. Not at all.

Mr. GARDNER. Now, as to this question of the disposition to be made by boat fishermen of their surplus catch of bluebacks or kyacks, in order to identify the fish completely, I am going to ask Dr. Smith to give me the scientific name.

Dr. SMITH. The scientific name is *pomolobus aestivalis*.

Mr. GARDNER. I ask for the scientific name because in different parts of this country the same fish is called by different names.

These bluebacks are caught at certain seasons when schools of them come along the coast, at irregular times, and go up the rivers and sounds in my neighborhood. When the fish are running, a large number of boats set sail and catch them; as many as 30 sail might

be out at one time in my neighborhood. They cover many miles of territory, each one seeking to intercept a school of bluebacks, if they are so fortunate as to do so. When the fishermen get their catch ashore—the income they get from the catch of these bluebacks is a very material part of their livelihood—when they get their bluebacks ashore, they proceed to dispose of them either for fresh bait for our fisheries, or else they sell them to the freezers, so called. In the freezers these fish are preserved for bait. Our deep-sea fisheries nowadays take a great deal of frozen fish as bait to be used on the Grand Banks and elsewhere.

Quite often it will happen that simultaneously this big fleet of 30 fishing boats, unbeknown to each other, spread over a large extent of territory, may all have luck simultaneously. They may all come ashore with a very large catch of bluebacks. Then what happens? There is very often an excess after the freezers are full, and after every fisherman who wants fresh bait is supplied, the excess is sold to fertilizer factories, to factories that manufacture fertilizer. This is a great blessing to the fishermen. Formerly when on coming ashore they found that they had all been in luck, they were obliged to throw their surplus product overboard. That is what used to happen, I am told, before these fertilizer factories were established, unless the fishermen could find farmers who would take that surplus fish and haul it directly away and put it out on the land without its going through a fertilizer factory.

Now, the United States Fish Commission takes the ground that these bluebacks are edible. Perhaps they are. So are skates edible. So are rays edible. Skates and rays are eaten in England, but the fact remains that there is no market for them with us. You can tell my neighbors, until you are black in the face, that a certain fungus of the mushroom family which grows in our fields, is edible; but you can not get them to eat it and can not get them to buy it. Therefore until the people in my part of the country are willing to eat up this surplus catch of bluebacks, the result is going to be, if you pass this this law in its present shape, that those surplus fish are all going to be dumped overboard.

Some few years ago the selectmen of a town in the neighborhood of Boston complained of the vast quantity of herring that was being washed ashore, thereby spoiling their beach for bathing purposes. On investigation it appeared that those herring which were washed ashore had been thrown overboard by the very men who caught them. Why? Because the fishermen all had had luck at the same time. They had caught a great many more fish than the market would stand without forcing them to sell at ruinous prices. In order not to break the market, they had pitched the herring overboard. That is exactly what fishermen would have to do under this bill if they could not sell their surplus to the fertilizer factories.

Some one has argued: "Yes; but your people need not catch more fish than they can profitably sell." Put yourselves in the place of the individual boat fisherman. I have my boat at the mouth of a river, and you have your boat at the mouth of another river three miles off. The shore curves. Between us several more boats are scattered around. They have no wireless apparatus to communicate with each other. Not one of the boats knows what the other boats

have caught. Suppose I run into a school of fish. Do you expect me to say: "Here is a splendid school, but I am afraid I have got my share already, and I should spoil the market if I were to catch any more." That would be absurd. If I said that, like as not when I got ashore I should find that the other boats had had no luck. What a fool I should feel like. No fisherman could support a family if he undertook to fish on any such plan as that.

The sum and substance of what I have been saying is this: Of late years this extra catch, which can not be foreseen, is disposed of to the fertilizing concerns. They have proved a boon to our fishermen. I suggest that fish used for the purpose of fertilizing the ground go a good deal further toward helping along the food supply of this country than fish dumped overboard out at sea.

I have introduced some amendments here. One of them is designed to protect persons who use the refuse of our fish canneries and fish packing concerns. The other amendments are designed for the protection of a mighty sturdy class of folks who make their living by clamming and by lobstering and by boat fishing.

For instance, in the first section of the bill I suggest that kyacs or bluebacks be included in the list of fishes which men shall be permitted to sell to fertilizer factories. That amendment of course would meet the problem that I have just presented to you so far as my fishermen constituents are concerned. Under the terms of the bill fish may be disposed of for any purpose when they are the by-product of any industry. I suggest an amendment granting the same privilege to fish which are the surplus product of any industry. I suggest, in the amendment which I have sent to the committee, that the surplus of any fishing industry may be disposed of to a fertilizer factory or to any other kind of business.

Either of those amendments would meet the particular difficulty of which I complain.

I do not know to what extent any harm is being done under the law as it is at present. I am quite confident that up my way, where, so far as I know, nobody eats bluebacks, no injury whatever is being done. As to what may be the injury in Chesapeake Bay, I understand that the best food herring is sometimes caught there in excessive quantities. I am also told that fish fry of all sorts, put out by the United States Fish Commission, are often caught with the herring. The circumstances may be different from what they are with my people. I can not pretend to say that they are not different, because I do not know. I suggest, however, that if such is the case, and if this difficulty is principally confined to Chesapeake Bay, there is nothing to prevent the passage of a law, if a constitutional one can be devised, which will apply only to the waters of Chesapeake Bay.

MR. COVINGTON. You have doubts about the constitutional power of Congress to do that, however?

MR. GARDNER. I have still greater doubt as to the constitutionality of this particular bill. Most good lawyers think that the States never gave Congress the right to prohibit the interstate transportation of the products of child labor. This bill proposes to go far beyond that step.

I wish that Congress could prohibit child labor; but if we never were given the power to forbid the transportation of the products of child labor, we never were given the power to prohibit the transportation of oil made out of some particular class of fish.

I am ready to answer any questions on this matter.

Mr. ESCH. What is the kyack? Does it belong to the herring family?

Mr. GARDNER. Yes, indeed. I think the distinction—I am getting far beyond my depth—but I think the distinction anatomically speaking between the blueback and the best food herring is that one has a black peritoneum and the other has a white peritoneum.

Mr. ESCH. You say the kyack is not an edible fish?

Mr. GARDNER. The kyack or blueback is not an edible fish in the opinion of my constituents; that is, they will not buy it as food, and most of them will tell you it is not edible, but I told by Dr. Smith, of the Fish Commission, that it is, as a matter of fact, edible, and that up my way we have not been educated up to eating it. While I concede that it may be edible, I also know of a great many other fish, said to be edible, which, as a matter of fact, people will not eat. I am going to read into the record a letter from one of these fishermen.

NEWBURYPORT, MASS., *January 29, 1914.*

HON. A. P. GARDNER.

