FISH AND WILDLIFE MISCELLANEOUS—PART 6

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

FISHERIES LOAN FUND REAUTHORIZATION (H.R. 5050); FISHERMEN'S PROTECTIVE ACT REAUTHORIZATION (H.R. 5051); ANADROMOUS FISH CONSERVATION ACT REAUTHORIZATION (H.R. 5074); AND STRIPED BASS MORATORIUM (H.R. 4884)

MARCH 20, 1984

ESTABLISHING THE MARINE RESOURCES DEVELOPMENT BANK (H.R. 5549)

MAY 24, 1984

COASTAL STATES MARINE RESOURCES CONSERVATION ACT OF 1984 (H.R. 6056)

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[2] Became Ranking Minority Member.
[3] Appointed to Committee June 14, 1984.
[4] Minority Members as of May 9, 1984.

CONTENTS

FISHERIES LOAN FUND REAUTHORIZATION; FISHERMEN'S PROTECTIVE ACT REAUTHORIZATION; ANADROMOUS FISH CONSERVATION ACT REAUTHORIZATION; AND STRIPED BASS MORATORIUM

	Page
Hearing held March 20, 1984	1
Text of:	
H.R. 4884	5
H.R. 5050	7
H.R. 5051	7
H.R. 5074	8
Statement of:	
Abele, Ralph W., chairman, Atlantic States Marine Fisheries Commission	107
Prepared statement	109
Blondin, Carmen, Deputy Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Department of Commerce	8
Prepared statement	10
Boreman, John, Chief, Coastal Fishery Resources Investigation, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Department of Commerce	67
Breaux, Hon. John B., chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment	1
Bryson, John C., executive director, Mid-Atlantic Fishery Management Council	104
Prepared statement	105
Byrne, John, Administrator, NOAA, Department of Commerce	28
Prepared statement	30
Coates, Philip G., chairman, Striped Bass Board, Atlantic States Marine Fisheries Commission	107
Prepared statement	109
Colvin, Gordon C., director, Division of Marine Resources, New York State Department of Environmental Conservation for the International Association of Fish and Wildlife Agencies	75
Prepared statement	76
Cousteau Society (prepared statement)	128
Dyson, Hon. Roy, a Representative in Congress from the State of Maryland	4
Forsythe, Hon. Edwin B., a Representative in Congress from the State of New Jersey	3
Goodyear, C. Phillip, Fisheries Biologist, Resource Analysis Section, National Fisheries Center, Leetown, U.S. Fish and Wildlife Service, Department of the Interior	79
Grable, Michael, Chief of the Financial Services Division, National Marine Fisheries Service, Department of Commerce	8
Hayes, Robert, Director, Office of Industry Services, Department of Commerce	8
Jensen, W.P., NOAA, Department of Commerce	28
Johnson, Jay, NOAA, Department of Commerce	28
Kutkuhn, Joseph H., Associate Director, Fishery Resources, U.S. Fish and Wildlife Service, Department of the Interior	32
Pond, Robert B., executive director, Stripers Unlimited, Inc	72
Radonski. Gil, president, Sport Fishing Institute	93
Prepared statement	95

Statement of—Continued
Rosen, Rudolph A., fisheries specialist, Fisheries and Wildlife Division, National Wildlife Federation, also representing the National Audubon Society ..... Page 111
Prepared statement 114
Russell, Richard, president, Striped Bass Emergency Council 97
Prepared statement 99
Saila, Saul B., chief scientist, Division of Marine Resources, University of Rhode Island 89
Prepared statement 91
Schneider, Hon. Claudine, a Representative in Congress from the State of Rhode Island 5
Winegrad, Gerald W., a State Senator from the State of Maryland 48
Prepared statement 52
Additional material supplied:
Commerce Department: Emergency striped bass research study 31
National Wildlife Federation:
Resolution No. 14—Stronger management efforts for marine striped bass populations 120
Resolution No. 28—Unified striped bass management program 120
Communications submitted:
Blondin, Carmen J.:
Letter of May 22, 1984, to Hon. Claudine Schneider 20
Letter to Hon. Douglas H. Bosco 19
Buss, Robert H.: Letter of March 18, 1984, to Hon. John B. Breaux 132
Gordon, William G.: Letter of February 17, 1984, to Hon. John B. Breaux 26
Jones, Robert P.: Letter of March 12, 1984, to Hon. John B. Breaux 129
Leitzell, Terry L.: Letter of March 9, 1984, to Hon. John B. Breaux 130
Rayburn, Ralph: Letter of March 22, 1984, to Hon. John Breaux 131
Walsh, James P.: Letter of March 27, 1984, to Hon. John B. Breaux 132

ESTABLISHING THE MARINE RESOURCES DEVELOPMENT BANK

Hearing held May 24, 1984 135
Text of H.R. 5549 139
Statement of:
Barr, Earl, president, The Peregrin Corp 200, 209
Blondin, Carmen, Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service, Department of Commerce 171
Prepared statement 172
Breaux, Hon. John B., a Representative in Congress from the State of Louisiana 135
Burney, David, general counsel, United States Tuna Foundation 179
Prepared statement 181
Cowles, Deming, Washington counsel, United Fishermen of Alaska 185
Prepared statement 186
Grable, Michael, Chief, Division of Financial Assistance, National Marine Fisheries Service, Department of Commerce 171
Greenberg, Eldon, representing the Southeastern Fisheries Assocition 200, 203
Prepared statement 205
Guimond, Alan D., president, Stonington Seafoods 200, 209
Prepared statement 211
Gutting, Richard, vice president for Government relations, National Fisheries Institute 185, 191
Prepared statement 192
Hayes, Robert, Director, Office of Industry Services, National Marine Fisheries Service, Department of Commerce 171
Shumway, Hon. Norman D., a Representative in Congress from the State of California 170
Sloan, Lucy, executive director, National Federation of Fishermen 185, 188
Prepared statement 190
Vehrs, Kristin L., Washington representative, Texas Shrimp Association 200
Prepared statement 201
Young, Hon. Don, a Representative in Congress from the State of Alaska 177
Walsh, Bud, Washington counsel, American Tunaboat Association 179, 181
Prepared statement 183

Communications submitted:
Nordstrom, M. Kathryn: Letter of May 22, 1984, to Hon. John B. Breaux.. Page 218
Seidman, Harold: Letter of May 7, 1984, to Hon. John B. Breaux 220

COASTAL STATES MARINE RESOURCES CONSERVATION ACT OF 1984

Hearing held September 5, 1984 223
Text of H.R. 6056 230
Statement of:
Austin, Herbert M., department head/assistant professor of fisheries, Virginia Institute of Marine Science 263, 267
Bateman, Hon. Herbert H., a Representative in Congress from the State of Virginia 224
Breaux, Hon. John B., chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment 223
Dyson, Hon. Roy, a Representative in Congress from the State of Maryland 228
Gilmore, Bruce, director of intergovernmental relations for the Maryland Department of Natural Resources 263
Krantz, George E., director of fisheries, Tidewater Administration, Maryland Department of Natural Resources (prepared statement) 264
Parks, Greg, president, Tangier Watermen's Association 254, 258
Pruitt, Bill, commissioner of marine resources, State of Virginia 263, 266
Rotenberg, Mark B., attorney-advisor, Office of Legal Counsel, Department of Justice 234
Simms, Larry, president, Maryland Watermen's Association 254
Prepared statement 257
Tarr, Ralph W., Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice 234
Prepared statement 246
Travelstead, Jack, assistant for fisheries management, State of Virginia 263, 266

FISHERIES LOAN FUND REAUTHORIZATION; FISHERMEN'S PROTECTIVE ACT REAUTHORIZATION; ANADROMOUS FISH CONSERVATION ACT REAUTHORIZATION; AND STRIPED BASS MORATORIUM

TUESDAY, MARCH 20, 1984

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 1334, Longworth House Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Representatives Breaux, Bosco, Carper, Anderson, Studds, Tauzin, Dyson, Bennett, Pritchard, Young, Carney, and Schneider.

OPENING STATEMENT OF HON. JOHN B. BREAUX, CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Mr. BREAUX. The subcommittee will please be in order.

This morning the subcommittee meets to consider three reauthorization bills as well as the legislation introduced by our colleague, Congresswoman Claudine Schneider, which is designed to address the steady decline in striped bass populations along the east coast.

The first bill the subcommittee will be receiving testimony on is H.R. 5050, which extends for 2 years the authorization of appropriations for the fisheries loan fund. As the members will recall, we revitalized this loan fund in the American Fisheries Promotion Act by placing foreign fishing fees collected during fiscal year 1981 and fiscal year 1982 into the fund and by restricting the use of the funds for loans to commercial fishermen who are suffering temporary economic difficulties.

The AFPA stipulated that loans from the fund should go first to fishermen holding Government guaranteed loans under the title XI Obligation Guarantee Program; and, second, it would go to fishermen in danger of defaulting on mortgages not thus guaranteed; and, third, it would go to fishermen experiencing net operating losses due to temporary economic downturns in a fishery.

In the past 2 years we have extended the fisherman loan fund for 1 additional year each, and we propose in this bill to extend the fund for 2 additional years.

Two years ago we were also successful in obtaining a significant appropriation, $10 million, for this fund. Unfortunately, for reasons we hope to explore today, the National Marine Fisheries Service was unable to distribute the money to needy fishermen. As a result of the low level of obligations, the appropriation for fiscal year 1984 amounted to only $3 million.

I would note to the members that we do not anticipate a continued need for full funding under this program as it is currently constituted. I firmly believe, however, that we must insure the continued viability of this fund as a source of money for future fisheries development needs.

As the members are well aware, the subcommittee has been considering a number of alternative uses for this money. While I would hope that these efforts will bear fruit this year, I have proposed a 2-year extension of the fund in light of our shortened legislative agenda during this election year.

The second bill that we will hear testimony on is H.R. 5051, which makes permanent the provisions of section 7 of the Fishermen's Protective Act of 1967. Section 7 provides an insurance program to our distant water fishing fleets for the reimbursement of certain losses suffered by such fishermen as a result of foreign seizures of their vessels. Although some would question the reasoning behind a permanent authorization, I would simply note that the program we are talking about in section 7 is a program that has for the last several years been funded entirely through industry fees. The only issue that I am aware of with respect to this program is whether or not the administration has requested and the Congress has granted sufficient appropriations for this program, so that the industry has been able to recoup the fees which it has put into it.

The third bill the subcommittee is going to consider is H.R. 5074, which authorizes for 1 year at current levels the emergency striped bass research study. This study was initiated by Congress in 1979 as section 7 of the Anadromous Fish Conservation Act. The study calls for the investigation of three major issues related to the decline of the Atlantic Coast striped bass population, including, first, the assessment of the current population status; second, a determination of the causes for this serious decline of the population; and, third, and evaluation of the economic impact the decline has had on the coastal communities.

At issue is whether the objectives of this study have been achieved and whether continued Federal support of the striped bass research is appropriate.

The last bill under consideration by the subcommittee today also addresses the serious decline in striped bass along the Atlantic coast. H.R. 4884, introduced by our colleague, Congresswoman Claudine Schneider, calls for a 3- to 5-year moratorium on the taking of striped bass in the territorial sea on the Atlantic coast.

As the members are aware, the striped bass has been among the most significant of coastal migratory fishery resources in the Nation. Although substantial natural fluctuations in striped bass

abundance have occurred throughout history, the current population decline has been seriously compounded by the degradation of nursery and spawning habitats, particularly in the Chesapeake Bay, and the fragmented State fisheries management regime which apparently has allowed overfishing to occur.

Fisheries, scientists, and managers alike seem to agree that drastic measures may be necessary to arrest, and hopefully reverse, this downward trend. A number of approaches have been suggested, including means of restoring the habitat and water quality, enhancing production through hatcheries, and a number of fishery management strategies, including the moratorium proposed by Ms. Schneider's bill.

The proposed moratorium approach is certainly unique in that it would represent, to my knowledge, the first time in recent history the Congress has directly participated in the management of a species.

The fact that we are considering such action, however, points to the severity of the situation at hand, and I look forward to exploring all means necessary to insure the future of this very valuable resource.

That will conclude my opening comments.

I would ask if Mr. Pritchard or Mrs. Schneider have any comments they would like to make.

Mr. Pritchard.

Mr. PRITCHARD. Mr. Chairman, I would like to put a statement from Congressman Forsythe into the record.

Mr. BREAUX. Without objection, Mr. Forsythe's statement along with those of other members will be made part of the record.

[Statements follows:]

STATEMENT OF HON. EDWIN B. FORSYTHE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Today, the Subcommittee will be examining an issue of great importance with respect to inter-jurisdictional fishery resources, specifically, the conservation of the striped bass resource along the Atlantic Coast. Because of Congressional concern about the status of this resource, in 1979, Congress directed that the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) undertake an emergency striped bass research study to: (1) assess the status of the coastal migratory stock; (2) determine why production had declined in key areas along the coast; and (3) evaluate the economic impact that decline in the striped bass fisheries might have on coastal communities.

Concerned about the status of the once-plentiful striped bass, the Striped Bass Interstate Fisheries Management Plan of the Atlantic States Marine Fisheries Commission proposed resrictions in an effort to conserve and restore striped bass stocks. The plan was the result of four years of discussions among resources managers, fisherman, and sportsmen in the major striper-catching states of the Northeast. As the plan has been making its way through state legislatures, it has stirred consideration debate. On February 21, my colleague, Congresswoman Claudine Schneider, introduced H.R. 4884, a bill to impose a moratorium on fishing for Atlantic striped bass. In introducing the bill, Mrs. Schneider suggested that of all the management alternatives, a ban affecting all fishermen is the most equitable solution and the one that promises the quickest results. She also expressed the view that Congressional action would end the disputes between the states and among commerical and recreational fishermen, and would allow time for the states to arrive at the crucial permanent management measures required once the moratorium is to be lifted.

There is a great deal of interest within my state on the striped bass issue as well as in the whole question of effective conservation and management of inter-jurisdic-

tional fishery resources. For many years, I have been concerned about the need for effective planning and management of inter-jurisdictional fish stocks and fisheries which range through the waters of two or more states, or between the waters of states and the Exclusive Economic Zone (EEZ). While the FCMA clearly establishes the responsibility of the Federal Government with respect to management of fisheries harvested in the EEZ, and the coastal states have jurisdiction over fisheries in internal waters and the territorial sea within their maritime boundaries, there are still many fisheries whose ranges transcend state boundaries or the state-EEZ boundary. Because of this, the conservation and management of inter-jurisdictional resources may be subject to diverse, inconsistent, and intermittent state and Federal regulation, resulting in actions or inactions detrimental to long-term maintenance of fish stocks and the interests of fishermen and the nation as a whole. The witnesses who will appear before the Subcommittee today are certainly aware of the implications this has for the striped bass resource. I would hope that, as a result of this hearing, we will not only be better prepared to address the needs of the striped bass resource, but also to focus on the broader question of what needs to be done to ensure effective conservation and management of inter-jurisdictional fishery resources in general.

STATEMENT OF HON. ROY DYSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I want to thank you for your prompt scheduling of today's hearing on the management of the Atlantic Coast's striped bass stock. This is particularly important to my constituents in Maryland's First Congressional District since up to 90 percent of these fish spawn in the waters of the Chesapeake Bay.

Since my first day as a member of the Maryland State Legislature's Environmental Matters Committee, I have been deeply concerned about how we can preserve the health of the Chesapeake Bay and the marine life which lives there. With the initiation of the Emergency Striped Bass Study, we have begun to discover the answers to important questions about how to take care of this species. It is clear, however, that despite the excellent work of the National Marine Fisheries Service and the Fish and Wildlife Service to date, there is still much research that needs to be done on striped bass. That is why I strongly support the Chairman's efforts to reauthorize Section 7 of the Anadromous Fish Conservation Act through H.R. 5074.

I believe that we need to do more than study the problems involved in the decline of the striped bass. There is a clear need for prompt and responsible action to implement plans to responsibly manage the striped bass fishery on the East Coast.

One of the central issues involved in this is guaranteeing that the principle spawning ground on the Atlantic Coast for striped bass, the Chesapeake Bay, is environmentally sound. Effective habitat management is the beginning of effective fisheries management. This is why I have authored and introduced H.R. 2817, legislation that would amend the Clean Water Act by providing federal funds to the states in the Chesapeake Bay region to clean up this estuary.

Just recently the President endorsed the major components of my bill and I have worked closely with the House Water Resources Subcommittee to have it included when they reauthorize the Clean Water Act this year. This bill is the catalyst for a landmark interstate effort to restore the Bay, a program which will substantially improve the environmental quality of the striped bass' chief spawning grounds.