DEAR SIR: I saw an article in the Gloucester Times of January 22, written by Dr. Fields, of the Massachusetts Fish Commission, speaking of a bill soon to be introduced by Congressman Linthicum, of Maryland, forbidding the catch of certain kinds of fish for fertilizer purposes. I wish to call your attention to one kind of fish which is caught extensively by the fleet of boats out of Gloucester, Newburyport, and Provincetown. They are of no commercial value as a food fish, being caught solely for bait for the fishing fleet, either to sell fresh or to be put into the freezers for bait for winter. It is very often the case where there are so very many of these boats fishing (some 50 sail) that when they get in with their fish there is no market for them for bait or to be put in the freezers. In that case they are obliged to sell them for oil and fertilizers, which is much better than taking them to sea and bailing these dead fish overboard again. These fish are a species of herring and are not an alewife. They are known to the fishermen as bluebacks. I have never known of any of these fish being sold as food fish, either the fresh or salted. These fish usually arrive with the menhaden and are, with us, used for the same purposes.

In Congressman Linthicum's bill it is allowable to use menhaden for fertilizer, and we ask the same privilege of the bluebacks. I think your attention will be called to this by the fishermen of Gloucester.

Hoping you can help us in this matter of importance to us, I am,

Respectfully,

GEORGE G. SHORT,  
*116 Water Street.*

The fish which we call an alewife in Massachusetts I think is not the same fish which you call an alewife in the waters of Chesapeake Bay. How is that, Dr. Smith?

Dr. SMITH. It is the same fish.

Mr. GARDNER. What is the alewife that runs up the Hudson River, what is the scientific name?

Dr. SMITH. *Pseud serengus.*

Mr. GARDNER. That means false herring?

Dr. SMITH. That means false herring.

Mr. GARDNER. I have here a letter, of which I will only read a part, from a gentleman who represents Newburyport in the Massachusetts Legislature. This letter is from Mr. James Eugene Fowle, of Newburyport, Mass:

NEWBURYPORT, MASS., *February 15, 1914.*

HON. AUGUSTUS P. GARDNER,  
*Washington, D. C.*

DEAR CAPTAIN: I am taking the liberty to tell you how anxious the fishermen in this locality are over the bill prohibiting the sale of bluebacks for oil and fertilizer purposes.

I omit some of the letter, which is personal.

I have, upon your suggestion to Capt. Short, written to Senator Weeks, and would write to others if I felt well enough acquainted with the Congressmen of Massachusetts. I understand the hearing has been obtained for Wednesday next. If I could be of any assistance I would come up to Washington.

The rest of the letter is in regard to personal matters, interwoven with comments on the situation. This bill is very alarming to men who get their living entirely or even substantially from fishing. They see one of their sources of livelihood imperiled. It is not fair to keep those men in suspense. I hope that this committee will arrive at an early conclusion as to whether or not it is proper to insert in this bill such language as may permit fishermen to dispose of the surplus which comes as an incident to the conduct of their industry.

Mr. LINTHICUM. May I ask a few questions, Mr. Chairman?

Mr. COVINGTON. Yes, sir.

Mr. LINTHICUM. I want to ask you, do you know how many of these fish are sold for fertilizer and what proportion are used for bait?

Mr. GARDNER. No; I do not. Dr. Field might know.

Mr. LINTHICUM. You made the statement a while ago.

Mr. FIELD. There is relatively a small proportion, I think, used for fertilizer. They are mostly used for bait. The general situation has been that they have been unable to get sufficient bait.

Mr. GARDNER. The general situation has been they have been unable to get sufficient bait. In other words, in your opinion, it is generally the surplusage, not the main business?

Mr. FIELD. Yes; that is practically true of all the Gloucester fishermen. However, there are about 300 Sicilian fishermen in Boston Harbor who sell them in the same way, but they are more inclined to throw them overboard, if they can not get a certain amount of money for them.

Mr. GARDNER. They throw them overboard rather than break the market?

Mr. FIELD. Yes, sir.

Mr. GARDNER. When you speak of the Sicilians, you are speaking of fishermen who catch the food herring, are you not?

Mr. FIELD. They use them for both bait and for food, the same fish you have in mind.

Mr. LINTHICUM. Is it not a custom among those fishermen that if they can not get a certain price for the fish, rather than sell them to the people as a food, they throw them overboard or sell them to the factories?

Mr. FIELD. In the neighborhood of Gloucester, where there is a market for fertilizer, they sell them that way, but sometimes there are not sufficient fertilizer factories in Massachusetts to take up the surplus, and I have known cases where these Sicilian fishermen, to the number of 200 or 300, sometimes throw over a very considerable number of herring.

Mr. LINTHICUM. They do that rather than sell them to the people at reduced prices?

Mr. FIELD. Yes, sir.

Mr. LINTHICUM. If they were prohibited from catching more than they could dispose of, would they sell them to the people at a reduced price?

Mr. GARDNER. How could they?

Mr. LINTHICUM. I mean to say, if they were prohibited from throwing them overboard, or selling to the fertilizer factories, would they not put them on the market at a reduced price and let the people have the advantage of that price?

Mr. FIELD. I do not see how they could.

Mr. GARDNER. May I ask how you propose to prevent them throwing them overboard?

Mr. LINTHICUM. Yes; I think I can answer that question by asking this further question: Is there not a movement in your State to prohibit them from catching fish in a seine and pulling them up on shore?

Mr. GARDNER. I have heard of something of the sort, I think.

Mr. LINTHICUM. They can only catch them in nets and only catch a boat load?

Mr. GARDNER. I am not sure.

Mr. COVINGTON. That is a matter that has absolutely nothing to do with the interstate-commerce character of control of fish, to be characterized either in the first place as migratory fish or in the second place being converted in a commercial aspect and shipped into interstate commerce. That is a matter the States would have to deal with?

Mr. LINTHICUM. The matter does not come up in this way at all. It comes up in interstate commerce.

Mr. COVINGTON. I called the attention of the gentleman that there are only two ways this question could arise.

Mr. GARDNER. Your bill has nothing to do with the movement of which you speak, which, by the way, is more agitated elsewhere than in Massachusetts. When a man draws his seine in what is called a strand fishery, it is easy enough to see what he does with his catch. The fishermen of whom I speak are not engaged in a strand fishery. I am speaking of the boat fishery.

Mr. LINTHICUM. I think I have covered this point, but I will ask you, do you know what quantity is used in fertilizer?

Mr. GARDNER. Dr. Field answered that.

Mr. ESCH. If a bill is to be enacted, Mr. Gardner, do you not think we ought to put in the scientific names of the fish, in view of the fact that people have different names for these fish in different sections?

Mr. GARDNER. By all means.

Mr. ESCH. You illustrated that by calling herring a blueback.

Mr. GARDNER. Once in a while I go down into this Washington Market. I find that I call every second fish by a different name from what the fish dealers call it. By all means use the scientific names if you report a bill.

Mr. LINTHICUM. I am told that years ago in your State you used to catch so many shad that you used those on the land as fertilizer?

Mr. GARDNER. I never heard of it, but I can quite understand that it may have been so in prehistoric days.

Mr. LINTHICUM. No; about 30 or 40 years ago.

Mr. GARDNER. No; certainly not. I am too old for that. I do not remember any shad in my lifetime on the coast there.

Mr. LINTHICUM. I do not wish to enter into any controversy with the gentleman.

Mr. GARDNER. I am speaking of my part of the coast.