This initiative conclusively demonstrates that the states in the Chesapeake Bay region, who will provide matching funds for those provided by the federal government, are taking steps to protect our striped bass.

Besides improving the Chesapeake Bay's water quality, we must also address the question of how to responsibly manage the striped bass species. In my own state of Maryland, the Department of Natural Resources and the Maryland Watermen's Association are working on a plan that will implement the Atlantic States Marine Fisheries Commission's management plan for striped bass. Such an effort involves major sacrifices among my state's commercial and recreational fishermen, but it shows their intent to help in saving the striped bass from further decline.

While I commend my colleague from Rhode Island for her interest in seeking way to protect the species, I believe that a three-year coastwide moratorium is an ill-conceived because it fails to address the major issue in saving striped bass: how to responsibly manage the species. Fishery management experts will testify later today before the Subcommittee against a moratorium for this very point.

In addition, the impact of a moratorium upon both commercial and sports fishermen would be disastrous. The commercial industry alone would lose three million

dollars annually, directly affecting almost 600 watermen. However, when one adds the effects that this would have on the Maryland economy in related jobs in the restaurant, sales and other related industries, the total is nearly $30 million annually. Maryland recreational fishermen would lose nearly $13 million directly from a moratorium. Finally, a moratorium would curb the net fishing of white perch in my state almost completely, accounting for another revenue loss of about $8 million.

This severe economic fallout, while failing to address the broader management questions involved, makes a moratorium completely unacceptable to me. I do look forward to the comments that today's witness will make and am anxious to continue to work with you, Mr. Chairman, in seeking ways to encourage all Atlantic Coast states to adopt the Atlantic Marine Fisheries Commission Plan.

Thank you.

STATEMENT OF HON. CLAUDINE SCHNEIDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. Chairman, I would first to express my appreciation to you for including consideration of H.R. 4884 on today's agenda. I also wish to add my welcome to our panelists. We are indeed fortunate to have so many experts on the Atlantic striped bass assembled here this morning.

I believe that it will be firmly established today that the coastal migratory stock of the Atlantic striped bass is in very serious trouble. The problems are, basically, pollution of the spawning areas and continued heavy fishing pressure on a rapidly diminishing population. The scientists working on this problem tell us that these two factors have a mutually reinforcing effect on each other, a lethal combination that has brought this highly prized fishery to the brink of collapse. If decisive action is not taken quickly, we could easily lose this fishery as a useable resource.

The bill that I have introduced is only one part of the comprehensive program that many of us believe must be carried out if we are to protect this resource. Obviously, a big step is the cleanup of the Chesapeake Bay, where, historically, 90 percent of this migratory stock are spawned. I have no doubt that the Bay will someday be cleaned up, but this will take a decade or maybe longer. In the interim, we can and should address the problem of excessive fishing mortality. We must take action now to protect the bass that are left so that the restoration process may begin. I believe that the fairest and most effective way to do that is to impose a coastwide ban on harvest, as embodied in H.R. 4884. A moratorium will also give the states the time they need to develop an acceptable and effective long-term management plan for this fishery.

An issue surely to be raised today is that H.R. 4884 constitutes Federal intervention in matters traditionally reserved to the states. However, with these striped bass we are dealing with a migratory fish, an interstate fish, if you will. Therefore, it is not the problem of any one state, it is truly a regional problem.

Thank you, Mr. Chairman. I look forward to hearing the testimony today and participating in the discussion.

Mr. BREAUX. Mr. Bosco?

Mr. BOSCO. I have no statement at this time, Mr. Chairman.

[A copy of the bill follows:]

[H.R. 4884, 98th Cong; 2d Sess.]

A BILL to impose a moratorium on fishing for Atlantic striped bass in order to restore that species, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Striped Bass Restoration Act of 1984".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term "Atlantic striped bass" means members of the species Morone saxatilis.

(3) The term "fishing" means—

(A) the catching, taking, or harvesting of Atlantic striped bass;

(B) the attempted catching, taking, or harvesting of that species; and

(C) any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B).

Such term does not include—

(i) any scientific research activity that is conducted by a scientific research vessel; or

(ii) in catching, taking, or harvesting of Atlantic striped bass that occurs incidentally in the course of commercial fishing operations for other species.

(4) Subject to section 4(a), the term "moratorium period" means—

(A) the period beginning on the date of the enactment of this Act and ending on the third anniversary of that date; and

(B) any extension of the period referred to in subparagraph (A) made by the Administrator under section 4(b).

SEC. 3. PROHIBITION ON FISHING FOR ATLANTIC STRIPED BASS.

(a) IN GENERAL.—It is unlawful for any person—

(1) to engage in fishing for Atlantic striped bass in waters of the territorial sea of the United States north of the State of South Carolina during the moratorium period;

(2) to possess Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);

(3) to transport in interstate commerce Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1); or

(4) to fail to return to water live Atlantic striped bass that are caught, taken, or harvested during the moratorium period under circumstances described in section 2(3)(ii).

SEC. 4. TERMINATION OR EXTENSION OF MORATORIUM PERIOD.

(a) TERMINATION.—If at any time after the second anniversary of the date of the enactment of this Act the Administrator determines that the stocks of Atlantic striped bass spawning in and inhabiting the waters described in section 3(a)(1) have returned to a level sufficient to produce a reproductive index equal to 80 per centum of the average index of the juvenile populations attained during the calendar years 1954 through 1974, the Administrator may, after providing notice thereof to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, terminate the moratorium period.

(b) EXTENSION.—If the Administrator determines before the close of the period described in section 2(4)(A) that the stocks of Atlantic striped bass spawning in and inhabiting the waters described in section 3(a)(1) have not returned to a level sufficient to produce the reproductive index referred to in subsection (a), the Administrator may, after providing notice thereof to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, extend that period for an additional period of not to exceed twenty-four months.

(c) PROCEDURES.—The Administrator shall consult with the States affected by the moratorium period, and invite the submission of written comment by interested persons, before making a determination under either subsection (a) or (b). The Administrator shall promptly publish notice of a determination under either subsection, together with a summary of the information on which the determination is based, in the Federal Register. A determination under either subsection (b) or (b) is not subject to judicial review.

SEC. 5. PENALTIES AND FORFEITURES.

(c) CIVIL PENALTIES.—(a) Any person who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act that is unlawful under section 3 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $500 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Administrator by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, the degree of culpability, any history of prior violations, ability to pay, and such other matters as justice may require.

(2) Subsections (b) through (e) of section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858 (b)-(e); relating to review of civil penalties, action upon failure to pay assessment, compromise, and subpenas) shall apply to penalties assessed under paragraph (1) to the same extent and in the same manner as if those penalties were assessed under subsection (a) of such section 308.

(b) CRIMINAL PENALTIES.—(1) A person is guilty of an offense if he knowingly commits an act that is unlawful under section 3.

(2) Any offense described in paragraph (1) is punishable by a fine of not more than $5,000, or imprisonment for not more than six months, or both.

(c) CIVIL FORFEITURES.—(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) or vehicle used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or the result of, the commission of any act that is unlawful under section 3, shall be subject to forfeiture to the United States. All or part of the vessel or vehicle may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States under a civil proceeding described in paragraph (2). The district courts of the United States have jurisidiction over proceedings under this subsection.

(2) Subsections (c) through (e) of section 310 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860(c)-(e); relating to judgment, procedure, and rebuttable presumptions) apply with respect to proceedings for forfeiture commenced under this subsection to the same extent and in the same manner as if the proceeding were commenced under subsection (a) of such section 310.

SEC. 6. ENFORCEMENT AND MONITORING.

(a) ENFORCEMENT.—The Administrator shall enforce this Act.

(b) MONITORING.—The Administrator shall monitor the Atlantic striped bass fisheries in the waters described in section 3(a)(1).

(c) AGREEMENTS WITH AGENCIES.—The Administrator may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, and facilities of the United States Coast Guard, the United States Fish and Wildlife Service, and the States to enforce this Act and to carry out the monitoring required under subsection (b).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Oceanic and Atmospheric Administration, for purposes of carrying out the provisions of this Act, $1,000,000 for each fiscal year after fiscal year 1984 during which the moratorium is in effect.

[H.R. 5050, 98th Cong., 2d Sess.]

A BILL to extend until October 1, 1986, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) is amended—

(1) by striking out "September 30, 1984" each place it appears in section 4(c) and inserting in lieu thereof "September 30, 1986"; and

(2) by striking out "1982, 1983, and 1984." in section 7(c)(6) and inserting in lieu thereof "1982, 1983, 1984, 1985, and 1986.".

SEC. 2. Section 221 of the American Fisheries Promotion Act (16 U.S.C. 742c note) is amended—

(1) by striking out "September 30, 1984" in subsection (a) and inserting in lieu thereof "September 30, 1986";

(2) by amending subsection (b)—

(A) by striking out "each of fiscal years 1982, 1983, 1984," in subparagraph (A) and inserting in lieu thereof "each of fiscal years 1982, 1983, 1984, 1985, and 1986,", and

(B) by striking out "1981, 1982, 1983, and 1984" in subparagraph (C) and inserting in lieu thereof "1981, 1982, 1983, 1984, 1985, and 1986"; and

(3) by striking out "any of fiscal years 1981, 1982, 1983, and 1984," in subsection (c)(1) and inserting in lieu thereof "any of fiscal years 1981, 1982, 1983, 1984, 1985, and 1986,".

[H.R. 5051, 98th Cong., 2d Sess.]

A BILL To give permanent effect to the provisions of the Fishermen's Protective Act of 1967 relating to the reimbursement of United States commercial fishermen for certain losses incurred incident to the seizure of their vessels by foreign nations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (e) of section 7 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking out "The provisions of this section shall be effective until October 1, 1984; except that payments" and inserting in lieu thereof "Payments".

[H.R. 5074, 98th Cong., 2d Sess.]

A BILL To authorize appropriations to carry out section 7 of the Anadromous Fish Conservation Act during fiscal year 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 7 of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) is amended by striking out "each of the fiscal years ending September 30, 1983, and September 30, 1984." and inserting in lieu thereof "each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985.".

Mr. BREAUX. All right. With that, I would thank the members and we will call up our first panel.

We will call Mr. Carmen Blondin, who is Deputy Assistant Administrator for Fisheries within the Department of Commerce.

Carmen, would you please introduce your colleagues?

We would be pleased to receive your testimony on both the fisheries loan fund and then, I understand, the Fishermen's Protective Act.

STATEMENT OF CARMEN BLONDIN, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY ROBERT HAYES AND MIKE GRABLE

Mr. BLONDIN. Thank you, Mr. Chairman.

First, to my right is Mr. Robert Hayes, who is the Director of our Office of Industry Services, and to my left, Mr. Michael Grable, who is the Chief of the Financial Services Division in the National Marine Fisheries Service.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the fisheries loan fund's reauthorization.

The American Fisheries Promotion Act authorized appropriation of foreign fishing fees to make loans for purchase and rehabilitation of fishing vessels. You have already outlined the priorities, and I will not read those which are in my statement, in order to save time, Mr. Chairman, although I would like them to appear in the statement; $62½ million in foreign fees have been deposited in the loan fund through December 31, 1983. It is estimated that an additional $27 million in foreign fishing fee receipts will be collected through October 1 of this year, bringing the total of foreign fishing fee receipts to $89 million.

We are now proceeding to loan $3 million appropriated for fiscal year 1984.

The National Marine Fisheries Services and the Department of Commerce oppose any reauthorization of the Fisheries Loan Fund. We oppose subsidized direct loan programs to industry, particularly loans made at 3 percent.

Federal intervention through direct loans disturbs the free market allocation of capital and diverts Federal revenues from fundamental Federal responsibilities.

The Federal Government incurs major costs in enforcement and management of the fishery conservation zone. Thus, in 1985 we have proposed using these fees to offset certain costs associated with carrying out the Magnuson Fishery Conservation and Management Act responsibilities.

The fisheries loan fund should not be authorized and foreign fishing receipts should not be earmarked for fishing vessel loans. Specifically, we propose that the balance of foreign fishing fees collected as of September 30, 1984, which are estimated to be $89 million, be split 50/50 between NOAA and the Coast Guard to reduce general fund appropriations required for carrying out MFCMA responsibilities.

Legislation has been submitted to the Congress to implement this change, and it is our hope that the committee would act favorably on this piece of legislation, instead of authorizing extension of the fisheries loan fund.

Next I will go on and provide the testimony with regard to the Fishermen's Protective Act reauthorization.

This program indemnifies domestic fishermen for risk of vessel seizures by foreign countries. Only those who buy a program contract are eligible. Eligibility is further limited to seizures by foreign countries whose claims of oceanic rights are either not recognized by the United States or unrelated to fishery conservation and management; fail to consider traditional practices of the United States; are more onerous than those applied to foreign fishing vessels in the U.S. fishery conservation zone; or fail to allow U.S. fishing vessels equitable access to fishery resources under the foreign countries' exclusive management authority.

The fee paid by program participants is presently sufficient to cover all claims, payments, and administrative expenses. This is true even though the statute requires fees to cover only 25 percent of the claims plus administrative costs.

The covered risks include damage to, or destruction or confiscation of the vessel or its equipment; dockage or utilities fees; the market value of fish caught before the seizure and confiscated or spoiled because of the seizure; and up to 50 percent of the vessel's gross income lost because of the seizure.

Separate protection is also provided by the Secretary of State under section 3 of the Act. Section 3 reimburses fines and other direct charges resulting from seizure. This section is funded by appropriations and does not require preexisting contracts.

U.S. Government policy supports equitable access to fishery resources outside our fisheries jurisdiction in accordance with the international legal rights espoused by the U.S. Government.

Consequently, the section 7 program supports both U.S. positions on international law and the continued economic viability of the U.S. distant water fishing fleets.

Two major U.S. fleets now use the section 7 program: The tuna purse seine fleet operating off the west coast of Central and South America and the shrimp fleet operating off northeast South America. Since the program began in 1968, 215 claims totaling $9.9 million have been paid. During the same period, approximately $3.9 million has been appropriated from the Treasury and $8 million collected in fees for the administration of the program and payment of claims. Fee collections this year will be about $2 million.

In addition, I am also submitting for the record, Mr. Chairman, a table indicating our experience with seizures over the past 3 fiscal years.

This concludes my testimony on both those bills before you.

[Statements of Carmen Blondin follow:]

STATEMENT OF CARMEN J. BLONDIN ON FISHERMEN'S PROTECTIVE ACT

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss reauthorization of Section 7 of the Fishermen's Protective Act.

This program indemnifies domestic fishermen for some risks of vessel seizure by foreign countries. Only those who buy a program contract are eligible. Eligibility is further limited to seizures by foreign countries whose claims of oceanic rights are either not recognized by the United States or

(1) are unrelated to fishery conservation and management;

(2) fail to consider traditional practices of U.S. fishing vessels;

(3) are more onerous than those applied to foreign fishing vessels in the U.S. Fishery Conservation Zone; or

(4) fail to allow U.S. fishing vessels equitable access to fishery resources under the foreign countries' exclusive management authority.

The fee paid by program participants is presently sufficient to cover all claims, payments and administrative expenses. This is true even though the statute requires fees to cover only 25 percent of claims plus administrative costs.

Covered risks include:

(1) damage to, or destruction or confiscation of the vessel or its equipment;

(2) dockage or utilities fees;

(3) the market value of fish caught before the seizure and confiscated or spoiled because of seizure; and

(4) up to 50 percent of the vessel's gross income lost because of the seizure.

Separate protection is provided by the Secretary of State under Section 3 of the Act. Section 3 reimburses fines and other direct charges resulting from seizure. This section is funded by appropriations and does not require pre-existing contracts.

U.S. Government policy supports equitable access to fishery resources outside our fisheries jurisdiction in accordance with the international legal rights espoused by this Government.

Consequently, the Section 7 program supports both U.S. positions on international law and the continued economic viability of the U.S. distant water fishing fleets.

Two major U.S. fleets now use the Section 7 Program: the tuna purse seine fleet operating off the west coast of Central and South America and the shrimp fleet fishing off Northeast South America. Since the program began in 1968, 215 claims totalling $9,910,800 have been paid. During the same period, $3,961,200 has been appropriated from the Treasury and $8,057,400 collected in fees for the administration of the program and payment of claims. Fee collections this fiscal year will be about two million dollars.

I am submitting for the record a table indicating our experience with seizures during the past three fiscal years.

This concludes my testimony in support of the reauthorization of Section 7 through October 31, 1987. I would be pleased to respond to your questions.