Mr. LINTHICUM. The Fish Commissioner told me they did use shad up there on the land as fertilizer.

Mr. GARDNER. That may be so, but I say that in my lifetime there has never been a shad on my part of the coast. A boy can not live on the coast without knowing what kind of fish is there, you may be sure of that.

Mr. ESCH. Has the shad become more sacred than the cod on your coast?

Mr. LINTHICUM. Shad would not bite at a hook anyway.

Mr. GARDNER. Nevertheless, a boy would know mighty well if there were any about.

Mr. LINTHICUM. He would not know it as a fisherman with a hook and line.

Mr. GARDNER. A boy on the coast would know. Some shad, in these days, might go up the Merrimac River, but when I was a boy, before the days of electric cars and automobiles, the Merrimac River was a very long distance from where I lived. I lived in what is now the lower part of my district.

Mr. COVINGTON. You have some doubt as to the constitutionality of this bill as a whole, as I understand you, but you did not go into that?

Mr. GARDNER. I am not a lawyer. If I were to discuss what strike me as some very obviously unconstitutional features of this bill, I might be accused of venturing out of my depth. Perhaps I had better confine myself to the practical side of the question.

Mr. COVINGTON. Does that conclude your statement?

Mr. GARDNER. Yes, sir; unless you gentlemen of the committee have any questions which you wish to ask.

Mr. ESCH. You have no doubt as to the jurisdiction of the States in these matters, have you?

Mr. GARDNER. Not the slightest doubt as to the jurisdiction of the State of Massachusetts as to what goes on in Plum Island River. That is a sound entirely within Massachusetts' jurisdiction. The question of the joint jurisdiction of Maryland and Virginia over the waters of Chesapeake Bay seems to me to be quite a different problem. I know nothing about it, however.

Mr. COVINGTON. I think probably what Mr. Esch is getting at is that if what is occurring in Massachusetts needed rectifying, Massachusetts, through its legislature, would be able to do it?

Mr. GARDNER. Unquestionably. Possibly Chesapeake Bay may present an interstate question, inasmuch as it borders both on Maryland and Virginia.

#### STATEMENT OF MR. W. I. WARBURTON, ELKTON, MD.

Mr. COVINGTON. Whom do you represent in this particular hearing?

Mr. WARBURTON. I represent the fishermen's association of Harford, Cecil, and Kent Counties, Md. Shall I proceed?

Mr. COVINGTON. You may proceed.

Mr. WARBURTON. Mr. Chairman and gentlemen of the committee, I assure you that my remarks shall have at least one merit—that of brevity. I have listened very attentively to what has been said to this committee in advocacy of this bill, and as far as the remarks and testimony affect the interests of the fishermen I represent, I have



been amazed at the inaccuracy of the data. Now, it is admitted that herring are a food fish, but I am surprised that anybody is apprehensive that herring are decreasing, and that the demand for herring as a food fish can not be supplied.

It is a fact, capable of proof, and which we will prove to this committee by men who are engaged in taking fish from the headwaters of Chesapeake Bay and its tributaries, that herring have increased rapidly and continuously since 1884. In 1884 pound-net fishing commenced in the Chesapeake and its tributaries. Prior to that time fishing was carried on by what the gentleman spoke of as strand fishing, by putting out into the water what is called in that section of the State hauling seines, extending away out into the river, and then united at either end to a capstan and by horses driven around, or by steam applied to the capstan, drawn to the shore. That system of fishing was gradually abandoned after 1884, and the Legislature of Maryland authorized fishing by pound nets.

I will digress just at this point. There has been a great deal said to this committee about the Maryland Legislature and the influence of the fishermen in that State, and from what has been said you would suppose that most everybody in the State of Maryland was engaged in fishing. Now, the fact is that those actually engaged in taking fish from the Chesapeake Bay and its tributaries constitute numerically a small portion of the population of Maryland. But as far as character and industry is concerned, they constitute a most valuable asset to its citizenship.

As I said a moment ago, we are able to show that the herring are on the increase. We have learned here this morning a fact, which I believe I knew before, that the Government does not propagate herring; that there has been no artificial propagation of herring. The fact is, Mr. Chairman, that herring have continually increased in the headwaters of Chesapeake Bay and its tributaries since 1884. Where I live, in the town of Elkton, to show the gentlemen who are not familiar with the matter, I will tell them what I have seen. The herring come up in the spring of the year, as everyone knows, for the purpose of spawning in fresh water, and not only come up into the rivers that empty into the bay, but from the rivers go to the creeks and the runs and go as far as they have sufficient water to carry them for the purpose of spawning, and I have seen, in the stream at Elkton, which is not much wider than where I stand to where you sit, Mr. Chairman, so literally filled with herring that they smother each other in the water and hundreds were dead upon the water, floating upon it. That is the condition at the headwaters, and the only time since 1884 there has been any appreciable falling off, as far as herring is concerned in the Chesapeake Bay or its tributaries, was in 1913, and why? Let us look at the reason. Every member of this committee, and every man within the sound of my voice, knows the conditions of the weather last spring, and everyone knows that when such conditions of weather prevail, that the fish will not come up to the fresh water, but they evidently seek other waters for the purpose of spawning. Now, every fisherman knows that. That is practical knowledge, and during that time we had freezing weather; we had very cold storms and rains and adverse winds, and the fish did not come up as they did formerly.

The only thing that these men are interested in, whom I represent, is this. They are engaged in a lawful occupation under the laws of the State of Maryland; that State has authorized them by legislation to fish with pound nets; it has authorized them to begin at a certain season of the year, and it requires them to discontinue at a certain time of the year, and they fish for shad and for herring and what is called the small fry, perch and so on. Just here let me remark, for fear I forget it, a great deal has been said here about the perch and such fishes as are called small fry going to the fertilizer factory with the herring. Now, the people who assert that do not understand the habits of fish at all, and we will show you by the fishermen. When the run of herring is on in the waters there are not enough of that small fry caught to feed the men engaged in the work. The herring exclude every other fish from the net, and they are taken up at that time in great quantities.

What is this demand for herring that they are talking about? What is this demand for herring as a food fish they are talking about? I will just read you some letters. We have heard here to-day that sliced herring with the viscera removed were selling as high as \$6 a barrel; would bring \$6 a barrel, and that herring salted down, would bring \$4 a barrel. Now, if that is true, why there is no necessity for this bill to protect the herring, because this surplus herring that is caught and sold to these boats by these men are paid for at \$1.25 per 1,000, and just as the gentleman who preceded me here said, who can tell when they put their nets down how many fish they are going to get, and when these people are engaged in fishing what are they going to do with this surplus? Shall they throw it overboard and let it become a stench and nuisance? When all demand for herring is supplied, and amply supplied at a price, I was going to say, may it please the chairman—at a price that will scarcely justify taking it out of the water, why should not these fishermen dispose of their surplus in this way, instead of throwing dead fish into the waters? And why should not the people have the benefit of the oil and the fertilizer?

If it were true that the food fish—the herring as a food fish—was being destroyed so nobody could get herring, that would be another question; but I will just read you some letters that will show what fish in the year 1913—the year they claim they were scarce—what they were selling for.

Here is a letter from C. E. Davis Packing Co., Fleton, Va.:

Mr. HARRY L. HARVEY,  
*Northeast, Md.*

DEAR SIR: In May of last year—

That is, 1913, and that is the year that they were scarce on account of adverse winds and weather conditions—

in May of last year we were offered several thousand barrels and half barrels of cut and roe herring by Norfolk jobbers and brokers. These herring had been bought by the Norfolk parties, but they were unable to dispose of them at any price, so we thought we might be able to make use of them for fertilizers.

These were herring that had been salted; these were prepared. Now, what happened?

We bought of one particular broker, Charles Sire & Co., 1,570 barrels of cut herring, at 55 cents to 80 cents per barrel, delivered aboard our steamer, and 1,637 half barrels of roe herring, at 13 to 27 cents delivered.

Now, what?

We were later offered several thousand additional from other dealers; but after handling this first lot we found they were not even worth use for fertilizer. With kindest regards, I remain,

Yours, very truly,

C. E. DAVIS PACKING CO.

Mr. LINTHICUM. To what price did they afterwards go about two or three months after that? You saw statements in the paper about Gen. Vandiver and others seeking out all the herring?

Mr. WARBURTON. Yes; and the fishermen will tell you that is not true.

Mr. LINTHICUM. To what price did they go?

Mr. WARBURTON. I do not know. I am not familiar with that. Of course, I did not sell any.

I have bills of the fishermen who have sent fish to Baltimore City, for instance, here is four barrels:

We could not sell these herring, arrived Friday; impossible for me to get freight money.

EDWIN S. HUFF, *Dock Street Fish Market.*

That is Philadelphia. Here is another:

GEORGE R. FINN, *Elkton, Md.*—

I do not know how many barrels that is—

Freight and charges, 50 cents. Could not sell these herring. Impossible for me to get freight money. William D. Racine, 3 barrels, freight and charges, \$1.50. Could not sell these herring. Impossible for me to get freight money.

EDWIN S. HUFF.

Let us come to Baltimore.

Mr. ESCH. Are those all practically the same thing?

Mr. WARBURTON. Yes, sir.

Mr. ESCH. Was there any condition of the market at that time, any particular condition which caused this?

Mr. WARBURTON. I do not know at all, sir. These men here can tell you that. Here is G. D. Buddock & Co., Baltimore, Md.

MESSRS. W. J. WILSON & SONS—

This is from Baltimore, Md.—

May 13, 1908, total receipts from you so far this season amount of 119 barrels gross; 69 barrels and 50 barrels—119 barrels. We have sold the 69 barrels at \$2, and will sell the 50 as soon as sale can be made. Selling fish is hard work. Nobody seems to want them.

Mr. LINTHICUM. That was in June, was it not?

Mr. WARBURTON. That was in May.

Mr. GARDNER. Do you know the scientific name of the kind of herring you are speaking about now?

Mr. WARBURTON. I do not. In our section we call them herring, but I have heard them spoken of this morning as alewives.

Mr. GARDNER. Perhaps, Dr. Smith, you can tell me whether these are what are called alewives?

Dr. SMITH. These are what are called alewives and bluebacks, in Massachusetts.

Mr. WARBURTON. Both kinds run together in Chesapeake Bay.

Mr. TALCOTT. The kiacks, are they just the same as the bluebacks?

Mr. WARBURTON. Running through all these bills is the same story.

Mr. GARDNER. May I ask this question? Are these two different species of fish both classified as herring?

Mr. WARBURTON. I never knew. You are asking me a question which I can not answer, for I have no technical or expert knowledge on the subject.

Mr. H. L. HARVEY. They are all the same. We call them the branch and the glut herring.

Mr. GARDNER. The glut herring is what we call the blueback. What is the name of the other?

Mr. H. L. HARVEY. Branch herring.

Mr. GARDNER. The branch herring are what we call alewives. Is that correct, Dr. Smith?

Dr. SMITH. Yes, sir.

Mr. GARDNER. I ask you, Dr. Smith, whether the fish which the Maryland fishermen call the glut herring is the fish which in Massachusetts is called the blueback?

Dr. SMITH. That is the case.

Mr. GARDNER. I also ask you whether the fish which the Maryland fishermen call branch herring is the fish which is called alewife?

Dr. SMITH. Yes, sir.

Mr. GARDNER. I ask you, Mr. Harvey, whether the barrels of herring of which Mr. Warburton is speaking contained glut herring and branch herring both?

Mr. HARVEY. We very seldom ever sell any branch herring. They are not so numerous as all that.

Mr. GARDNER. Ordinarily they are entirely the glut herring?

Mr. HARVEY. The glut herring; yes, sir. They are salted.

Mr. GARDNER. May I ask whether there is a market for them as a food fish?

Mr. HARVEY. The glut herring?

Mr. GARDNER. Yes, sir.

Mr. HARVEY. There is, at a very small price.

Mr. WARBURTON. And a very limited market, is it not?

Mr. HARVEY. It is very limited.

Mr. LINTHICUM. May I ask the gentleman from Massachusetts a question?

Mr. COVINGTON. He is not on the witness stand.

Mr. GARDNER. I am perfectly willing to answer any questions I can.

Mr. LINTHICUM. I want to ask the gentleman whether he has thoroughly demonstrated by those questions that the blueback is an edible fish and that these gentlemen catch a great many of them and sell them as edible fish?

Mr. GARDNER. I quite agree, so far as the bluebacks being sold as edible fish in Chesapeake Bay is concerned, I am convinced the gentleman, Mr. Linthicum, is correct in his supposition.

Mr. COVINGTON. Proceed, Mr. Warburton.

Mr. WARBURTON. I am reading now from the Virginia Citizen, a paper published at Irvington, Va., and I find this:

#### HERRING IN ABUNDANCE.

That herring and other prolific migratory fish can never be depleted so long as the ocean does not go dry, is the opinion of Dr. Prince, the eminent scientist at the head of Canada's great fishery interests.

This view is also taken by other reliable authorities, and it is only those not acquainted with fish life or those who have an ulterior motive that persistently

clamor that these fishes are being destroyed by man. Man's dip from the briny deep is but like a drop from a bucket. Were it not for shark, bluefish, mackerel, and such predatory species, the teeming billions of herring, shad, menhaden, and such like, would literally block all estuaries of the coast in certain seasons, becoming a stench and a nuisance.

They miss our waters occasionally, but show up elsewhere. A report this fall from Newfoundland stated that bays up there were being blocked with the runs of herring; that there was no great demand for them, and the fishermen had to take up their nets to get rid of them.

Mr. LINTHICUM. Is there any objection to Dr. Smith asking Mr. Warburton a question right at that point? I think Mr. Warburton misunderstands the fish referred to.

Dr. SMITH. I should like to know if he knows the fish Mr. Prince referred to are not the herring in the Chesapeake Bay, but the sea herring of the North Atlantic?