SECTION 7—FISHERMEN'S PROTECTIVE ACT

Fiscal year and seizing country	Number of claims paid	Amount
1981:		
Canada	8	$105,892
Venezuela	1	362,736
Brazil	5	152,671
Mexico	9	1,151,809
Costa Rica	1	107,742
Ecuador	11	743,631
Peru	2	65,952
Total	37	2,691,433
1982:		
Brazil	8	808,842
Ecuador	2	249,894
Mexico	7	656,446
Peru	1	37,179
Total	18	1,752,361

SECTION 7—FISHERMEN'S PROTECTIVE ACT—Continued

Fiscal year and seizing country	Number of claims paid	Amount
1983:		
El Salvador	1	12,032
New Guinea	1	167,127
Brazil	4	296,404
Mexico	2	668,314
Total	8	1,143,877

STATEMENT OF CARMEN J. BLONDIN ON THE FISHERIES LOAN FUND

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Fisheries Loan Fund's reauthorization.

The American Fisheries Promotion Act authorized appropriation of foreign fishing fees to make loans for purchase and rehabilitation of fishing vessels. The first priority is to make loans to borrowers who have guarantees under the Fisheries Obligation Guarantee Program. The second priority was loans to avoid default on unguaranteed debt which had financed projects similar to those financed under the Guarantee Program. The last priority was loans to cover vessel operating expenses in those years when a vessel owner suffered an operating loss. Sixty-two and a half million dollars in foreign fees had been deposited in the loan fund through December 31, 1983. It is estimated that an additional $27 million in foreign fishing-fee receipts will be collected through October 1, 1984, bringing the total of foreign fishing-fee receipts to $89 million. We are now proceeding to loan the $3 million appropriated for fiscal year 1984.

The National Marine Fisheries Service and the Department of Commerce oppose any reauthorization of the Fisheries Loan Fund. We oppose subsidized direct loan programs to industry—particularly loans made at 3 percent. Federal intervention through direct loans disturbs the free market allocation of capital and diverts Federal revenues from fundamental Federal responsibilities. In addition, the Nation's economic recovery has reduced the need for this type of program.

The United States Government incurs major costs in the enforcement and management of the Fishery Conservation Zone. Thus in 1985, we have proposed using these fees to offset certain costs associated with carrying out the Magnuson Fishery Conservation and Management Act (MFCMA). The Fisheries Loan Fund should not be authorized and foreign fishing receipts should not be earmarked for foreign fishing vessel loans. Specifically, we propose that the balance of foreign fishing fees collected as of September 30, 1984, which are estimated to be $89 million, be split 50/50 between NOAA and the Coast Guard to reduce general fund appropriations required for carrying out the MFCMA. Legislation has been submitted to the Congress to implement this change. It is our hope that the Committee would act favorably on this piece of legislation instead of authorizing an extension of the Fisheries Loan Fund.

This concludes my testimony. I would be pleased to respond to your questions.

Mr. BREAUX. Thank you, Mr. Blondin.

With regard to the first bill that you testified on, the Fisheries Loan Fund, it is something that obviously was very important to this committee in the sense that we established for the first time a source of funding for the U.S. fishing industry, and we took it not out of general Treasury funds, but we took it from foreign fishing fees. As you know, this committee and its members fought very hard to try to establish a funding program that did not impact on the Treasury. What we created, in fact, was a user fee, saying, "All right, foreign fishing industry, if you want to fish in the U.S. zone, that's going to have an impact on the U.S. fishing industry, so we're going to charge you for that right and we're going to take

those fees, at least a small portion of those fees, and use them to put back into the U.S. fishing industry to try to help U.S. fishermen who might be in trouble." We established certain criteria.

The criteria were basically that a fisherman had to be in some trouble, either in danger of default or bad economic circumstances, in order to successfully apply for the loan.

This committee went through the whole process of appearing before the Appropriations Committee and we were fortunate enough, because of a lot of hard work, to get $10 million appropriated against foreign fishing fees that were coming in at an annual rate of $30 to $35 million. Although we got the money appropriated, the end result, of course, is the problem.

Can you tell us how many applications were received by the National Marine Fisheries Service, and what was the total amount requested in those applications?

Mr. BLONDIN. There were 142 applications, Mr. Chairman, for a total of $9.3 million.

Mr. BREAUX. And how many of the applications were approved and for what amount?

Mr. BLONDIN. Thirty were approved for $1.8 million.

Mr. BREAUX. We had applications totaling $9 million; we approved applications for $1.9 million. Explain to the committee and for the record why, approximately, was only 22 percent of the available money expended. What happened?

Mr. BLONDIN. Well, Mr. Chairman, I think there were a number of things that occurred that precluded us from acting very quickly.

First of all, as you well remember, I think that the legislation had not been completed until almost a quarter of the year had been completed. Since this was a new procedure, there were procedural requirements, and we had developed the operating instructions and had forwarded them to the Office of Management and Budget. At that time we felt that we were dealing with multiyear funds, and I think it is important to keep this in mind because later in the year it was determined that we were not dealing with multiyear funds, but single year.

We finally published the rules after having received them from OMB in late May. We immediately proceeded to continue getting notices out to the fishing industry to insure that everyone who might be eligible would be aware of it. We had expected to be inundated by a large number of these claims. One of our fears had been that, with the availability of these 3-percent soft loans, it would produce applications far in excess of the $10 million. So, we instituted requirements which would hopefully guard against creating unfulfillable expectations.

The criteria that we had used, we thought, would carry us through the initial open season, and that is the reason that we limited this initially to people who had 5 years of experience. Again, since we felt we were dealing with multiyear funds, after the first go-round, we thought we would have other opportunities to deal with additional applicants, should we not expend the total amount of money.

It was later in the year—in fact, in August—August the 17, that a departmental legal opinion came forward and established for the first time that we were dealing not with multiyear funds, but with

a single-year appropriation. If we had known this earlier, we might have handled this in a slightly different fashion.

Mr. BREAUX. Needless to say, Mr. Blondin, it is with great disappointment that the committee reviews the actions of your agency in this area last year.

Everybody who is associated with anything in Government knows how difficult it is to get programs that are designed to help a particular industry, adopted, particularly when we get one that has for the first time involved a user fee from foreign fishermen as a matter of fact, and then we find out that, through an incredible number of—I will be kind and say—"bureaucratic blunders," we end up almost right on target with the applications received. We had $10 million sitting there in a pot. We got $9 something million worth of applications. We funded only 22 percent because of some incredible steps that were taken, or maybe were not taken that should have been taken.

For the life of me, this is really a sad chapter with regard to this particular program. No. 1, someone made a decision in your agency who had not read the legislation carefully, and apparently never called anybody, that somehow the money was available on a multiyear basis.

Where did that decision come from? Was that the legal counsel's opinion?

Mr. BLONDIN. Well, Mr. Chairman, I'm not quite sure where it began from, but, in any event, OMB had looked at this as multiyear funds as well. So between the Department of Commerce and OMB, I think this was where the decision was made with regard to multiyear funding.

Mr. BREAUX. Well, that was the first key mistake. From a legal standpoint, that was a critical mistake. Someone, somewhere, sent an opinion down that said it was a multiyear appropriations.

Apparently, OMB apportioned the fund as multiyear funds, which means they made a mistake at that point and sent it back to your agency.

Someone did not check that and assumed it was correct. Then it took 2 months really, from January 20 to March 17, before the National Marine Fisheries Service forwarded the rules for the program and had them published. We lost 2 months there.

Then OMB took an additional 2 more months to publish them after they had received them from you. So that is 4 months of lost time through the bureaucracy before we even had the program available to the fishermen.

I would point out that the Commerce Department did not even inquire as to whether it was multiyear funding until August 4, which is really 1 month prior to the end of the fiscal year.

I can see how you are not asking for any funds for it now, because it is perhaps too much of a difficult program to implement.

It is a sad chapter; it really is. We were right on target with the amount of money that was appropriated as far as applications that were received. There was an incredible list of bureaucratic blunders, and I will be kind in saying that. We just did not get the program on track until it was almost out of time. It is really, really, really a sad, sad chapter.

Now one of the interesting comments that you make in the testimony is that, well, you are not asking for any funding for the next fiscal year for the program because, well, it is a subsidy and we are opposed to direct subsidy, even though it is a user fee, which I think the administration has always supported.

You point out, in addition, however, that the Nation's economic recovery has reduced the need for this type of program.

I would kindly submit that it certainly does not indicate that by the number of vessels that are apparently in danger of defaulting on title XI loans that are out there in the fishing industry. This statistic does not indicate an economic recovery in this particular area.

How many vessels, can you tell us, were covered by the National Marine Fisheries Service under the title XI guarantee program, went into default in fiscal year 1983? How much of a total was that as far as dollars are concerned?

Do you have a figure, Mr. Grable?

Mr. BLONDIN. Mr. Grable does not have a figure, Mr. Chairman, but we can provide that.

Mr. BREAUX. OK. Let me provide it for you and see if you agree with it.

The budget information from the National Marine Fisheries Service indicates that the answer is 24 vessels for a total of $6.88 million. How many vessels, and for what amount, have gone into default so far during fiscal year 1984? Do you have any figures on that?

Mr. GRABLE. The amount so far in fiscal year 1984 is roughly about $10 million. The number would be fairly low. I don't know the precise——

Mr. BREAUX. The number we have is 14 vessels for a figure of $10.28 million. Is that probably about right?

Mr. GRABLE. Yes.

Mr. BREAUX. So here we are with obligations we have as a government and which the National Marine Fisheries Service has as an agency of our Government. We find that last year, in 1983, we had $6.88 million of vessels that had gone into default; 24 fishing vessels. So far in this fiscal year we have 14 vessels that have gone into default for a figure of $10.28 million. Now that represents a loss to the Treasury.

Here we have a program that would take foreign fishing fees and try to put these people back on their feet in order to survive, and yet your testimony tells this committee that: "Well, we are not asking for any of the foreign fishing fees to be used for this purpose because the Nation's economic recovery has reduced the need for this type of program." I would suggest that the figures show just the opposite.

This is the first time that we have seen these types of figures of vessels that are in the fishing industry that are in actual default. Isn't that inconsistent with your statement?

Mr. BLONDIN. Well, Mr. Chairman, perhaps it appears that it is inconsistent, but I think that is only one of the reasons for our opposing the bill. The economic conditions, certainly, that you point out are true. But, on the other hand, we are concerned about the impact that this kind of money would have on the free market, and

we are also concerned about the use of these funds in other priority Federal program areas.

Mr. BREAUX. I won't elaborate on your answer, but to say that it is a question of priority of use. Considering the fact of the losses that NMFS had to eat for the vessels that were, in fact, in trouble, that we did not use a program that was in existence to help them out is disturbing. Did the National Marine Fisheries Service have the relevant money to take care of those defaults or did you, in fact, have to go to some other source and, in fact, borrow to cover the default of the vessels that were having a problem?

Mr. BLONDIN. In fact, Mr. Chairman, we had to borrow $18 million from the Treasury.

Mr. BREAUX. Do you see the line of questioning that I am pursuing? We had $10 million that we got from the foreign fishing fees to cover vessels that were getting ready to go into default. We did not enact the program in time. We lost the money. NMFS had to eat the defaults, and in fact didn't have enough money to cover the defaults, so you had to go out and borrow the money to cover the defaults.

Can you tell us where NMFS ended up acquiring that money from—other programs or did you have to go out and borrow the money, borrow from the Treasury?

Mr. GRABLE. I will answer that, if I may. We had to borrow $18 million to cover those defaults, but most of those that we actually did pay off were cases which really ought to be in liquidation. Most of them are cases which are so far gone that they really cannot borrow their way out of trouble, and the best thing to do with them is just to liquidate them and cut everyone's losses as quickly as possible.

Mr. BREAUX. I don't recommend throwing good money after bad and prolonging someone's inevitable default or bankruptcy, if that is going to be the case. But surely you do not say to the committee that, of all the loan applications that we received, there were not some that, in fact, were not of the type that would have been in the interest of the Government to try to help to see if they could get their act back together and wait for the better economic times that Mr. Blondin spoke about. Were all of them ineligible?

Mr. GRABLE. Well, there are two main reasons why so many in fiscal year 1983 which we actually received were not funded. One is that some of them were actually too good. The principals either had other sources of credit or other assets that they could use to finance themselves. Most of the other ones were simply too bad.

We have always viewed this program as a soft program, but, nevertheless, we have always tried to administer it with the understanding that there had to be some reasonable assurance of repayment.

Mr. BREAUX. You are saying that some were too good, and some were too bad, and none fell in the middle. I tend to doubt that there were not any within that whole category of $10 and almost $20 million worth of applications there were not suitable for the program had we had it on track. The parameters are fairly large, as far as Congress is concerned, and I thought the directions that we tried to craft were fairly broad enough to cover people that fell within those two parameters that you outlined.

Mr. GRABLE. We were trying to find the ones who really did fit in the middle.

Mr. BREAUX. We need to make this program work. We need to be positive. We need to be aggressive in trying to help our industry, like other countries are helping their industries. My God, we are not a bank that has to foreclose and insure a profit. Our actions lost you $18 million. I would rather make the loans using the foreign fishing fees and keep these people in business. That would have saved the $18 million right there that you had to borrow from the Treasury.

We need to have a can-do attitude, not try to figure out why we should not make the loan. I am not saying you are not helpful; you are, but I am talking about the overall thing. I am hearing: "Well, we found another reason why we couldn't make the loan." I would prefer an attitude of: "We're going to find some ways to make the loan and try to keep these people in business."

Mr. Pritchard.

Mr. PRITCHARD. After listening to the testimony it reinforces my feelings that I question about the whole loan program. Does it skew the system, and in the long run, how helpful is it to get into this loan program? I would hope that somebody in your operation is taking a second look at the program to see if, in the long run, there might be a more constructive way to help. I think in a lot of ways this has proven not to have been a help.

Does anybody share this feeling at the panel?

Mr. BLONDIN. Well, Mr. Pritchard, we certainly are looking at this and reviewing the criteria within the terms of the criteria of the act. I think we have certainly learned a great deal from last year's experiences as well. So far I think we are proceeding much more smoothly. There were already some rules in place that we did not have to construct new rules.

We established the first open season this year from January 15, and it will end on March 31. Hopefully, with the funding that is available this year, we will be able to deal with it far better than we did last year.

Mr. PRITCHARD. I understand your obligation to follow the law, and I think that is fine. I want you to do that, but I think sometimes somebody has to back off and take a fresh look and see whether or not we are going in the right direction.

This member has some serious question as to whether or not in the long run these programs make sense economically and whether we help or hurt the industry in the long run. I know you do things in the short term, but in the long term is this really a constructive program?

I know you have to carry out the law, and so it is a little difficult for you, on the one hand, to be carrying out the law and, on the other hand, to be walking around saying: "What Congress has passed isn't a very good idea."

I would hope there is a little more creative thinking going on as to how better to treat this whole subject.

Mr. BREAUX. Will the gentleman yield?

Mr. PRITCHARD. Yes.

Mr. BREAUX. Would he consider a vessel buy-back program?

Mr. PRITCHARD. I think we've got to reconsider all of these things. We help people out as best we can but looking down the road 10 or 12 years, perhaps we get people into the industry and economically it isn't in their best interest. But this is hard to tell people. This doesn't sound very good, you know.

What do you do with the vessels that you finally foreclose on when you get them?

Mr. BLONDIN. There is an attempt to try to resell the vessel, obviously, and recoup as much money from it as we can. Oftentimes, they will go back into the fishery, if it is a fishery that might be productive, and the person who purchases the vessel might have the correct combination to make a profit.

Mr. PRITCHARD. What is the percentage that you reclaim? What does the vessel go for, 50 cents on the dollar?

Mr. GRABLE. It depends on the fishery, but in really depressed fisheries such as the Gulf of Mexico shrimp fishery and the northwest crab fishery, I would say, yes, 50 cents on the dollar would be good at this point.

Mr. PRITCHARD. You would be lucky.

Mr. GRABLE. Yes; but, often we are able to buy the vessel back at our own foreclosure sale and hold it for a few months, until we can locate someone who wants that particular kind of vessel, and do better than a distressed price at a foreclosure sale.

Mr. PRITCHARD. That is dumping additional boats into the market. Well, the whole thing gets worse and worse.

I will yield back my time, Mr. Chairman.

Mr. BREAUX. Mr. Bosco.

Mr. BOSCO. Thank you, Mr. Chairman.

Mr. Blondin, I have a couple fairly technical questions. Say I am a salmon fisherman out in Fort Bragg, or Seattle, or anywhere on the west coast, which, despite the economic recovery that you speak of, due to weather conditions, and El Nino, and other factors, that fishery is down by about 90 percent, and I read that—I have been a fisherman, say, for 20 years and have done well some years and poorly others, but have stayed afloat generally. I read that Congress has authorized a fishermen's loan fund and I want to take out such a loan. How would I initiate that process?

Mr. BLONDIN. I will let Mr. Grable answer that, Mr. Bosco. I think he is working with the program day by day and has better answers.

Mr. BOSCO. Thank you.

Mr. GRABLE. He would initiate that by calling our regional office in Terminal Island, CA. On the basis of that conversation, our office would advise him whether or not they thought he might be eligible and whether or not he ought to submit an application, and the process would start there.

Mr. BOSCO. Then if he did submit that application, would it be decided at the regional level?

Mr. GRABLE. There is a requirement in the Department of Commerce that any financing be approved by a departmental review board.

Mr. BOSCO. That is here in Washington?

Mr. GRABLE. Yes, sir, it is.

Mr. BOSCO. Who is in charge of that review board?

Mr. GRABLE. Kay Bulow.

Mr. BOSCO. Who is in charge of this program as a whole? Are you, Mr. Blondin, or is it your ultimate responsibility to see that this program works and that the loans are made according to the will of Congress?

Mr. BLONDIN. I have that program responsibility in the National Marine Fisheries Service; yes, sir.

Mr. BOSCO. Do you believe in this program?

Mr. BLONDIN. Yes, sir. I can see some problems with it generally—in fact, some of the same points that Mr. Pritchard has already made. On the other hand, I think that we can see some benefits to the program under certain conditions, and we are trying to minimize the risks to Federal money. That may explain some of the very conservative approaches that we use, rather than trying to use this as a subsidy program, which would further compound problems.

Our loss rate, while we have figures that may be quite high, I think when compared to other losses, our track record is not too bad.

Mr. BOSCO. I get a very mixed message because, first of all, you don't want the program reauthorized. Much of your testimony makes it appear that you don't like the program. Yet, from what you just said, you say you do believe in it and you could, under certain circumstances, make it work.

I am just wondering what message gets out to the people whom we are trying to help, because apparently you have not been very successful at helping very many of them, which of course becomes a great embarrassment to those of us who, on the one hand, tell people that there is assistance available, and then they go through the bureaucracy and apparently end up talking to a lot of people who don't believe in the program.

Do you think that in the future you can instill in your people from the top all the way to the regional level a certain commitment to this program, so that we can feel safe in advising people that there may be help forthcoming to them?

Mr. BLONDIN. Well, I think the only answer I can give you, sir, is that if, in fact, this Congress should provide legislation, we certainly will carry out those responsibilities vigorously. I don't think it is—while we may feel one way or another personally about this, particularly in the effects on other program areas, because we are dealing I think with limited funding, regardless of how we look at this, and so we are dealing with other priorities, and that is a concern. Nevertheless, if it is the wish of this Congress that this program should be continued, I think we can say that we will attempt to carry it out as vigorously as we can.

Mr. BOSCO. I am not going to ask you to do this now, but would it be possible for you to describe to me in a letter form, which I will share with the committee if they wish, how we could go about judging whether you are successful at achieving the goal you just outlined, say 1 year down the road?

Mr. BLONDIN. Yes, sir, I would be delighted to provide you such a letter.

Mr. BOSCO. Thank you very much.

[Material to be supplied follows:]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
NATIONAL MARINE FISHERIES SERVICE,
Washington, DC.

Hon. DOUGLAS H. BOSCO,
House of Representatives,
Washington, DC.

DEAR MR. BOSCO: You asked, during hearings on H.R. 5050, how the Congress might judge whether we were successful in administering a reauthorized Fisheries Loan Fund.

The Fund does present administrative problems. The law makes these loans available to borrowers about to default of primary financings. The law also requires a lack of credit resources anywhere else. And, finally, the law requires a finding that the loan requested will make the applicant financially viable. This effectively means that successful applicants may be neither to financially strong nor two financially weak. They must be somewhere in the middle. Our experience to date is that many applicants have been at either end of the spectrum.

The initial test of administrative success will be qualification criteria which produce applicants in the middle and result in usage of the loan funds appropriated. The ultimate test of success will be whether or not loans actually result in the borrowers' financial viability and repayment of the loans.

Sincerely yours,

CARMEN J. BLONDIN,
Deputy Assistant Administrator
for Fisheries Resource Management.

Mr. BREAUX. Congresswoman Schneider?

Mrs. SCHNEIDER. As you know, Mr. Blondin, the Merchant Marine and Fisheries Committee rejected the proposal to use this $89 million from the fund at the end of this year split up between NOAA and the Coast Guard. I was wondering if you are looking at any specific alternatives as to how that $89 million might be used, specifically how it might be able to help the domestic fishing industry.

Mr. BLONDIN. Well, I think we were looking at this only in the sense of offsetting burdens on the general tax revenue and, seeing that this money was available, that it would go to offset our normal management requirements, both the Coast Guard's and ours.

Mrs. SCHNEIDER. So it would be fit into programmatic overrides or something to that effect?

Mr. BLONDIN. Or at least to deal with—I wouldn't say necessarily overrides, but simply normal programs.

Mrs. SCHNEIDER. How did the administration determine that a 50/50 split of those collected foreign fishing fees would be distributed between NOAA and the Coast Guard? How did they arrive at that determination?

Mr. BLONDIN. We had discussions with the Coast Guard. There were—I don't know if we would term them "negotiations," but at least discussions, and it was agreed between the Coast Guard and our representatives that a 50/50 split represented a fair distribution considering the responsibilities in the fisheries area.

Mrs. SCHNEIDER. Could you be a little more specific on that?

Mr. BLONDIN. Well, I was not a part of those discussions, and I can only relate to you what I heard from those who were a part of those discussions. But certainly if there are details here that you would like, we can put this in writing and provide it to you.

Mrs. SCHNEIDER. That would be appreciated.

[Material to be supplied follows:]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
NATIONAL MARINE FISHERIES SERVICE,
Washington, DC, May 22, 1984.

Hon. CLAUDINE SCHNEIDER,
House of Representatives,
Washington, DC.

DEAR MRS. SCHNEIDER: You asked, during Subcommittee on Fisheries and Wildlife Conservation and the Environment hearings on H.R. 5050, reauthorization of the Fisheries Loan Fund, how it was determined that the collected foreign fishing fees would be split 50/50 between the Coast Guard and NOAA.

Final determination was made by the Office of Management and Budget after a review of the actual costs incurred by each agency for fisheries management and enforcement. Because of their differences in organization and mission, the methods used to calculate each agency's costs were different, precluding a precise comparison.

The final determination was that, all things considered, a 50/50 split was probably the most equitable arrangement possible.

Sincerely yours,

CARMEN J. BLONDIN,
Deputy Assistant Administrator
for Fisheries Resource Management.

Mrs. SCHNEIDER. That's all I have, Mr. Chairman. Thank you.

Mr. BREAUX. As a followup on that, I hope you all lost that battle because I hope that wasn't your position in sitting down with Coast Guard and everybody else. Again, we established a user fee to help the U.S. fishing industry, and we said we were going to make loans available to our fellows and the people who are in trouble to help them get by. Someone else in the administration said,

No, we don't think that is a good idea. We love the user fee, but we are going to give it to the Coast Guard, so we can enforce the laws against our people as well as against the foreigners. So it is all right to use a user fee for enforcement, but don't use it to help the people who are in the business and who are sinking very fast.

That is really the decision that was made. Was that the recommendation of the National Marine Fisheries Service, which is in charge—I hope—of promoting the U.S. fishing industry? Please tell me it wasn't.

Mr. BLONDIN. Well, I think that you've got me in a position that makes it very difficult to explain.

Again, I don't think——

Mr. BREAUX. If you lost the fight and somebody at OMB said, "You have to do this," I'd say, "Look, you lost the battle but, boy, you fought for the industry." Did you?

Mr. BLONDIN. I think there were discussions concerning this and a fair review of the elements that——

Mr. BREAUX. I know all of that, Carmen. I mean, did you all say, "Look, we ought to keep it for the fishing loan program," or did you say, "No, take it to enforce the laws against our own fishermen"? I know you all discussed it. That's not telling us anything.

Mr. TAUZIN. Which side were you on?

Mr. BLONDIN. Well, I represent the administration here. I think that is who is paying my wages, and so I think I have to take that view, Mr. Chairman.

Mr. BREAUX. But what I'm trying to clarify is in developing the administration's policy, you have all these constituency interests that are in there fighting for their turf. Coast Guard, I am sure, said, "Hey, look there, $10 million, and we're going to get half of that to run our ships and to do our enforcement and buy some new

uniforms," or whatever they need, and I am all for them. What I am questioning is, did NMFS, your policy people, say, "No, you can't do that. We want to keep this and make it available for an industry that is going busted"? Did you all submit papers that say that? Was that your position or did you just roll over and let them rule you on the thing?

Mr. BLONDIN. Well, I think it's fair to say Mr. Chairman, that we did look at all of the issues involved here. We are concerned about the viability of the American fishing industry. I think it is a question of how we achieve that viability. While it is very easy to point out that the funds would be used in an enforcement area, in fact, we were looking at, hopefully, its being used in other areas—development or other activities that would assist them, not necessarily limited to enforcement, although obviously from the Coast Guard's standpoint their interaction is important, and the protection of our fisheries from foreign violations is certainly an important element of that.

Mr. BREAUX. Ah, well, OK.

Congressman Young?

Mr. YOUNG. I happen to agree with the chairman on this issue, Carmen. I know your position. I don't want to see anything happen that happened before when the last guy took an antiadministration position in this committee room. I think we all know what we are speaking of.

But this committee is not going to tolerate what has occurred in the administration, and I speak from the minority side. That law was passed specifically to generate money for the fishermen in the industry, the fishing industry of the United States—not for surveillance, not for all the other good things.

I serve as ranking minority member of the Coast Guard Subcommittee.

Whatever you can do, you let them know downtown that it ain't going to happen, and those are direct words from the Republican side of the aisle.

The chairman is absolutely correct. I don't like the way the system was handled. As far as the fund goes, I think only a million and some odd dollars out of $10 million being dispersed and borrowing $18 million is ridiculous. But, in the meantime, no one else is going to get their little hands on that money.

We are working on legislation now with the chairman and the staff. Maybe we will figure out another way, maybe we will write it a little more clearly and direct the administration, whoever it may be, in what they are supposed to do.

That is not directly aimed at you. I know your problem. But somewhere down there, be it David or be it whoever is in charge down there, they had better understand they ain't going to play around with this fishy system.

Thank you, Mr. Chairman.

Mr. BREAUX. Mr. Tauzin?

Mr. TAUZIN. Thank you, Mr. Chairman.

With all due respect, Mr. Blondin, let me tell you that in the short time I have been in Congress an awareness has been growing with me, and it is something that folks told me I would find out when I got to Washington, and that is that we aren't really in

charge here. We pass laws, and we are rather transitory. I am going to go back to Louisiana one day. But the folks who work in marine fisheries and the folks who work in the bureaucracy in Washington will still be here and they will still be running the show.

I am also aware that the Bible says you cannot serve two masters. That is probably true in government as well. You are going to have trouble serving those of us who want to see you have a loan program and function for the benefit of fishermen in our country and the master apparently who is really guiding your decisions, who has instructed you to come before us today and say you opposed any such loan program. I realize that is a difficult position to be in.

But let me suggest something to you, and possibly to this subcommittee. I think before we let the reauthorization bill out we have to consider something very seriously. If those of you who work for this administration and who are charged with carrying out a program written by Congress for the benefit of the citizens of this country are obliged to take an administration position which is, in effect, slow down, don't help, don't make this program work because we oppose the program, and you are concerned, as you should be, about the fact that you have to follow orders from those who put you in your position, then the only way I know around that is for the legislation itself to carry penalties for nonenforcement of its provisions and to create some new authority in the act that is likely to guide the decisions of those of you who should be administering the act.

Let me tell you I'm embarrassed to go home and talk to fishermen who have applied for help under this act and who came back to me and said, "That's a phony piece of legislation you passed because the folks who are administering it tell us we cannot get any help from it, and they are apparently not willing to help us get any help from it. As a result, why pass it? Who's in charge up there? What do you guys think you're doing?"

It is embarrassing to go home and talk to constituents whom you have told we finally have a program together to give you some small modicum of help, only to find out that they are not getting it because the folks charged with administering it are under different instructions.

Now I am not sure what kind of provision we can write into this bill, Mr. Chairman, but I suggest that is the way we should go.

I know in Louisiana we had similar problems when I was in the State legislature. Occasionally, we had to put a little clause in the bill making it rather difficult for any administrator not to enforce the bill, not to carry out its purposes, or to follow some other orders, some other marching orders, if you will, other than those directed by Congress.

Now I don't like to have to do that, but I suggest to you that you have heard some rather strong words from both sides of the aisle in this subcommittee, and all of us I think are united in the view that, when we pass an act such as this one, we want to see it carried out; we want to see some good results flowing from it. We don't want to see those who are administering it sabotaging it at every step because they have different orders.

Well, I've gotten it off my chest perhaps, but I want you to know that is part of the frustration we feel when we go home and talk with fishermen whom we thought we were helping under this kind of program, only to find out the administration has a different view and a different agenda.

With all due respect, Mr. Blondin, I want you to be aware of the fact that before this authorization moves again I, for one, am going to be looking at some new language in it to make it a little easier for you to serve those of us who want to see the bill carried out, rather than serving those who would thwart the authority granted to you in this law.

Could you live with such a stiff provision? Wouldn't it make it easier for you if you told your bosses at OMB, or wherever they are, that, "Look, Congress is getting pretty tough with us. We've got to carry it out. We have to carry out the program whether you like it or not"? Would it make it easier on you?

Mr. BLONDIN. It probably would if my views were different from those of the administration; yes, sir.

Mr. TAUZIN. So what you are telling me is that you agree with the administration and, no matter what we put in the act, you are going to try to make sure it is not enforced?

Mr. BLONDIN. No, sir, I am not saying that at all. I think that since I represent the administration, I will give that advice to the administration on the use of these things—that in good conscience and in interpretation of what is called for——

Mr. TAUZIN. Did the administration veto this act?

Mr. BLONDIN. I don't believe they did.

Mr. TAUZIN. I don't believe they did, either. I think, as a matter of fact, it was signed into law. I think it became the law of the land enacted by Congress and signed by the Executive of this administration.

So I think we have a conflict here. I think we have a President who signs an act into effect and then gives different orders to his administrators. I think we need to end that somehow. I think maybe we need to put something new in the act that calls upon you and him and everybody else to live by the law that we passed and he signed.

Thank you, Mr. Chairman.

Mr. BREAUX. Well, the points that you made are good.

I would just conclude on this point: we tried, I would say to everyone here, to make the bill broad enough to cover all possible situations. Apparently, Mr. Blondin, the bill was silent as to whether the loan program was going to be for new vessels, used vessels, or what have you, and you folks made a cut that you were only going to apply to new vessels. Is that correct?

Mr. BLONDIN. That is correct, yes.

Mr. BREAUX. Apparently, there was a lot of discretion used there.

Another thing, we set up three categories of how you could use the money: Title XI mortgage holders or nontitle XI, or the third category was operating loans. I think the third category was eliminated by the regulations; was it not?

Mr. BLONDIN. Yes, that is true, Mr. Chairman.

Mr. BREAUX. I guess what you are telling us is that we have to sit down and write not only the enacting law but, if we really want

it to be accomplished, we are going to have to do the regulations, too.

Mr. BLONDIN. Well, Mr. Chairman, if I might just respond, I think maybe we are being painted a color that we don't represent.

What I think is important here is that we tried to deal with these funds in a way that would allow us to deal with them reasonably. We knew that they were limited funds. There could be a massive run on the program, and we were trying to deal with it in a reasonable fashion, taking it one step at a time and opening up the criteria.

We have learned a great deal. I think our approach this coming year will be slightly different than last year, as I indicated earlier, but it is one of a learning process, rather than to develop something that would set up a lot of false expectations which we could not fulfill.

Mr. BREAUX. I appreciate those comments. Learning we lost $7 million in the appropriations process, which is one thing that I really sincerely feel very badly about, but, after all, even though the policy is not in agreement with what you are recommending, it is the policy of the United States. As Mr. Tauzin pointed out, the President did sign the bill, and that becomes the law of the United States. We have the right to make good policy and, from your perspective, we also have the right to make bad policy, but it is the policy that should be carried out until the law is changed. I think perhaps we have learned a lesson. I think, from both sides on this situation, hopefully it can be handled better in the future.

I have just a couple of questions with regard to the second bill that you testified about, the Fishermen's Protective Act.

What are your anticipated industry fees under the section 7 for fiscal year 1985?

Mr. BLONDIN. $2 million, Mr. Chairman.

Mr. BREAUX. How many?

Mr. BLONDIN. $2 million.

Mr. BREAUX. $2 million. And what is your request for appropriations—$1.8 million?

Mr. BLONDIN. I believe that is correct, $1.8 million.