Mr. WARBURTON. I do not. Now, coming down to the practical part of this, these men, I say, are engaged in a lawful occupation, made so by the laws of Maryland. They fish for herring and shad, and the fish by a system called pound nets, and those pound nets are staked out in the water. There has been a great deal of talk of blocking up the waters so the fish could not get to their spawning places. I want to say that under the laws of Maryland they are only allowed to go out 800 yards from the shore, only allowed to stake their nets out 800 yards from shore, and where these men fish—these men whom I represent—it leaves a space 7 to 8 miles for the fish to pass up the river. Then they talk about blocking up the river. I do not know what they do down at the mouth of Chesapeake Bay; I do not suppose they block it up; but I am speaking of the conditions now at the headwaters and tributaries of the bay in our county and in Harford and in Kent, and the river there where these people fish, from shore to shore, has a width of 7 to 8 miles, and the pound nets are only allowed to be put out 800 yards from either shore.

Mr. ESCH. Is it the nature of the fish to follow the shore line, or to go out in the channel?

Mr. WARBURTON. That I can not say. I stated I was not acquainted with the habits of the fish, and I do not know.

Mr. ESCH. Possibly Dr. Smith would know, and I will ask him that question.

Dr. SMITH. These fish are attracted by the fresh water, and when they enter the bay they seek the shore immediately.

Mr. ESCH. So in the passage up the bay they would go up the shores, and not up the channel?

Dr. SMITH. The movements of the shad and herring in Chesapeake Bay is always toward the shore and up the streams.

The gentleman has misquoted me, and I should like an opportunity to correct him. I made no reference whatever to the pound nets at the head of Chesapeake Bay. My reference was to the pound nets from Washington to the mouth of the Potomac, and from thence on to the mouth of Chesapeake Bay.

Mr. WARBURTON. I was speaking particularly about the conditions; about their not blocking up the river. Somebody used the word "blocking."

Mr. HARVEY. The Susquehanna Flats are very shoal, they are considered natural spawning grounds, and there are more herring caught

there than any other place in the river, so it is very evident that the herring take to the Susquehanna Flats.

Mr. WARBURTON. As I said a moment ago, these men are engaged in a lawful occupation according to the laws of the State of Maryland, and it would be presumption on my part, and I am not going to enter into it—I have my opinion about it, but I am not going to enter into a discussion of the legal phases of this bill, or its constitutionality, etc. There is one thing, though, that I think no one will undertake to gainsay or deny, and that is that the State of Maryland has the right to say how fishing shall be done in her waters.

Mr. COVINGTON. Is it not doing that at the present time?

Mr. WARBURTON. Is doing that and has that right.

Mr. LINTHICUM. Can the State of Maryland itself prohibit the sale of these fish for fertilizing purposes in another State?

Mr. WARBURTON. No, sir.

Mr. LINTHICUM. Therefore it must be national legislation?

Mr. WARBURTON. No, sir; but I am speaking about these men here. They are engaged in a lawful occupation under the laws of the State of Maryland, and they are taking fish from the headwaters of the bay, and they have a right to take them. Now, there is no proof before this committee, and I said that they can ransack the United States for proof, and they will find that they can not get it, that there is any diminution of herring as a food fish below the demand, and you can buy them for almost nothing, and everybody knows the people do not eat herring. They are not a food fish in the sense of being universally used.

Mr. COVINGTON. Let me ask you whether you know that the State of Maryland has, in the oyster industry, already legislated to prevent the sale, and the catching and sale beyond the confines of the State of oysters under a certain size, the so-called planting oysters?

Mr. WARBURTON. I do. That is true.

Mr. COVINGTON. The right of the State to do that has never been seriously controverted?

Mr. WARBURTON. It has never been questioned.

Mr. COVINGTON. And that law to-day is being successfully enforced in the State of Maryland?

Mr. WARBURTON. That is so.

Mr. LINTHICUM. They regulate as to the size of the oyster, though?

Mr. WARBURTON. Yes, sir.

Mr. LINTHICUM. You seem to lay special stress on the point that these men have the right to do this according to the laws of the State of Maryland. Has not the distillery business a right to do business according to the laws of the State of Maryland; yet this Congress has prohibited the shipping of their product into other States, where it is local option territory?

Mr. WARBURTON. Yes; that is true.

Mr. LINTHICUM. So it is not unusual for the Government to prohibit shipment of certain things?

Mr. WARBURTON. But, if you will bear with me, I am coming to the point. As I stated, these men are engaged in a lawful occupation, and in fishing for shad, when the glut of herring is on, they take up a great deal more herring than they can dispose of, and unless they have the privilege of selling to the fertilizer factories, they must dump them overboard, because there is no demand for them. Now, if they

are dumped overboard they become a nuisance in the water, and I contend that unless the State of Maryland legislates against taking them out of the water that the United States Government has not that power. They have the power to prevent them being sold for fertilizer and oil, but they can not prevent them being taken out of the water, and when they are taken out in scows, those pound nets are dipped and put in the scows, what is going to become of the surplus? Just as the gentleman from Massachusetts was stating some time ago.

Mr. TALCOTT. Do you think the State of Maryland has the exclusive jurisdiction over that matter, or has jurisdiction only until the Federal Government acts?

Mr. WARBURTON. You mean in the matter of taking fish, as to how they shall take them?

Mr. TALCOTT. Yes; general control over fisheries?

Mr. WARBURTON. I think the State of Maryland has exclusive control over that?

Mr. LINTHICUM. You will admit the Government has something to say about the transshipment of these fish into another State?

Mr. WARBURTON. Oh, yes; there is no doubt about that. The remarks that I have made to the committee are for the purpose of showing that this is not a destruction of food fish to the extent of diminishing the fish that are necessary to supply the demand, or even increasing the price. It is only to get clear of this surplus, and how does any man know who is fishing? I submit, how can any man know?

By the way, that reminds me that there was a letter read this morning by some one to the effect that somebody wanted fish, and took a boat down to Turkey Point, and there were 18 steamers loading fish. Was not that stated here?

Mr. LINTHICUM. The letter speaks for itself. I think that is right.

Mr. WARBURTON. That is my recollection.

Mr. LINTHICUM. That is about it; yes.

Mr. WARBURTON. Here are gentlemen who fish at Turkey Point and know that is absolutely false.

Mr. LINTHICUM. Mr. Harrison is a member of the Legislature of Maryland.

Mr. WARBURTON. Very well, they know that is absolutely false, and they will testify there never were 18 steamers there at all.

Mr. ESCH. There was a letter read by Dr. Smith this morning from a fisherman, or from a fish firm of the lower Potomac, showing a very large reduction between 1907 and 1913. Is that the experience anywhere in your territory?

Mr. WARBURTON. Not at all. That was on the Potomac River, and there are conditions on the Potomac River that account for that, apart from the quantity of fish.

Mr. TALCOTT. Is there any law in the State of Maryland prohibiting the catching of fish for the purpose of manufacturing them into fertilizer?

Mr. WARBURTON. No, sir. Now, gentlemen, I have made these broken remarks as best I could.

Mr. GARDNER. There is such a law in Virginia, is there not?

Mr. WARBURTON. That I do not know.