Mr. BREAUX. Where does the difference go? It is all industry fees. They are paying for what, in effect, is an insurance policy. If you are estimating that they are going to give you $2 million in fees for an insurance policy and you are only going to need $1.8 million, there is some money missing, and I am wondering where it is going to be channeled? Is the Coast Guard going to get it or what?

Mr. BLONDIN. No, it would stay in the fund, Mr. Chairman.

Mr. BREAUX. It sits in the fund?

Mr. BLONDIN. Yes, sir. We were trying to use our best judgments with the people that have budget responsibilities in the Department.

Mr. BREAUX. Well, should we reduce the fees if we are only going to need $1.8 million? I guess it is a guessing game. You don't know how much you are going to need?

Mr. BLONDIN. That is correct.

Mr. BREAUX. But it is staying in the fund? It does not leave the fund?

Mr. BLONDIN. It stays in the fund. It does not leave the fund.

Mr. BREAUX. All right. We are trying to make it permanent. You are saying to reauthorize it for 3 years. If the administration supports the program and how it is being run why don't we just make it a permanent program? If a change needs to occur, we could always come back and recommend a change. Why don't we just make it permanent if it is working?

Mr. BLONDIN. That certainly is an alternative, sir. I think it was our view that, with the changes that are occurring internationally, a review of this program in a 3-year period would probably be more appropriate and cause us to focus on the circumstances.

Mr. BREAUX. The position from a policy standpoint within NOAA and through NMFS is still the same with regard to the highly migratory nature of the tuna, though, isn't it?

Mr. BLONDIN. It is; yes, sir.

Mr. BREAUX. All right. I think that takes care of any additional questions.

Mr. Bosco.

Mr. BOSCO. Mr. Chairman——

Mr. BREAUX. We have the Administrator, I would point out, Dr. Byrne, who is going to be next.

Mr. BOSCO. I have a very quick comment, Mr. Chairman.

As I mentioned last week, I haven't decided completely yet, but I am getting very frustrated with the Federal management of the fisheries and this loan program and others as well.

Has any thought been given in restructuring this program to perhaps simply make these funds available to the States to distribute, rather than having Federal administration of it at all?

Mr. BREAUX. I haven't thought about it.

Mr. BOSCO. I think that may be one angle that we might want to pursue.

Mr. BREAUX. We could also go into a fisheries corporation. I never thought about that. It might be a new idea.

Mr. BOSCO. I think at least our chance in terms of giving the money to the various States would be that it would probably be administered unevenly, but there may be some out there that believe in the program. So we would have at least a better batting average than we now have.

Mr. BREAUX. I appreciate those comments. It is certainly worth some consideration.

Another supporter of the fishermen's loan fund and other fish programs, Mr. Studds, who has just arrived from somewhere—I was wondering if you have any comments or any questions. You missed some great exchanges.

Mr. STUDDS. Not at this time.

Mr. BREAUX. With that, Mr. Blondin and gentlemen, we appreciate your being with us. Thank you for your testimony.

[The following was received:]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
NATIONAL MARINE FISHERIES SERVICE,
Washington, DC, February 17, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your cosigned letter of December 19, 1983, concerning the Fisheries Loan Fund and Fisheries Obligation Guarantee Programs.

We also were disappointed that the $10 million in fiscal year 1983 loan funds was not productively used. Here is what happened.

The $10 million was not appropriated until December 21, 1982. One quarter of fiscal year 1983 had already passed at this point.

Apportionment of the $10 million was requested on Jaunary 5, 1983. The apportionment request was approved by the Office of Management and Budget on January 10, 1983. The $10 million was apportioned as multiyear funds.

Final rules for the $10 million program were forwarded by the National Marine Fisheries Services (NMFS) on March 1, 1983. Authority to publish these rules was received from the Office of Management and Budget (OMB) in late May, 1983. They were published on May 26, 1983.

A press release about the Program was issued on May 27, 1983. An informative notice about the availablity of these funds was concurrently mailed to about 200 parties either representing the fishing industry or having extension-type relations with it. Periodic notices were published in NMFS Market News Reports. Fishing industry representatives in the Washington area were personally briefed. NMFS regional offices conducted further publicity on a regional basis.

The open season for applications was from June 15 to July 29, 1983.

A Departmental legal opinion dated August 17, 1983, established for the first time that the $10 million was not multiyear funds. This is despite the fact these funds had been apportioned as multiyear funds. About 1 month remained in fiscal year 1983 at this point.

As you can see, we were, despite our best efforts, not in a position to implement the fiscal year 1983 loan program until May 26, 1983 (the date program rules were published in the Federal Register). Only one quarter of fiscal year 1983 remained at this point. Once we were in a position to do so, we made every reasonable effort to publicize the availability of these funds.

Our fear had always been that availability of these 3 percent, soft loans would produce applications far in excess of the $10 million. In order to guard against creating unfulfillable expectations, the rules established qualification criteria designed to reasonably match potential applicants to available funds. The main criteria used to accomplish this involved restriction of applications, during what we thought would be only the initial open season, to owner/operators with at least 5 years' experience. This approach had been discussed in advance with both national fishing industry representatives and concerned Congressional staff.

We were operating under the assumption that OMB apportionment of these funds as multiyear funds meant that any funds not obligated in fiscal year 1983 would carry over to fiscal year 1984. If the first open season for applications had not produced enough applications to use the available funds, our intention had been to schedule successive open seasons with successive less restrictive criteria. Only 1 month remained in fiscal year 1983 when we were first advised, shortly after August 17, 1983, that these funds could, in fact, not carry over into fiscal year 1984. The remaining time was insufficient to announce another open season and obligate the remaining funds before they reverted to the Treasury on September 30, 1983.

Even so, the response to what turned out to be the only open season possible was strangely small. Only 90 applications from non-guaranteed program parties were received (there were another 51 applications from guaranteed-program parties). This is a total of only 141 applications from the Nation's entire community of experienced owner/operators who had constructed larger fishing vessels. We do not know how to explain this relatively small response. We can only speculate that most of the fishing industry was imperfectly aware of what was available.

Most of the guarantee-program community who needed loans and could reasonably qualify for them had already been funded in fiscal years 1981 and 1982. Most of the non-guarantee-program applicants in fiscal year 1983 either had other resources available (and were, thus, ineligible) or were in such poor financial shape that additional loans could not reasonably be justified. Our operating assumption was always that there had to be some reasonable potential for the loans being repaid. Many of

the applications could not meet this minimal requirement. One hundred forty-one applications for $9,077,427 were received. Only 35 applications for $1,969,389 could be approved.

We could have loaned the entire $10 million to deserving parties under any of the following conditions:

If the statutory authority had been available earlier in the fiscal year 1983.

If the statutory authority had provided for the carry over of these funds into fiscal year 1984.

If the clearance for publishing program rules had been available earlier.

If we had been aware earlier that these funds were, in fact, not multiyear funds.

If a greater number of more deserving applicants had applied during what turned out to be the only open season possible.

Unfortunately, a combination of these circumstances resulted in most of the fiscal year 1983 authority being unexpended. We regret this as much as you do. Nevertheless, we believe we did the best we could under the circumstances.

You should understand that one of the major constraints on loan program usage is the apparent ineligibility of mortgages which financed the purchase of used vessels. As we read the authorizing legislation, non-guarantee-program applicants are eligible only if they meet the use and documentation requirements of Title XI (the guaranteem program's authorizing legislation). The eligibility window for used vessels is very narrow under Title XI. This greatly restricts the universe of eligible applicants under the loan program.

The situation in fiscal year 1984 will be better. Since the appropriation authorization was enacted earlier (November 28, 1983) and adequate program rules were already in place, we were able to establish the first open season from January 15 through March 31, 1984. Preliminary indications are that application activity will be substantial.

One hundred seventy-four million dollars in guaranteed financing is currently outstanding under the Fisheries Obligation Guarantee Program. Historically, $331 million in guaranteed financing has been approved since passage of the Federal Ship Financing Act in 1972. You realize, of course, that this program has been limited to financing only new construction and only in non-conditional fisheries. The great majority of all financing have involved vessels. Shoreside financing has been slow since implementation of this portion of the program on December 23, 1982. Only $9.8 million in shoreside financing has been approved since that date. Another $2.8 million in shoreside financings is currently pending decision. Several million more are currently in the preapplication discussion stage.

As you know, both the national economy in general and the fisheries economy in particular have been through a prolonged and severe recession. Investment in the fishing industry has dropped off sharply since about 1979. A severe cost-price squeeze began in the Gulf of Mexico shrimp fishery during that year. This problem continues in the shrimp fishery at present. The high seas tuna fishery has since encountered a similarly severe cost-price squeeze. The North Pacific crab fishery is in financial shambles due to the major resource cycle. Performance in other fisheries has been uneven during this period, but the fisheries investment climate has generaly has generally been very depressed during the first 3 years of this decade.

The fisheries investment climate will improve, but we cannot say when. This makes projecting future guarantee program activity difficult. We can't at this point project program activity in fiscal 1984 to be more than about $50 million. This could increase considerably, however, if large factorship projects in the North Pacific bottomfish fishery materialize and if investment confidence returns to the secondary portion of the industry during fiscal year 1984.

Sincerely yours,

WILLIAM G. GORDON,
Assistant Administrator for Fisheries.

Mr. BREAUX. Next we would like to welcome a panel that will be testifying on the third and fourth pieces of legislation, the Anadromous Fish Conservation Act and the striped bass moratorium bill.

Dr. John Byrne is Administrator, of course, of the National Oceanic and Atmospheric Administration, Department of Commerce, and Joseph Kutkuhn is the Associate Director for our Fishery Resources with the Fish and Wildlife Service in the Department of the Interior.

Is he here? I don't see him. If he shows up, ask him to please take his seat at the witness table.

With that, Dr. Byrne, we appreciate your being with us and look forward to your testimony.

STATEMENT OF JOHN BYRNE, ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY JAY JOHNSON AND W.P. JENSEN

Dr. BYRNE. Thank you, Mr. Chairman.

It's an opportunity that I wouldn't have missed not only to make this presentation, but also to have heard the discussion that preceded it.

I appreciate the opportunity to appear before this subcommittee to present the Department of Commerce's position on the reauthorization of section 7 of the Anadromous Fish Conservation Act of 1965, as amended by Public Law 96-118 on November 16, 1979, which is scheduled to expire on September 30, this year, and to comment on H.R. 4884, a bill which would impose a moratorium on fishing for, possessing, or transporting striped bass in the coastal States north of South Carolina.

The Anadromous Fish Conservation Act of 1965 authorized the Secretaries of Commerce and the Interior to enter into cost-sharing agreements with the States and other non-Federal entities for the conservation, development, and enhancement of the anadromous fishery resources of this country.

Section 7 of Public Law 96-118 directed these agencies to conduct a 3-year emergency research study to determine the cause or causes of the severe decline in striped bass stocks. This emergency study was reauthorized for 2 years by Public Law 97-453.

During the 5-year period of the research activities, $6.8 million in Federal funding was authorized. Appropriations totaling $4.7 million were shared by the Fisheries Service and the U.S. Fish and Wildlife Service and were passed on to the State management agencies and research facilities. In addition, the States provided $700,000 to the studies as matching funds.

As part of this administration's economic program, the 1985 budget proposes to eliminate the fishery grant-in-aid programs, including Public Law 89-304, and it would be left to the States to fund activities which the States consider to be important, such as stock monitoring, data gathering, and studying the effects of contaminants on the survival of striped bass, which were funded under section 7.

Of course, we would continue to work with the States in managing the fishery resources, and we believe that the cooperative effort could continue effectively.

The emergency striped bass research study has produced some results to date. We are pleased in general with the accomplishments of that study, and a summary of the major findings of this study is attached to this statement.

This administration believes, however, that the States, as primary beneficiaries, and other non-Federal cooperators should assume the responsibility for the continuation and performance of

striped bass research activities. This is consistent with the administration's announced program to return full responsibility to the States for managing resources that primarily exist within their jurisdiction.

The administration opposes the enactment of H.R. 5074. In our view, sufficient Federal research has been done, and further studies should be done at the State level.

H.R. 4884, the Atlantic Striped Bass Restoration Act, provides for a 3-year moratorium on fishing for or possessing striped bass with provisions for a 2-year extension. This bill is an attempt to respond to the consensus, and I must say that it is a very strong consensus, among State and Federal biologists—in fact, I think all who have studied the striped bass—that the striped bass, particularly those inhabiting the Chesapeake Bay, have declined in an alarming way during recent years.

There are a number of indicators of this. One reliable indicator of stock strength is the annual survey of juvenile striped bass which is conducted in Chesapeake Bay by the State of Maryland.

The numbers of juveniles encountered in 1981 and 1983 are the lowest and second lowest in the survey's 30-year history.

The total commercial landings of striped bass along the Atlantic Coast from North Carolina through Maine have declined steadily from an alltime high of about 14.7 million pounds in 1973 to 1.7 million pounds in 1983. Over this same period, the combined commercial landings from Maryland and Virginia have decreased from 7.9 million pounds to just over 500,000 pounds. It's very clear that an alarming state is recognized and that the striped bass is in significant trouble.

The Department of Commerce recognizes the need to protect striped bass, but has concluded that a Federal moratorium on striped bass fishing may be premature. In October 1981, the Atlantic States Marine Fisheries Commission adopted an Interstate Fisheries Management Plan for the striped bass of the Atlantic Coast from North Carolina through Maine. The plan specified that the States implement size limits, area closures, bag limits, and other measures to reduce fishing mortality on the stocks.

After 2 years, the plan has not been fully implemented. Since that time, however, the States collectively have determined that more restrictive measures are in order. The State management agencies agreed in late 1983 to make efforts to reduce fishing mortality by 55 percent over what would have been achieved through full implementation of the provisions of the earlier plan. The States are currently developing such measures, and, in fact, these are due for presentation to the ASMFC Striped Bass Board and the Scientific and Statistical Committee early next month.

I might also mention that the National Marine Fisheries Services is reviewing a petition at this time from an organization called, Stripers Unlimited to list the Chesapeake Bay strain of striped bass as threatened or endangered under the Endangered Species Act of 1973.

About a year ago the Fisheries Service completed a status review under that act based on another petition from that organization and determined that there was insufficient evidence at that time to declare the species either threatened or endangered.

If the evidence warrants, it is important to note that threatened or endangered classifications would obviate the need for a moratorium inasmuch as all directed fishing, commercial as well as recreational, could be controlled until the resource recovers.

This concludes my statement, Mr. Chairman. I would be pleased to attempt to respond to questions.

[Statement of John V. Byrne follows:]

STATEMENT OF JOHN V. BYRNE, ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before this Subcommittee to present the Department of Commerce's position on the reauthorization of Section 7 of the Anadromous Fish Conservation Act of 1965 (P.L. 89-304), as amended by P.L. 96-118 on November 16, 1979, which is scheduled to expire on September 30, 1984, and H.R. 4884, a bill which would impose a moratorium on fishing for, possessing or transporting striped bass in the coastal states north of South Carolina.

The Anadromous Fish Conservation Act of 1965 authorized the Secretaries of Commerce and the Interior to enter into cost-sharing agreements with the states and other non-Federal entities for the conservation, development, and enhancement of the anadromous fishery resources of the Nation, including fish in the Great Lakes and Lake Champlain that ascend streams to spawn, and for the control of sea lamprey. Section 7 of P.L. 96-118 directed these ageneies to conduct a three-year emergency research study to determine the cause or causes of the severe decline in striped bass stocks. This emergency study was reauthorized for two years by P.L. 97-453.

A total of $6.75 million in Federal funding was authorized over the five-year period to carry out the purposes of Section 7 of the Act. Appropriations totalling $4.675 million were shared by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (F&WS), and passed on to the state management agencies and research facilities. States provided an additional $700,000 to the study by providing matching funds up to 33.3% of project costs on those projects conducted by state agencies.

As part of the Administration's economic program, the 1985 NOAA budget proposes to eliminate the fishery grant-in-aid programs, including P.L. 89-304. It would be left to the states to fund activities they consider important such as stock monitoring, data gathering, and studying effects of contaminants on survival of striped bass which were funded under Section 7. We will continue to cooperate with the states in the management of the fishery resources. We believe that this cooperative effort can continue to be effective, as in past years.

We are pleased with the accomplishments of the Emergency Striped Bass Research Study to date. I have attached to my testimony a summary of major findings under this Study. A more detailed description of findings will be available shortly in a report to Congress for the years 1982 and 1983. The states as primary beneficiaries, and other non-Federal cooperators, should assume responsibility for the continuation and performance of striped bass research activities. This is consistent with the Administration's announced program to return full responsibility to the states for managing resources that primarily exist within their jurisdictions. Therefore, we oppose the enactment of H.R. 5074. In our view, sufficient Federal research has been done. Further study would only delay state corrective action.