Mr. LINTHICUM. I say, in answer to the gentleman's question, there is no such law as to herring at the present time, but I understood from the State commissioner of Virginia that such a law is contemplated to be passed.

Mr. GARDNER. There is a law now in Virginia which prevents the catching of herring for fertilizer purposes.

Mr. LINTHICUM. There is a law in Virginia which prevents the catching of herring for fertilizer purposes?

Mr. GARDNER. Yes, sir.

Mr. LINTHICUM. Then you get them from Maryland?

Mr. GARDNER. That is a matter up to Maryland.

Mr. LINTHICUM. That is a very, very good point.

Mr. WARBURTON. I will tell you what I suggest, Mr. Linthicum. I suggest that if you just accept from your bill the surplus herring that these men catch, why we will have nothing more to say.

Mr. LINTHICUM. You are in favor of that, Mr. Warburton, I take it from your remarks, that all herring they catch and do not care to sell for food fish or other purposes, they should be allowed to sell to Virginia for fertilizer purposes, while Virginia has a law upon its statute books prohibiting them from catching herring in their State for fertilizer purposes; that we should take out herring and sell them to their State for that purpose?

Mr. WARBURTON. I am not particular where they sell them, because they are no use to us. Dead, rotting fish are a nuisance, a stench.

Mr. LINTHICUM. You are in favor of selling them?

Mr. WARBURTON. That surplus catch.

Mr. LINTHICUM. For fertilizer purposes?

Mr. WARBURTON. For fertilizer purposes or for anything they can be manufactured into.

Mr. COVINGTON. I wish to insert in the record at this point that the Secretary of Commerce has just telephoned to the secretary of this committee that he has examined the bill H. R. 7774, and that he is in favor of the principle embraced in that bill and desires the committee to make the matter of record that he advocates and indorses its passage.

#### STATEMENT OF MR. WILLIS J. DAVIS, CLERK OF THE COMMITTEE.

Mr. DAVIS. The Secretary of Commerce has just called me over the phone and stated that he intended to appear here this afternoon; that he did come down to the Committee on the Merchant Marine and Fisheries, thinking this bill had been referred there; that he promised Mr. Linthicum to appear here this afternoon, but, through error, he went to the Committee on the Merchant Marine and Fisheries and made inquiry and they naturally knew nothing about it. He then came out and found somebody outside of the committee room waiting for him on a matter which necessitated his return to his office, and when he got back to his office he found he was scheduled to come before this committee instead of the Committee on the Merchant Marine and Fisheries; that it was then impossible for him to come back here this afternoon, but he states that he is heartily in favor of this bill, and wished me to so state publicly, and that he is ready to come be-



fore this committee either to-morrow, the next day, or any other time the committee desires, and to appear before the committee in support of the bill. He wanted Mr. Linthicum and the members of this committee to know this.

### STATEMENT OF W. S. DOWNS, BAY SHORE, L. I.

The CHAIRMAN. State your name and your occupation.

Mr. DOWNS. My name is W. S. Downs; I live at Bay Shore, L. I.; I am secretary of the Long Island Gunners and Fishermen's Association, representing practically the entire fishing industry of Long Island and the salt water business of the State of New York.

Mr. COVINGTON. Are you taking a position in favor of or in opposition to this bill?

Mr. DOWNS. There are features of it that I believe we are in opposition to. There has been a good deal said here to-day in regard to fish. We, in New York State, from time to time have legislation introduced detrimental to the commercial fisheries, and, needless to say, we have to oppose it. I had the honor a few years ago of placing on the statute books, or of being instrumental in the placing on the statute books, of the State of New York of a law to prohibit the taking of food fish and using them for fertilizer purposes. I am in hearty sympathy with that movement. I do not believe that food fish should be utilized for fertilizing purposes; that is, of course, food fish. You make an exception in this bill with respect to fish known as pogies, fatbacks, and mossbunkers, sharks, dogfish, skates, and every one of them is a food fish. There is no sweeter fish that swims in salt water than this same mossbunker, and it is used by a great many people as a food fish. The herring is in the same class.

When we passed that law in New York we did not think of the herring being what we commonly term a food fish. We classed it with the other fish that you have named in the bill. But to-day sharks, dogfish, and skates especially are being sold and utilized in the markets of the State of New York, every one they can get hold of. The Italians think more of a shark than they do of a Spanish mackerel. The Englishman thinks more of the skate than any other fish that swims. They call it a delicacy; therefore they are food fish as well as the herring.

My objection to this bill is the possibility of hampering the fishing industry of the State of New York—that is, the menhaden industry—by having in there that no food fish—so-called food fish, as you please to term them; that is, the herring—should be ground up for fertilizer.

Now we all know that herring, bunkers, and other fish travel sometimes close together. Menhaden fishermen will catch a school of menhaden in which there will be a few herring, or maybe a weakfish or two, and the possibility of a bluefish. In a boatload of say five or six hundred thousand they might not be seen. They take them to the factory; some inspector stands there, and as they scoop out the fish they discover a weakfish or a herring and they go over into the factory as food fish in that boatload of herring. That is all right. You do not pretend to stop it, if caught and used in that State, but you do pretend to stop it being transported into any other State. Is that the idea; that is, unless it is tagged?

Now, I am very zealous of putting laws on the statute books to prevent people from being lawbreakers. There is not a man in this room, be he a scientist or a layman, that can pick out a herring from a mossbunker after it has been through a fertilizing plant and dried. Believe me they can not tell whether it contains herring or bunkers; they are all together.

Mr. ESCH. That is just as true of the oil.

Mr. DOWNS. That is just as true of the oil. If you go down into a restaurant and ask for a bluefish or a weakfish, if you are not pretty careful and look at its skin, you do not know what you are eating. You do not know whether it is a bluefish or a weakfish when you get it at a restaurant. I am very zealous with regard to the man behind the gun, and that has not been brought out to-day.

Now, if this bill is honest and wants to conserve the fish, all right, but I have not heard anybody in favor of this bill to-day, except the gentleman who is the introducer, but who has been representing the sporting interests. I am very zealous of the people who represent the sporting interests in favor of a bill because I am always afraid they want to put the commercial industry out of business. This does not appear, on the face of it, to do it but here is a section which reads:

That the Secretary of Commerce shall make such rules and regulations as are necessary for carrying out the provisions of this act.

I am not a lawyer, but what is to prevent the Secretary of Commerce from saying, "You shall not set nets," if it is to carry out the provisions of this bill? It is well to think how much power you are putting into the hands of one man.

Mr. LINTHICUM. You have read the bill carefully, have you?

Mr. DOWNS. Quite carefully.

Mr. LINTHICUM. And you do not find that it is limited entirely to the question of using food fish for fertilizer?

Mr. DOWNS. It says: "Food fish for fertilizer." It also says that the Secretary of Commerce shall make such rules and regulations as are necessary for carrying out the provisions of this act. What is to prevent him, if he deems it necessary to carry out the provisions of that act, from saying, "You shall not catch fish"?

Mr. LINTHICUM. The whole provisions of the act.

Mr. DOWNS. That is carrying it a good way; but, nevertheless, I am always zealous. I know that our conservation people in New York will tell you when they introduce a bill there is nothing in the bill that hurts you, but when we sift it down it puts us out of business, and I do not care to be put out of business because I am a fisherman. I fish in Long Island, and fish with these pound nets that you hear about. There is only one way to catch edible fish for the market, and that is with pound nets, and that is the only way by which the market can be continually supplied with fish. You can not depend upon a hook and line. You can not depend upon a set net. There are days and days that they are not catching anything. The only proper way to catch edible fish for market purposes is with a pound net. That is the only way by which the market can be supplied and supplied regularly.

Down our way we are under a permit from the War Department. I believe the War Department has done the same thing with the Jersey

Beach; they have done the same thing with the Chesapeake. If those pound nets are such a menace, as you have heard, to navigation and life, do you think the War Department would stand for them for a moment? They would not. They would take them out very quickly. There is nothing to that.

Dr. SMITH. Have you seen a certificate that the War Department has issued?

Mr. DOWNS. In regard to the Chesapeake?

Dr. SMITH. Yes.

Mr. DOWNS. No, sir; not this year I have not.

Mr. COVINGTON. Dr. Smith, do you mean to say that the War Department has not issued a very elaborate circular regulating fishing in the Chesapeake?

Dr. SMITH. I meant to say that it had, covering the very point the gentleman is speaking upon.

Mr. COVINGTON. It was susceptible of the other conclusion.

Mr. DOWNS. I did not myself say that there was anything in the suggestion about their being a menace. In considering the fishing question from time to time—and I may say that I have attended our State legislature, and I am the agent of the War Department for the waters of the Great South Bay, as far as navigation is concerned—it is a remarkable thing that so far as we laymen who follow the water and study the fish, and the scientist who has made a complete study of it, as well as the expenditure of money, are concerned, it is not what we know about fish, but it is what we do not know.

A good deal is said about the spawning habits. It was mentioned to-day that there are no shad ever in the North River. There are not and there will not be any more until the North River is cleaned up of its pollution. A fish is not a dirty animal, and he will not go there as long as the sewers of New York are going to be dumped into the North River. As long as that continues there will be no more shad there.

Two years ago—whether they were caught in the Chesapeake or Delaware River I do not know—but I do know this, that two years ago there was the biggest lot of shad fish in history in the markets of New York. There were more shad there two years ago than they had ever known before in their lives, and still they say there is no shad. The same could be said of the herring in certain places. We have some herring up north in the Great South Bay, but not very many. The same thing applies to what you have here, with regard to the bluefish. In all these years that we have been catching bluefish they came up, in the last three years, with more bluefish on this coast than were ever known before in the world.

Mr. LINTHICUM. May I ask you a question. I think you have probably got this bill somewhat confounded with another bill. The question in this bill is as to whether food fish shall be used for fertilizer, and that is what I would like to hear the gentleman express himself upon—as to whether he is in favor of the use of food fish as a fertilizer, or not?

Mr. DOWNS. I am not—not food fish, but I do not consider the herring in a class with the food fish. I consider him in the class we have of bunkers, sharks, and dogfish, because it has no commercial

value to speak of as a food fish, and yet the bunker is just as good eating as the herring.

Mr. LINTHICUM. Whether you are in favor or not of using food fish as fertilizer, you do not consider herring a food fish?

Mr. DOWNS. I do not—that is, in the class we speak of as food fish. I do not consider them in the class of bluefish or weakfish, spots or perch, and that character of fish, but I do say there is no great diminution in the number of those fish. I have not got the two bills mixed. I know the one you speak of, and that is the one I am to speak on to-morrow. I am more particularly interested in that other one.

**STATEMENT OF DR. GEORGE W. FIELD, BOSTON, MASS.,  
COMMISSIONER OF FISHERIES AND GAME.**

Dr. FIELD. Mr. Chairman and gentlemen of the committee, while I am in favor of the general proposition that food fish should not be captured expressly for the purpose of use as fertilizer, I believe that some provision should be made whereby fish, which under the present relatively crude and incoordinated conditions of capturing and distributing fish, are by circumstances rendered unfit for food, should still be available for use as fertilizer. I am in favor of preventing so far as possible, the deliberate and systematic taking of valuable food fish for fertilizer purposes, and am strongly in favor of any legislation which will make possible the utilization for fertilizer and oil, those species of fish such as the dogfish, sharks, and the other species enumerated in this bill, which are of little value as food for the people, but which destroy in the aggregate an enormous quantity of valuable fish, and thus do an incalculable injury to the commercial fisheries.

The one point which has not thus far been brought out is the important fact that apart from the value of the adult alewives taken in the spring on the way to the spawning beds, the small alewives and herring are of very great value to the sea fishermen from the fact that, coming out from the streams and estuaries, they attract to our shores large quantities of bluefish, striped bass, weakfish, and other species of valuable fish upon which the market depends for its supply. For this reason the supply of herring of all species, particularly the young, should be conserved very carefully for the benefit they confer upon fishermen and upon the ultimate consumer in making possible other valuable fisheries.

**STATEMENT OF HON. WILLIAM A. JONES, REPRESENTATIVE  
FROM THE STATE OF VIRGINIA.**

Mr. COVINGTON. The committee will be glad to hear from Mr. Jones now.

Mr. JONES. Mr. Chairman, I regret very much that I did not have the opportunity of hearing the author of this bill, and the other gentlemen who spoke in favor of it this morning. I was informed that the committee would not commence the hearings until 2 o'clock in the day, and therefore I went to see my doctor this morning, and

when I returned to my office I found that the hearings had been going on for some time. So that I have heard very little of what has been said in favor of the passage of this bill.

Mr. Gardner, of Massachusetts, said he did not know whether this bill was constitutional or not, but that if so, its operation should be confined to the Chesapeake Bay. I would like to go a little further, and to suggest that its operation be confined strictly to such waters as are wholly within the territorial jurisdiction of the State of Maryland. Virginia has already passed a law prohibiting the catching of herring to be manufactured into fertilizer and oil, and therefore there is no need for Federal legislation upon this subject in Virginia, even granting the constitutionality of such legislation.

So, if my colleague, Mr. Linthicum, wants to prevent the use of herring for fertilizer purposes, it seems to me that the thing for him to do is to apply to the legislature of Maryland and have his State cooperate with Virginia by passing a law prohibiting the catching of herring in Maryland waters for other than food purposes. Such a law would moreover have the advantage of being free from constitutional objections, which the bill of which he is the patron does not possess.

Mr. LINTHICUM. May I ask you a question there?

Mr. JONES. You can, if you desire to.

Mr. LINTHICUM. You state that you would recommend that it be confined to the waters of Maryland, and that the legislature pass an act upon the subject. Do you not realize that the legislature can not pass an act which prohibits the fishermen from catching herring and selling them in your State for fertilizer?

Mr. JONES. No; I do not.

Mr. LINTHICUM. You do not?