H.R. 4884, "The Atlantic Striped Bass Restoration Act," provides for a moratorium on fishing for or possessing striped bass for a three-year period with provisions for a two-year extension. This bill attempts to respond to the consensus among state and Federal biologists and administrators that the spawning stocks of migratory striped bass, especially those inhabiting the Chesapeake Bay, have declined dramatically in recent years, and that swift and decisive action is necessary to protect and restore the stocks. Illustrations of this decline are juvenile surveys and landing trends. A reliable indicator of stock strength is the annual young-of-the-year survey of juvenile striped bass conducted in the Chesapeake Bay by the State of Maryland. The numbers of juveniles encountered in the 1981 and 1983 surveys are the lowest and second lowest in the survey's 30-year span. The total commercial landings of striped bass along the Atlantic Coast from North Carolina through Maine have declined steadily from an all-time high of 14.7 million pounds in 1973 to 1.66 million

pounds in 1983. Over this same time period, the combined commercial landings from Maryland and Virginia decreased from 7.86 million pounds to just 548,000 pounds.

The Department of Commerce recognizes the need to protect striped bass, but has concluded that a Federal moratorium on striped bass fishing is premature. In October 1981, the Atlantic States Marine Fisheries Commission (ASMFC) adopted an Interstate Fisheries Management Plan for the striped bass of the Atlantic coast from North Carolina through Maine. The plan specified that the States implement size limits, area closures, bag limits, and other measures to reduce fishing mortality on the stocks. After two years, the plan has not been implemented. Since that time, the States collectively determined that more restrictive measures were needed. The State management agencies agreed in late 1983 to make efforts to reduce fishing mortality by 55% over what would have been achieved through full implementation of the provisions of the Interstate Plan. The States are currently developing such measures to achieve this 55% reduction, and will present these measures to the Chairman of the ASMFC Striped Bass Board and the Scientific and Statistical Committee in early April of this year.

We have consistently sought a cooperative national framework for coordinated management of our marine and estuarine interjurisdictional fisheries of which striped bass is a prime example. Our commitment to proper and timely management of interjurisdictional resources will continue. Both the Departments of Commerce and the Interior will be monitoring the state's efforts to revitalize the Atlantic Striped Bass fishery.

I should also note that at this same time, NMFS is reviewing a petition from *Stripers Unlimited* to list the Chesapeake Bay strain of striped bass as threatened or endangered under the Endangered Species Act of 1973. About a year ago, NMFS completed a status review under the Act based on another petition from *Stripers Unlimited* and determined that there was not sufficient evidence at that time to declare the species either threatened or endangered. If evidence warrants, it is important to note that threatened or endangered classification would obviate the need for a moratorium inasmuch as all directed fishing, commercial as well as recreational, could be controlled until the resource recovers.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions at this time.

Emergency Striped Bass Research Study

SUMMARY OF MAJOR FINDINGS TO DATE

Status of production

1. Production indices for striped bass spawned in Chesapeake Bay, the Delaware River, and the Roanoke River are at levels that are the lowest on record.
2. Dominant year classes have not been produced in the Chesapeake since 1970 and in the Roanoke River/Albermarle Sound region since the mid-1970's.
3. The Maryland spawning population currently lacks representation in the age groups that have historically contributed over 75% of the total annual egg deposition. Contribution of the majority of females to the spawning population is still being made by the 1970 and older year classes.

Status of the fisheries

1. Recreational and commercial landings of the coastal migratory striped bass stock have declined steadily in recent years. The decline has been most dramatic in the coastal states south of New Jersey.
2. Several commercial fishing operations have ceased activity due to the scarcity of striped bass.
3. The number of year classes making a significant contribution to the fisheries has been reduced due to the lack of dominant year classes and poor production in recent years.

Decline studies

1. Numerous organic and inorganic contaminants have been detected in striped bass eggs, young-of-the-year, and adults. However, no single contaminant has been identified that can be considered responsible for the decline in the coastal migratory stock. The biological significance of dioxin and debenzo-furan residues detected in the bass remains unknown.
2. Young striped bass are relatively more susceptible than sunfish, catfish, and minnows to acute exposures of arsenic, selenium, copper, cadmium, toxaphene, car-

baryl, and malathion. This indicates that striped bass may be one of the first fish species to succumb to these toxicants in estuarine waters.

3. Combinations of contaminants at concentrations similar to those found in spawning rivers of the Chesapeake Bay region and the Hudson River significantly decrease survival of striped bass larvae in fresh water and in 2 ppt salt water within 30 days of exposure, and in 5 ppt salt water within 90 days of exposure. As salinity increases, the magnitude of contaminant-induced mortality decreases.

4. In addition to decreased survival in 5 ppt salt water, the contaminants mixture decreased swimming activity and altered predator-prey behavioral relationships after 60 days of exposure.

5. Results of laboratory studies suggest that combinations of chemical contaminants may be contributing to the decline of early life stages of East Coast striped bass populations. Water salinity and migration should be taken into account when assessing the magnitude of contaminant impacts.

6. The level of fishing mortality affects the magnitude of contaminant-related mortality that a striped bass population can withstand, and vice versa. When contaminant-related mortality occurs with fishing mortality both sources contribute to stock decline. The effects of an increase in either type of mortality are magnified by the occurrence of the other type.

7. Starvation of larvae may play an important role in determining year class production.

8. Estimates of fishing mortality in the coastal migratory stock suggests that exploitation may be inhibiting production.

9. Currently-available statistical tools cannot detect the relationship between the size of the parental stock and the number of offspring they produce (the stock recruitment relationship). However, it is likely that, at the present low stock level, density-dependent mortality is not a major component of natural mortality. As such, the number of juveniles produced (year class strength) is directly related to the number of eggs spawned.

10. The coastal migratory stock cannot continue to support the level of fishing activity that currently exists.

Economic studies

1. The decline in commercial and recreational catches of striped bass since 1974 has cost the Northeast approximately 7,000 jobs and over $220 million in economic activity.

2. In 1980 the commercial and recreational fisheries were still supporting approximately 5,600 jobs, causing $96 million in annual spending and creating $200 million in related economic activity. Of this, recreational fishing generated $90 million in annual expenditures.

3. For every $5 and five jobs generated in coastal areas because of striped bass fishing, another $1 and one job are generated inland.

4. The net economic value (how much people are willing to spend above what they have to spend) of striped bass fishing is estimated to have been about $12 million in 1980.

Mr. BREAUX. Let's now hear from Mr. Kutkuhn from the U.S. Fish and Wildlife Service.

STATEMENT OF JOSEPH H. KUTKUHN, ASSOCIATE DIRECTOR, FISHERY RESOURCES, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. KUTKUHN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I very much appreciate this opportunity to comment on H.R. 5074, a bill to extend the authorization for the Emergency Striped Bass Study as well as on H.R. 4884, a bill to impose a moratorium on fishing for Atlantic striped bass in order to restore major populations of that species.

Striped bass populations from the Roanoke River/Albemarle Sound of North Carolina and northward are continuing the rapid decline that prompted the 1979 congressional directive to undertake the Emergency Striped Bass Study.

On a more positive note, I am pleased to be able to state that, as a result of the study, some corrective actions have been identified in the recently completed third annual report of the study. Perhaps the most significant recommendation is that fishing mortality, both recreational and commercial harvest, be reduced substantially from present levels until acceptable natural production is restored. Investigation of the feasibility of rebuilding natural production through a stocking program and reducing the introduction of toxic materials—that is, contaminants—into spawning and nursery habitat, in conjunction with the reduction in fishing mortality, are also recommended.

Finally, the report proposes continued monitoring of striped bass populations during all life cycle stages together with a number of additional investigations.

We strongly support the intent of H.R. 4884 to reduce fishing mortality, but feel that a Federal moratorium on striped bass fishing is premature. In view of the conclusions and recommendations of the Emergency Striped Bass Study calling for specific corrective actions, neither can we support H.R. 5074, which would simply extend the current study another year.

Before elaborating on our position on these bills, let me point out by way of background that restoration of anadromous runs of striped bass is a longstanding goal—shared with other entities—of the U.S. Fish and Wildlife Service and its predecessor agencies. As far back as 1875, attempts were made to rear striped bass at the Federal Government's Weldon Station in North Carolina. Striped bass were also raised during the 1930's at the old Edenton National Fish Hatchery, also in North Carolina. Current restoration efforts date from the establishment of the new Edenton National Fish Hatchery in 1960.

To date, striped bass produced by the Service have, in cooperation with the States, been used in attempts to restore anadromous runs in coastal streams from North Carolina south to the Gulf of Mexico, and in stocking major reservoirs in the Southeast. The Apalachiocola River in Florida's panhandle, for instance, has been one focus of these efforts. This emphasis reflects the fact that, until recently, stocks associated with the Roanoke River/Albemarle Sound and habitat to the north, including Chesapeake Bay—that is, stocks which are the focus of the Emergency Striped Bass Study—appeared to be in better condition than those produced to the south.

The Service has also had long-term involvement with striped bass in response to its Fish and Wildlife Coordination Act responsibilities. Under that act, the Service must comment on the effects of Federal water development projects and federally-licensed, permitted, and funded water-related activities, as well as provide recommendations on how to avoid, minimize, or mitigate for impacts from these projects and activities. These include many projects on the Atlantic and Gulf of Mexico coasts that occur in striped bass habitat and affect the species' use of that habitat.

As originally planned, for instance, the Storm King Pumped Storage and Westside Highway Reconstruction Projects in New York and the Savannah Harbor Project in Georgia had, in our

opinion, significant adverse implications for striped bass stocks in the Hudson and Savannah Rivers, respectively.

More recently, the Service has also become involved in studies about the nature and extent of contaminants in striped bass spawning and nursery habitat, especially in the Chesapeake and Delaware Bays.

With the passage of the Anadromous Fish Conservation Act of 1965, the Service, in conjunction with the National Marine Fisheries Service, began providing matching grants to coastal and Great Lakes States for the restoration of runs of anadromous fish, including those of the striped bass. Through Fiscal Year 1984, $89 million has been appropriated for this grant program. This total included $47.5 million appropriated to the Service, of which about $4 million was used for work related to striped bass.

Finally, the Service also shares jurisdiction with the National Marine Fisheries Service for conduct of the Emergency Striped Bass Study. In accordance with provisions of the Emergency Striped Bass Study Act enacted in November 1979, $4.7 million has been appropriated for Federal and State research on the size and condition, as well as distribution, of striped bass populations; the factors responsible for the decline in striped bass available for recreational and commercial use; and a survey of the economic importance of recreational and commercial uses of striped bass.

Of the total, $2.9 million was appropriated for the Fish and Wildlife Service and $1.8 million to the National Marine Fisheries Service. The respective roles of the Service, the National Marine Fisheries Service, and the States in this study, as well as some of its principal findings, conclusions, and recommendations, will be described in more detail by Drs. Goodyear and Boreman in their testimony. These gentlemen are members of the joint project management team established to implement and coordinate the study at its outset in 1980.

The several statutory requirements related to striped bass, together with substantial, long-term program involvement in the restoration of this species, have established a clear Federal and Service role with regard to the protection of this species. As a consequence, a recent Service policy review concluded that restoration of striped bass, along with that of several other nationally significant migratory or interjurisdictional species, should be one of six responsibilities of the Service's Fishery Resources Program. Rehabilitation and protection of the striped bass are central to the mission of the U.S. Fish and Wildlife Service and the program area that I administer. Consequently, we have a strong interest in the two bills presently before this subcommittee. I will now address them individually.

Mr. Chairman, the bill that you and Mr. Forsythe have introduced, H.R. 5074, is a simple, 1-year reauthorization of section 7 of the Anadromous Fish Conservation Act of 1965, which instituted the Emergency Striped Bass Study. As I stated earlier, the administration is opposed to extending the study, the principal intent of which is to specify what has caused the decline in the valuable striped bass resource.

When enacted in 1979, section 7 authorized what was envisioned as a 3-year study, although it contained a provision for an exten-

sion, if so recommended by the Secretaries of Commerce and the Interior.

In early 1983, the Anadromous Fish Conservation Act itself was reauthorized, including an extension of the study for 2 years, through fiscal year 1984. This extension was necessary because the results of the first 3 years' study of the complex biological systems involved, coupled with the 4-to-7-year life cycle of the striped bass, did not provide a sufficiently conclusive basis for identifying effective corrective actions.

From further research and evaluation of data subsequent to the earlier reauthorization, it is now clear that the striped bass, particularly the Roanoke River/Albemarle Sound, Chesapeake Bay, and Delaware River stocks, cannot support the current level of fishing mortality being imposed. However, research of itself will not restore these stocks. Suggestions for further study to more definitively indicate the causes of this decline would only, in our view, defer the protective actions that need to be taken now.

To reiterate, corrective actions are imperative before further investigation needs to be made. Consequently, we cannot endorse the pursuit of more research in the absence of steps by the States to reduce, as well as control, striped bass fishing mortality and to limit the introduction of toxic materials into spawning and nursery habitat, the other action recommended in the latest annual report of the Emergency Striped Bass Study.

We also recommend that action on the moratorium bill, H.R. 4884, be deferred pending the outcome of current State efforts to reduce the sport and commercial harvest of striped bass. Under the auspices of the Atlantic States Marine Fisheries Commission, the 12 States involved are attempting to institute a 55-percent reduction in striped bass fishing mortality by this spring. Any Federal action to pre-empt State management prerogatives by imposing a moratorium, or even a reduction in harvest, should be suspended pending the outcome of this multi-State initiative.

The recommendation that striped bass fishing mortality be reduced by 55 percent this year was adopted last December by the Striped Bass Board of the Atlantic States Marine Fisheries Commission. It was based on a careful study by my colleague, Dr. Goodyear, the U.S. Fish and Wildlife Service's Project Manager for the Emergency Striped Bass Study.

All available information suggests that this minimum reduction in total harvest would be sufficient to allow recovery of the affected stocks, although recovery at this minimum level of harvest reduction would be slow and, perhaps, not fully achieved for at least several decades.

Most of the 12 States involved are responding to the Commission's recommendation in a positive manner. The State of Rhode Island, for example, has imposed a 3-year moratorium on fishing for and possession of striped bass. At a meeting the first week in April, the Commission's Scientific Committee will evaluate the effectiveness of all the State programs in achieving the proposed reduction in total harvest. If that assessment concludes that these State efforts are likely to be effective, they should be given a chance to work before any across-the-board moratorium or other Federal action is instituted. Several years will be required before

the results of the reduction in fishing mortality as a result of this collective effort can be detected, in terms of increasingly larger year classes by indices of juvenile abundance.

To conclude this testimony, I would like to highlight the significance of striped bass fisheries. The striped bass is one of America's most esteemed and sought-after game and food fish, especially from Maine through North Carolina.

In 1970, an estimated 793,000 recreational anglers harvested 73 million pounds of striped bass and spent up to $100 million pursuing the species in the Northeast and Middle Atlantic coastal regions. During the same year, within the same geographic area, commercial landings of a little over 11 million pounds, valued at $2.5 million to commercial fishermen, contributed an additional $12.5 million to the general economy.

In 1973, commercial landings of striped bass in the proposed moratorium area reached an all-time high of 14.7 million pounds with a dockside value of $4.2 million. Since 1973, however, commercial landings have declined at most reporting sites from Maine through North Carolina. Estimated landings of striped bass in 1979 for the entire Atlantic Coast were only 4.5 million pounds, the lowest since 1957, as well as the sixth in a series of consecutive annual declines. Only 1.7 million pounds were harvested last year. Despite the decreased availability of striped bass, fishing pressures on this resource are high and continue to increase due to higher market prices and sustained growth in recreational fishing.

Clearly, a substantial reduction from the current rate of striped bass harvest is required to assure future generations the opportunity to fish for and otherwise enjoy this magnificent species. But before intervention by the Federal Government, the States must be allowed once more to demonstrate their willingness and ability, working together, to achieve reduction in and control of the fishing rates that we all agree are immediately essential.

Mr. Chairman, that concludes my prepared testimony. I will be happy to answer any questions you may have.

Mr. BREAUX. We authorized in 1979 a study on striped bass to take a look at it because at that time the stock additions looked pretty bad. We have completed the study. It is in final form. I think most people know what the study says.

Your recommendation across the board is that we do not need to do any more studies, that the States need to get on with implementing some of the recommendations of the study?

Mr. KUTKUHN. Yes, sir.

Mr. BREAUX. Is that basically it, Dr. Byrne?

Dr. BYRNE. Yes.

Mr. BREAUX. I know the President has recommended a large chunk of money for the Chesapeake Bay. I take it that a lot of that would be looking at some of the habitat problems.

A brief review of the summary of the study tells me that you have habitat problems and you have overfishing problems. Is that pretty much it—I mean a broad summary?

Mr. KUTKUHN. Yes.

Mr. BREAUX. We do have a lot of things that are causing the destruction of the habitat, and they need to be addressed. We also have the problem of overfishing. That pretty much summarizes it?

Mr. KUTKUHN. Yes, sir.

Mr. BREAUX. Congresswoman Schneider's bill proposes that the stocks are so bad and the States are not doing enough, even though they are basically a resident species, that we, the Federal Government, should come in and declare a moratorium. Both of you oppose that, do you not?

Mr. KUTKUHN. Yes.

Dr. BYRNE. Yes.

Mr. BREAUX. Tell us why.

Dr. BYRNE. Both statements, I think, indicate that the Atlantic States Marine Fisheries Commission has agreed that some serious action needs to be taken. I think everyone agrees to that.

Due next April, next month, are the recommendations by the States as to how they will impose the 55-percent reduction over the existing plan.

Mr. BREAUX. So, the Atlantic States have developed a plan which I guess takes into consideration some of the information contained in the study?

Dr. BYRNE. Yes.

Mr. BREAUX. You don't object to a moratorium, I guess, as much as you object to the Federal Government imposing a moratorium. If the States decided that a moratorium on the take was in their best interest, you have no qualms with that, I take it?

Dr. BYRNE. No.

Mr. KUTKUHN. That is our position, yes sir.

Dr. BYRNE. Yes; I agree with that.

Mr. BREAUX. The other thing I need to ask is this: the 200-mile fishing bill, the Fisheries Conservation Management Act [FCMA], when it talks about whether the Federal Government should preempt the States on the management of fisheries, we do have authority in that law to, in fact, do that. It basically says: If the Secretary finds that fishing in a fishery which is covered by a plan and is engaged in predominantly within the FCZ, and that the State has not taken any action, but they should in order to manage that fish, then the Federal Government can come in and do something about it.

Have we, in fact, ever used that authority on any species to allow, in effect, a Federal preemption of a species that previously was handled by the States? I am thinking, of course, of the salmon up in the Northwest.

You can have somebody come on up if you wish. Bring whomever you would like up to the witness table.

Dr. BYRNE. Yes; Mr. Chairman, we did preempt the State of Oregon, I think, just about a year ago, on a closure date with respect to at least one species of salmon.

Mr. BREAUX. Can you tell us what authority NMFS and NOAA used in order to take that action?

Dr. BYRNE. I would like to ask Mr. Jay Johnson to come up. He is with the General Counsel's Office and is assigned the National Marine Fisheries Service.

Mr. BREAUX. Mr. Johnson, would you tell us what authority you used there and what evidence indicated that it fit the criteria to allow you to do that at that time?

Mr. JOHNSON. With respect to Oregon, we used section 306(b) of the Magnuson Act. The evidence indicated that the salmon fishing, troll salmon fishing, in the Pacific Northwest was primarily engaged in beyond State waters, and that the action the State of Oregon had taken, which was essentially to leave open a recreational fishery that the Fishery Management Council had proposed be closed for about a 2-week period, would jeopardize the objectives of the Council.

Mr. BREAUX. So you found that most of the take, the majority of the take, was outside the State territorial waters?

Mr. JOHNSON. That is correct, and that certainly is not the situation with respect to striped bass.

Mr. BREAUX. That is what I wanted to ask. This situation, I take it, in your opinion, is not analogous in the sense that you don't think you could take this action in the absence of additional legislation in this case?

Mr. JOHNSON. That is correct.

Mr. BREAUX. Mrs. Schneider? Questions?

Mrs. SCHNEIDER. Mr. Byrne, I am curious to know on a scale from 1 to 10 how important is to you that the striped bass species survive?

Dr. BYRNE. Ten being high?

Mrs. SCHNEIDER. Yes.

Dr. BYRNE. Ten.

Mrs. SCHNEIDER. Well, if that is the case, it seems that, based on your testimony perhaps, with all due respect, you are willing to pass the buck to the States to take on that responsibility of managing the species when in fact——

Dr. BYRNE. I don't——

Mrs. SCHNEIDER. Yes, go right ahead.

Dr. BYRNE. I don't think I would use that choice of words. I think that inasmuch as this fishery is largely an in-State fishery in State waters, it is first the responsibility of the States to protect the resource. What both Mr. Kutkuhn and I have called for, really, is that the States be given that opportunity. We are asking for a deferral on action on the bill so that the States can implement a plan which they jointly agreed to last December and at earlier dates.

Mrs. SCHNEIDER. Well, based on your testimony, you do indicate that we have enough scientific basis now, enough scientific studies, that we need to move ahead into the management; is that correct?

Dr. BYRNE. The position I would take is that we need to move ahead into management, even though we may not know every answer to every research question pertaining to striped bass.

Mr. KUTKUHN. I would agree with that assessment.

Mrs. SCHNEIDER. If it isn't the time to move ahead toward the management, we will have other witnesses come forward later this afternoon that will share with us the complexities of internal State politics in developing such a plan, and I am curious to know what kind of time element are you looking toward that would be satisfactory for management activities to be enacted, when scientific data indicate that this April is one of the critical years in the renewal of this particular species.

Dr. BYRNE. I think NOAA would look for implementation of the State plan as soon as it has been formulated.

Mrs. SCHNEIDER. Well, let's talk about just those States for a moment that do have State plans, because, as you are aware, of those 11 coastal States, there are some of them that have not gotten their act together, as yet.

Let's take, for example, Connecticut. Connecticut's regulations call for a 4-fish bag limit. The State of New Jersey calls for a 10-fish possession limit. North Carolina, New Hampshire, Massachusetts—they are considering different seasons. The State of Rhode Island has called for a 3-year moratorium. There has been difficulty in Maryland, in which this question has entered the courts. Virginia has just instituted some closures and a five-fish sport fishing limit.

Now it seems to me we are talking about a fish that spawns in the Chesepeake Bay, travels along the coast of all of the Atlantic States northward, and there appears to be a serious lack of continuity here.

My question to you is, what does one do in time of enforcement of those individual State laws, and how are we going to be assured—or how many years will it take before the Marine Fisheries Service can do an adequate study to say that these individual management plans are, indeed, working or are not working?

Dr. BYRNE. I would like to ask Pete Jensen, who is the Chief of our Fisheries Management Operations Division, to respond to that.

Mr. JENSEN. I think probably the real answer is we may never know exactly when the point of recovery occurs, but the long history of research in striped bass does give a lot of background and a lot of basis for determining when the population is increasing or decreasing. There are a lot of corollaries that people can point to between production and the health of the fisheries, both recreational and commercial.

Most of the States have now in place, with the assistance of the Federal Government, very adequate monitoring programs. If they can come together in April and agree on the reduction programs and what does constitute a 55-percent program, then I think they will be in a clear position to tell whether, in fact, they have been successful within approximately 3 years, or in the course of those 3 years.

Mrs. SCHNEIDER. How did we arrive at that 55-percent reduction rate?

Mr. JENSEN. That came about——

Mrs. SCHNEIDER. Yes, go ahead.

Mr. JENSEN. That came about as a recommendation by an interstate group of scientists that——

Mrs. SCHNEIDER. I realize the source. I am interested in the biological, scientific model upon which this was based. How did we arrive at 55-percent reduction?

Mr. JENSEN. I think probably if you could defer that question for Dr. Boreman and the others who will appear this afternoon, they are very familiar with that model and can give you a much better answer than we can.

Mrs. SCHNEIDER. I will be happy to defer that question.

Another question that I have is related to the role of the Federal Government. Mr. Byrne, in your testimony had you indicated that there might be consideration, if the situation of the striped bass is

critical enough, that it could be incorporated into the consideration of the Endangered Species Act?

Dr. BYRNE. The Endangered Species Act, yes.

That is being reviewed at this time. There is a petition by Stripers Unlimited to have the striped bass of Chesapeake Bay considered as an endangered species or a threatened species.

Mrs. SCHNEIDER. Do you feel that there is some kind of scientific data that can justify this request, based on the studies that the Federal Government has been involved in?

Dr. BYRNE. This is still being reviewed. The Stripers Unlimited submitted a similar proposal about a year ago, which was returned to them for lack of sufficient data. We certainly will make that review available to you as soon as it has been completed, but, at this point, I really don't know an answer to the question.

Mrs. SCHNEIDER. Insofar as your attitude is on the status of the striped bass, is it your opinion that scientifically the striped bass are right now severely being threatened? I just want to make sure that I have——

Dr. BYRNE. There is no question in my mind that the striped bass is in some type of trouble. I hesitate to use the word "threatened" because it has a legal connotation with respect to the Endangered Species Act.

However, it is very clear from the kinds of declines that both Mr. Kutkuhn and I have discussed in our testimony, that we have a problem with striped bass.

Mrs. SCHNEIDER. Your recommendation would be to let the States try first to see if they can adequately manage the species?

Mr. BYRNE. Yes.

Mrs. SCHNEIDER. OK. I thank you, Mr. Chairman.

Mr. STUDDS [acting chairman]. Gentlemen, I think Mrs. Schneider's questions were in their general sense going in the right direction. The first thing that we need to determine is as best one can know, what is the situation? How severely threatened, if you will forgive the lack of legislative art in the use of that word is the species, and what needs to be done?

If one can get at least a tentative conclusion or answer to those questions, then the next question becomes, obviously, who is going to do it, and perhaps how long are we going to wait to see if someone else is going to do it?

The testimony of the executive agencies, as I hear it, as Mrs. Schneider has pointed out, is essentially one of great caution. That is not out of character.

You suggest that we neither need to study any further nor do anything on the Federal level, as I understand it. You suggest that the studies have essentially been done to the extent that they need to be done; that we have the information that we need; that we know roughly what ought to be done. I gather you support the recommendations of the Commission for a 55-percent reduction and feel that that is something which ought to be undertaken by the States, and we will applaud them, as I understand it.

Mr. KUTKUHN. Yes.

Mr. STUDDS. Now let me ask you—you were asked on a scale of 1 to 10 how deep your affection was for the striper—on a scale of 1 to

10 how much trouble do you think it is in, 10 being the most trouble of all and 1 being just slightly bothered?

Dr. BYRNE. That calls for a biological opinion, sir, and I don't feel confident——

Mr. STUDDS. There is some precedent for opinions of that nature being expressed to this committee. [Laughter.]

Mr. KUTKUHN. I would volunteer, sir, that in my professional judgment the resource is in very serious straits. Using your criteria, I would say somewhere in the vicinity of 8, 9, or 10.

Mr. STUDDS. Very serious?

Mr. KUTKUHN. I beg your pardon?

Mr. STUDDS. That sounds very serious.

Mr. KUTKUHN. Yes; it is very serious, in my view.

Mr. STUDDS. Does anyone else want to——

Mr. KUTKUHN. Ten is high?

Mr. STUDDS. Right.

Mr. KUTKUHN. Yes.

Mr. STUDDS. Very serious, 10—do you other gentlemen concur with that assessment?

Dr. BYRNE. Yes, I think so. My number was going to be 7, but I defer to my biological colleagues as to how bad things really are.

Mr. STUDDS. Well, I am sure if the gentlelady from Rhode Island still had the floor, she would question either your passion or your analysis, because if, indeed, your love is measured by the extreme on the scale of 10, and if your assessment of the danger of stocks is equally severe, maybe this is just a very dry administration, but if, indeed, we are committed to the species, and if, indeed, it is near its maximum peril, then presumably something needs to be done, and fairly fast.

Now I also assume that—am I correct in my assumption that the 55-percent reduction recommendation in your judgment is adequate?

Mr. KUTKUHN. In my professional judgment, I would say that it is adequate. I think the important thing that we have to consider here is bringing under control more so than previously the use of this resource. A 55-percent reduction from present levels of use of the resource would, in my professional judgment, be adequate as a basis for beginning this matter of control.

Mr. STUDDS. OK. Mr. Kutkuhn, you state in your testimony: All the relevant information suggests that this minimum reduction, the 55 percent in total harvest, would be sufficient to allow recovery of the affected stocks, although recovery at this minimum level of harvest reduction would be slow and perhaps not fully achieved for at least several decades.

Mr. KUTKUHN. We give a lot of credit to the species for being very resilient. The effectiveness of the measures imposed in achieving the proposed reduction is hard to judge at this point. Because of possible imperfections in their enforcement, it is possible that the length of time for recovery could be as long as several decades. But, in my professional judgment, I think the enforcement of these proposed actions, or the actions that are going to be discussed in the context of the present management plan, would in a shorter period than two decades have a very salutary effect.

Mr. STUDDS. Can this subcommittee assume that the recommendation of both of the agencies here now that no Federal action is necessary at the moment, and that the States should be relied on, can be relied on, ought to be relied on, to proceed to reduce the catch on their own—is a recommendation based on an analysis State by State of precisely what is the current situation and what is the projected situation as a result of these recommendations?

Mr. KUTKUHN. I think, Mr. Chairman, that this would be a fair assumption. I believe the folks who did the analysis, put the report together, who have been identified and otherwise associated with this matter for some years, have exhausted every bit of intelligence at our disposal in making the assessment that they did in the progress report of the first 4 years of the Emergency Striped Bass Study.

I believe that the study has admirably served the purpose. I feel, also, that it is fortuitous that the findings of the first 4 years of this study are presented at this time in readiness for consideration by the Atlantic States Commission and the States working together in that context for another look, a more definitive look, at the plan that had already been evolving.

Mr. STUDDS. I assume that is a "yes"?

Mr. KUTKUHN. Yes.

Mr. STUDDS. Yes. The thing that troubles me is your next sentence goes on to say: "Most"—"most of the 12 States involved are responding to the Commission's recommendation in a positive manner."

It would, presumably, only take one not doing so to ruin the whole thing, would it not?

Mr. KUTKUHN. This referred to the response to the management plan that had been evolving—

Mr. STUDDS. Yes.

Mr. KUTHUHN [continuing]. Prior to the presentation of the——

Mr. STUDDS. Well, if most are, who is not responding in a positive manner?

Mr. KUTKUHN. Offhand, sir, I cannot say which of the States are not responding.

Mr. STUDDS. Surely someone can. If you are telling us that we don't need to act, you've got to be basing it on the assumption that someone else is going to act, I assume?

Mr. KUTKUHN. Yes.

Dr. BYRNE. Mr. Jensen has an answer.

Mr. JENSEN. Mr. Chairman, we have a printed summary of the status of every State in implementation, and every State is in some varying degree of compliance. We would be glad to supply that to the committee, and you can go step by step, State by State, and see where they are or are not in compliance.

Mr. STUDDS. I am going to ask that that be done in a moment, if some other member doesn't, but it does seem to me that this is the point of the questioning that Mrs. Schneider began, and that I am continuing. We have to have answers to the most elemental of the questions before the subcommittee in order to be able to deal intelligently with the challenge posed to us by the problem and by the gentlelady's proposed solution to it.

I am going to yield to the other members who are here for the time being, but let me suggest that someone take that time to dig out, if you don't have it before you already, that State-by-State analysis. I think this subcommittee is going to want it; I think they are going to want to hear your assessment of it and the assessment of subsequent witnesses as well, as to what we are doing here.

As I say, when someone tells me that most of the States are doing a good thing, I can only infer that some of them are not, or some of them are doing something less than a good thing.

If one State fails to do a good thing, it seems to me, and your assessment of the status of the stocks is accurate, that could be a fatal omission, could it not?

Mr. KUTKUHN. Yes.

Mrs. SCHNEIDER. Would the gentleman yield on that point?

Mr. STUDDS. Certainly.

Mr. BYRNE. Mr. Chairman, we can provide for the record right now an assessment of which States have done nothing.

Mr. STUDDS. Are there such States?

Mr. JENSEN. There are two States that have taken no action at all, and that's Delaware and North Carolina.

Mr. STUDDS. Delaware and North Carolina.

Mr. JENSEN. Other States have taken some action, some nearly fully complied, others in various stages of compliance.

Mr. STUDDS. Delaware and North Carolina have done nothing.

Mr. JENSEN. That's true.

Mr. STUDDS. I'll be happy to yield to the gentlelady from Rhode Island.

Mrs. SCHNEIDER. I might also point out that Maryland has been having some problems, and their situation is in the judicial system now, locked up in court. New Hampshire and Massachusetts are considering a variety of things, but there doesn't seem to be that continuity.

I would like to follow up on your line of questioning with just one comment, Mr. Chairman.