Mr. JONES. No, sir; I do not. But that is not the question here. Mr. Chairman, I am thoroughly in accord with what is stated to be the object of this bill. I am opposed personally—as are the people of my State—to the manufacturing of food fish into fertilizer and oil, and we have a statute which prevents it. And yet it is nevertheless true, as has been stated here, that frequently herring are so numerous in the waters of Chesapeake Bay, and so many of them are caught that the herring packers can not handle them and consequently they must either be sold to the fish factories or thrown as dead fish into the bay. The herring packers sell their herring in advance, and when they have put up as many as they think they can dispose of, they cease packing them, and the fishermen who supply them must then sell what they have in their boats to the factories or throw them into the bay. While this is unquestionably true, most of the menhaden fishermen realizing the existence of the prejudice against converting any food fish into fertilizers, petitioned the Legislature of Virginia to prohibit it by law.

But, Mr. Chairman, my chief objection to this bill is that it seeks, in an indirect and roundabout way, to invade the rights of the various States of the Union. It seeks to accomplish in an indirect way what can not be done directly. I think it will be admitted by every man who has given any thought to the subject—anyone who has read the decisions of the courts of the United States bearing upon it—that the States have the absolute right to control and manage

the fisheries within the limits of their respective jurisdictions. I do not think there can be any doubt as to the correctness of this proposition. There is an unbroken line of decisions of the courts of the United States from the foundation of the Government down to this time which has settled this question so far as it is possible for the courts to settle anything. The gentleman who introduced this bill realized that this was true, and so he is attempting, as I have said, to do in an indirect and roundabout way what he can not possibly do in a direct way. It is this that I seriously object to. I object to the invasion of the constitutional rights of the people of my State, and the fact that this invasion is by indirect methods does not make it less obnoxious to me.

MR. LINTHICUM. Did you not vote for the migratory-birds bill?

MR. COVINGTON. That is not a proper inquiry.

MR. JONES. If authority be needed in support of my contention, I will gladly furnish it in abundance, and I suggest to the author of this bill that he read the case of *Smith v. Maryland*, a case that went to the Supreme Court of the United States from his own State. He will find in that decision ample confirmation of my contention. I also commend to him the opinion of Chief Justice Waite in the case of *McCready v. Virginia* (94 U. S.).

It is not within the power of Congress to prohibit the catching of herring in the waters of the various States by the citizens of those States, and yet this bill seeks to accomplish this very thing indirectly; it seeks to do it by destroying the market for these fish. Under this bill the products of herring caught in the waters of Maryland, for instance, can be lawfully sold in Maryland but not in Virginia. It is only when they become the subjects of interstate commerce that the bill attempts to reach and control them, and yet the obvious—yes, the avowed—purpose of this bill is to prevent the catching, not the shipment and sale, of herring for fertilizer purposes. The object of this bill is not to protect the people of the interior States from the introduction into those States from the seaboard States of fertilizer and oil injurious to the public good or the public health. That is not the object. It is to prevent the catching in Maryland, or in any other State, of herring for fertilizer purposes. Congress has no power to do this by direct legislation, and therefore it is asked to do so in this covert and disguised way.

This is what I most object to. It is not an honest, fair, square, and open way of meeting this question. At the same time I wish it distinctly understood, Mr. Chairman, that my State does not permit the catching of herring to be manufactured into fertilizer and oil and if the patron of this bill will but induce his State to follow the example set by mine there will be no excuse, even from his standpoint, for its passage. I do not agree with some of those who have addressed this committee that herring are not food fish. They are not only food fish, but they furnish excellent food for those who can not buy the more expensive varieties of fish.

I will not take up the time of the committee to discuss the other sections of this bill—those that impose new duties upon the Secretary of Commerce. I think the Federal Government has enough to do now, and that the powers of Congress should be confined within the sphere prescribed by the Constitution of the United States.

I repeat that the proposition embodied in this bill is not only unconstitutional, but that there are no conditions which would justify its passage, even were it free from constitutional objections. I represent, I may say, the district in the United States in which more fertilizer and oil are manufactured than any other district in the United States, but I am not opposing this legislation chiefly because it would injuriously affect my constituents. I oppose it because it is vicious in principle. I regard it as dishonest, and I know it is not direct, and that it is an attempt to do in a roundabout and improper way what can not be done in a straightforward, open, and honest way.

Mr. LINTHICUM. I would like to ask you a question. I want to say in the first place that I am not trying to enforce or trying to put into execution any legislation that is not honest, square, and above-board.

Mr. JONES. I do not mean to convey the idea, Mr. Linthicum, that you would do anything dishonest, but I do mean to say that this character of legislation is, in my judgment, an attempt to evade the provisions of the Constitution, to invade the rights of the States and to do in an indirect way and roundabout way that which is not justifiable.

Mr. LINTHICUM. You were at the hearing before the Secretary of Commerce some time ago?

Mr. JONES. I was.

Mr. LINTHICUM. Did you not hear Mr. Lee, the fish commissioner of your State, say they were not enforcing the law as to herring in Virginia?

Mr. JONES. I can not remember that I did. He may have said it, but if so, it seems to me that it was an admission on the part of the chairman of the commission of fisheries of my State that seriously reflected upon himself. I do not know that he made any such admission.

Mr. LINTHICUM. That is my recollection of it. He may have referred to the herring from Maryland and not from Virginia.

Mr. JONES. I have no recollection that he made a statement that would reflect so seriously upon the efficiency of his administration of our fishing laws.

Mr. LINTHICUM. You represent the district in which most of these fish factories are located, do you not?

Mr. JONES. I do.

Mr. LINTHICUM. Do you know anything about how many herring they use in them; is there any data that you can give us upon that subject?

Mr. JONES. I can not. I know that before the passage of the prohibitive statute of which I have spoken a few factories purchased from the pound-net fishermen their surplus catch of herring. This was after the packing concerns had been fully supplied. These fish were dead and could then only be utilized by the menhaden factories. Many of the factories, especially the larger ones, did not buy herring. In order to utilize the herring the factories were obliged to operate their factories in advance of the opening of the menhaden season, and this was expensive. When it was discovered that herring were being bought in some considerable quantities by the factories the menhaden

fishermen themselves asked for the passage of the Virginia law, of which I have spoken.

Mr. LINTHICUM. I desire to ask just one more question. Mr. Jones, you stated in your statement that they were not allowed to catch them for fertilizer purposes. What do the fishermen do with their surplus; how do they arrange it, do you know?

Mr. JONES. I do not know what they do with them now. It may be that they carry some of them into your State and sell them there. You have no law on the subject.

Mr. LINTHICUM. We have not any factories.

Mr. JONES. You have at least one. I imagine that the people who are engaged in the pound-net business stop catching herring when they see they can no longer sell them to the packers. They doubtless raise their nets and allow the fish to escape—when they have them in their boats and can not sell them there is nothing left them but to throw them into the bay. They probably exercise more foresight now than they did when they could sell their surplus catch to the factories.

Mr. ESCH. Does Mr. Green, of Massachusetts, want to be heard?

Mr. GREEN. I do not care to be heard.

Mr. COVINGTON. If there are no other parties who desire to be heard, the committee will adjourn.

Mr. LINTHICUM. I do not care to be heard upon the merits of the bill. I came here on the constitutional side of it and will discuss that in the future.

(The committee thereupon adjourned.)





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