I think the point you raised is very well founded; that if some State is not complying, then what is happening? Just the mere example of the State of Rhode Island, which has gone far beyond the compliance efforts and has called for a moratorium—many of you might think, well, that's terrific, but it does have an impact on the system because there are no lines delineating the Rhode Island border versus the Massachusetts border, the Rhode Island border versus the Connecticut border, and I guarantee you on very good evidence that there are fishermen who are from Rhode Island, where we have a moratorium, going into Massachusetts waters or Connecticut waters, and they are fishing for those very same fish.

Now, there is no way that we are going to reach a 55-percent reduction unless there is a continuity statewide of a policy that can be enforced.

I will pursue other questions later, but I just wanted to add my comments onto yours, Mr. Chairman, as to the fallacy of thinking that there can be independent and incongruous actions taken on each of the individual States and expect an increase in the resource.

Mr. STUDDS. Let me yield to the gentleman from Delaware, whose State has been referred to as the most dubious sort.

Mr. CARPER. Thank you, Mr. Chairman.

I would like to follow up on a comment that was made earlier. The gentleman on my right—what is your name?

Mr. JENSEN. Jensen.

Mr. CARPER. I believe I understood you to say that North Carolina and Delaware have done nothing?

Mr. JENSEN. They have not implemented any portions of the Atlantic State Marine Fisheries Plan at this point.

Mr. CARPER. Could you take a moment to tell us why you think that is the case?

Mr. JENSEN. I think in Delaware, you are probably very aware that a hot debate has been going on in the legislature for several years over attempts to completely remodel the fisheries law, reflecting a very strong conflict between sport and commercial interests. The implementation of the striped bass portion of that plan has been very much a part of that effort. As the result of the legislature failing to revise the State's laws, the striped bass plan has not been implemented, either.

Mr. CARPER. And in North Carolina?

Mr. JENSEN. I am not quite as familiar with the circumstances in North Carolina. They do have a commission involved. All I can say is that, even though they have debated it on several occasions, they have not yet adopted any of the provisions of the plan.

Mr. CARPER. All right.

Gentlemen, I understand that Columbia Laboratory studies previously have demonstrated that certain contaminant mixtures at or only slightly above the environmental concentrations can decrease the survival of striped bass raised in freshwater and in saline waters. Are any of you prepared to talk about some of the sources of toxic compounds affecting striped bass, and maybe to shed some light on those studies and how they impact on this entire issue?

Mr. KUTKUHN. I believe that question or questions related to that one would be best deferred to the scientific panels that follow this one, sir.

Mr. CARPER. All right. I will follow up with a question on acid rain. Is that a question that is also best deferred?

Mr. KUTKUHN. I am sorry, I didn't hear the——

Mr. CARPER. I have a similar question on acid rain. Is that a question that is best deferred to a later panel?

Mr. KUTKUHN. I believe so, yes, sir.

Mr. CARPER. All right. Thank you very much.

Mr. STUDDS. Questions on that subject are not welcome by this administration, as you know. [Laughter.]

The gentleman from Florida?

Mr. BENNETT. Well, after listening to this testimony and reading your study here of the decline studies, it certainly does disturb me what I hear. Apparently, the Federal Government has made these studies. They decided that overfishing is one of the problems, and starvation of the larvae is another, and that poisons in the estuaries is another. These are all very concrete things.

To leave the solution of this fishery up to States, some of whom have done nothing, others of whom are experiencing great contro-

versy, in a time when there is a very serious decline, strikes me as being a very arbitrary position to take.

I realize that everybody in this country, in order to get the Federal Government on a better financial basis, opts for the idea of local States doing what they can of their own responsibility. However, when you are dealing with fisheries, which really go outside the boundaries, as the lady has pointed out, of any real handling, I just feel, myself, from what I have heard so far in this, that we are doing the wrong thing; that we ought to do something toward really protecting this fish, if we can do so. Thousands of jobs are involved. The fish itself is involved, a good fish, a good marketable fish.

It seems to me that drastic steps ought to be taken, and they ought to be taken by the Federal Government. Just what steps, I am not sure, but I think that the agency ought to recommend what steps—recommend the various options.

I, myself, after hearing what I heard, would opt for a very strong Federal intervention in this very serious problem.

I don't have any questions to ask. I am just getting off my heart what I feel from what I have heard today.

Mr. STUDDS. The gentleman from California?

Mr. ANDERSON. I was just wondering why the fisheries management councils have not worked together to promulgate some type of a moratorium on this. Are they just turning it over and leaving it to the local legislators to do as they wish?

Mr. STUDDS. I would say to the gentleman that the fish in question is an animal of extraordinary taste and confines itself to State waters as opposed to Federal waters for the most part——[Laughter.] thereby creating all manner of management difficulties for us, which is what we are wrestling with now.

Mr. ANDERSON. Seriously, we do have the Fisheries Management Council that we set up here some years ago.

Mr. STUDDS. That's right, but their jurisdiction is over the Fisheries Zone.

Mr. ANDERSON. They have a right to cooperate with each other where it crosses these lines. It would seem to me they could do what they should have done. Obviously, this legislation is needed because it hasn't been done, but I just wondered why they were not doing the job.

Mr. STUDDS. There is a provision in the law, as the gentleman undoubtedly will recall, the FCMA, which allows under certain circumstances for Federal preemption of the management of stocks in State waters. This administration has chosen—and they responded to an earlier question from the chairman of this subcommittee—not to attempt to implement that provision of law. You might want to ask them again why.

Mr. ANDERSON. All right.

Mr. JENSEN. Mr. Chairman, the councils are involved. You will have a witness this afternoon, I believe, from the Mid-Atlantic Council. We have been urging the Mid-Atlantic and New England and South Atlantic Councils to develop a plan for management of this species in the FCZ, even though it is a small portion of the range of that species. They are now actively involved in preparing that plan, which would extend at a minimum the provisions of the

Atlantic States Plan into the FCZ. We are working very actively with them to do that.

Mr. ANDERSON. How many Fisheries Management Councils are involved in the area involved? We are talking about from the New England States down to what—South Carolina?

Mr. JENSEN. It's North Carolina north. That falls within the jurisdiction of three councils: the Mid-Atlantic, New England, and the South Atlantic.

Mr. ANDERSON. Those three management councils could, if they wished, do what we are trying to do here today, couldn't they, had they done their jobs?

Mr. JENSEN. Well, they could not preempt State authority from 3 miles in and in internal waters, but they certainly can adopt a plan for the FCZ from 3 to 200 miles. That is what they are engaged in doing now, developing that plan.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. STUDDS. Does the gentlewoman from Rhode Island have further questions at this time?

Mrs. SCHNEIDER. No.

Mr. STUDDS. We know that there are going to be scientific panels and all kinds of things occurring later in the day, and we will reserve some of these questions, or certainly reiterate some of these questions, for them.

But I do think that in a general sense that some extraordinarily difficult management problems and questions are raised by the situation in which the striped bass apparently finds itself. I think that together we had better give it a little more creative thought—I mean we, both the executive and the Congress, at this point—as to how to deal with these problems.

We do have the provision in the FCMA to which reference has been made. We do, presumably, have the authority, if we so chose in our collective wisdom to simply act, as the gentlelady from Rhode Island proposes.

However, as a general proposition, there are other stocks, presumably, that have a similar distaste for either Federal waters in general or for confining themselves to one convenient management pattern for us, whether it be that of the Fisheries Management Council regionally or those of a single State's waters. Fish tend to show very little respect generally for the lines that we draw of a political nature or a management nature.

I think that we all could give at this point perhaps a little more thought to that.

I am tempted to ask you, at the policy as opposed to the scientific or the highly detailed level, at what point would you support a Federal moratorium, if any point like that proposed by the gentlewoman from Rhode Island?

Can you foresee a situation, for example, in which the States or some, or a majority of the States, did not act in a way that was consistent with the recommendations of the commission, and where it became quite clear to you that the No. 10 was, indeed, the number on the spectrum in terms of the threat to the species—can you conceive in that situation that the proposal of the gentlewoman from Rhode Island would be an appropriate one?

Mr. BYRNE. I think that history indicates yes. Both the Marine Mammal Protection Act and the Endangered Species Act, represent legislative actions which have been signed by the administration in support of protecting certain organisms that are threatened with extinction.

Mr. STUDDS. You don't suggest that we wait until the species actually becomes endangered, do you?

Dr. BYRNE. No; I think that the signals that we will get in the case of the striped bass are those which will come out of the petition which is being reviewed right now for the designation of either threatened or endangered.

But, in answer to your question, I think the question was, do we see a point at which such a moratorium would be put into effect. I think the answer is, yes, clearly there is such a point.

Mr. STUDDS. Do you have any sense at all of time closing in on us for having to make this decision one way or another?

Mr. KUTKUHN. Speaking for Interior, I would answer yes to that, sir. I would say that we should give the States, assembling here in the very near future to reconsider the present management plan in the context of the findings of the Emergency Striped Bass Study, an opportunity to modify that plan, and then for us to assess the results of that attempt and then make a decision as to whether to pursue——

Mr. STUDDS. What do you think would be a reasonable amount of time for that?

Mr. KUTKUHN. Before the onset——

Mr. STUDDS. Before we reach the conclusion at the Federal level that the States simply, for whatever reason or reasons—

Mr. KUTKUHN. We would say within the next several months, within 60 days.

Mr. STUDDS. Within 60 days. How, then, would you feel, for example, about a proposal, say from the Congress, that a moratorium be imposed *x* months from the date of enactment, in the event that States did not comply fully with the recommendations of the Commission? Would that be consistent with what I'm hearing from you?

Mr. KUTKUHN. I believe this is what I was implying, sir, or suggesting.

Mr. STUDDS. Mr. Byrne, do you have a reaction to that?

Mr. BYRNE. Certainly that would go a long way toward getting the States to work together in their own best interest with regard to the striped bass.

Mr. STUDDS. A master of subtlety. [Laughter.]

That, I take it, is about as close to an endorsement by the administration of that proposal as we can reasonably anticipate this morning?

[Dr. Byrne smiles.]

Mr. STUDDS. The record will reflect your expression.

Dr. BYRNE. That's a reasonable assumption.

Mr. STUDDS. I know you gentlemen know that, dealing with the striped bass, we are not just dealing with any old species of critter, and we are not just dealing with a species whose economic impact is extraordinary, although it is and certainly has been historically. We are not just dealing with a species that happens to be, although

I wish I could give more personal testimony to this effect, a remarkable sports species.

We are dealing with a fish that strikes a cord of emotion, as I think you know, in people who live along its migratory route and have come to know it and to respect it. Indeed, as the gentlelady from Rhode Island began, she asked you how much you loved it. We are dealing in a set of emotions not normally set aside by human beings for fish. This is a rather remarkable case, as I am sure you know.

Let me just say—first of all, does anyone else want to say anything at this time?

[No response.]

We are going to return, I am informed by the chairman of the subcommittee, at 2 o'clock, after a break for lunch. The House is now in session. At 2 o'clock we will proceed to hear the remaining panels of witnesses. Members of those panels can expect, among other things to be asked many of the same questions as were given to the two witnesses this morning.

Thank you, gentlemen.

The subcommittee stands adjourned until 2 o'clock.

[Whereupon, at 12:03 p.m., the subcommittee recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Mr. BREAUX. The committee will come to order.

This afternoon we have three panels that we are going to take testimony from. We also have a Maryland State senator, and because they are in session, we are going to go ahead and put him on the first panel and let him give his testimony. Depending on whether he has time, we will take the rest of the members of the first panel and then proceed to questions. However, we would like to allow him to have his statement presented at this time.

The first panel will consist of Senator Gerald Winegrad; Mr. Robert Pond, who is from Stripers Unlimited; Dr. John Boreman, Northeast Fisheries Center with NMFS; Mr. Gordon Colvin, who is director of the Division of Marine Resources for the New York Department of Environmental Conservation, also representing the International Association of Fish and Wildlife Agencies; and Dr. Phillip Goodyear, fisheries biologist for the Fish and Wildlife Service.

Gentlemen, we welcome you and would be pleased to receive all of your statements.

Senator, we will take yours first.

STATEMENT OF GERALD W. WINEGRAD, A STATE SENATOR FROM THE STATE OF MARYLAND

Mr. WINEGRAD. Mr. Chairman and members of the subcommittee, thank you very much.

We are in session in the Maryland senate, and I appreciate your calling me to speak.

Congresswoman Schneider had asked me to come down and share with you the problems we have had in the State of Maryland with the striped bass fishery.

In Maryland, first of all, we call the striped bass the rockfish, and so I will be using the terms interchangeably. In Maryland it is commonly referred to as the rockfish.

My district, first of all, Mr. Chairman and members of the subcommittee, includes a large chunk of the Chesapeake Bay, both north and south of the Bay bridges spanning the Chesapeake Bay going to the eastern shore of Maryland and also includes direct tidal tributaries of the Chesapeake Bay, including parts of the Magothy River, the South River, the Severn River, and also the Rhode and West Rivers. All of these rivers at one time supported spawning populations of striped bass, and there still are striped bass taken within the waters of my district, both from an active commercial and recreational fishery. There are many charter boat captains. There are many marinas. There are many commercial watermen that do actively engage in taking not only striped bass, rockfish, but also soft shell clams, hard shell clams, oysters, and other finfish in my district. So my district is heavily water oriented.

The harvesting of seafood has been an integral part of life in the Annapolis area ever since settlement over 300 years ago, and we also have very active retail and wholesale seafood establishments, several of which ship all over the continental United States, including two oyster packing houses in my district.

With that, I would like to emphasize the necessity of Federal action because of the inability of the States to form cogent and uniform fishery policies dealing with the depletion of our striped bass stocks along the Atlantic coast.

One of the most accurate, predictive tools that can be used to predict future populations of the striped bass is our young-of-the-year index, which is conducted each year in the spring, summer, and early fall in the State of Maryland, where netting is done in selected areas, the same areas during the same periods over the last 30 years. Two of the last 3 years, in 1983 and in 1981, produced the lowest young-of-the-year indices, which indicates very poor reproduction. The indices were 1.2 in 1981, which was the lowest during the previous 30 years, and 1.4, which was second lowest, just in this last year past 1983.

This means that the rockfish are not reproducing successfully.

Maryland's waters of the Chesapeake Bay account for roughly 90 percent of all striped bass in the Atlantic coast fishery, so we are literally the nursery for the entire striped bass population in the Atlantic coast, approximately 90 percent. Again, I wish to emphasize that.

We in Maryland are well aware of the importance of the success of these spawning seasons in Maryland to the entire striped bass population in the Atlantic coast. Again, 2 of the last 3 years have been catastrophic as far as the lack of spawning success of the striped bass fishery.

In Maryland, to counter the problems due to the depletion of the stocks, we have taken action. In 1983, prodded by this poor spawning success, we did enact after several years—I would say at least 5 years of arguing and failing to reach consensus on this issue—we did enact a 14-inch size limit on our fish, a minimum size limit for the taking of striped bass throughout the Chesapeake Bay and the tidal tributaries in the State of Maryland.

That was over the opposition, the vigorous opposition, of the commercial watermen. This is in effect right now. So what we are trying to do in Maryland is protect the fish that are reaching that size, coming up to the 14-inch size, from an average spawning year that occurred in 1982.

However, after those fish reach 14 inches, there are no plans currently on the books in Maryland, no new regulations, no new restrictions, no new statutory actions that would restrict the harvest of those fish in any significant proportions once they reach that 14-inch size, because the theory is, after they have reached that size, they reproduce once, maybe twice. A large proportion of those fish will leave Maryland's waters and enter the coastal fishery. So we in Maryland have traditionally said that we are not going to severely restrict our commercial watermen to allow the striped bass, the rockfish, to escape the Chesapeake Bay and then be taken in North Carolina or be taken off the coast of Virginia or be taken in Massachusetts. That is why we need Federal help.

The most common argument against the moratorium in the State of Maryland, where we have the brood stock, where we have the spawning grounds, is why should the commercial watermen and the recreational fishermen in the State of Maryland suffer if the other States aren't going to take equal and stringent actions, including a moratorium up and down the coast.

In examining—and I am not a biologist; I am an attorney by trade—but examining fishery dynamics, there are three elements that enter into fishery populations.

One we have no control over, and that is natural factors, such as climate, salinity levels, rainfall, temperature. We have no control over that.

There are two manmade factors that we have direct control over that determine fishery populations. One is fishing pressures, harvesting. Two, is the pollution that has entered the Chesapeake Bay in many of our tidal areas.

In Maryland, as well as in Virginia, and we hope with the help of the Federal Government, we have mounted a major effort to deal with the fantastic increase in the number of toxics, the amount of nutrients, and the sediment loading that has occurred to the Chesapeake Bay and her tidal tributaries as the result of sewage treatment plants, agricultural activities, and urbanization of a large proportion of the Chesapeake watershed, with its consequent pavement replacing forested areas and vegetated areas, and the increased sediment loading as well as nutrient loading and toxicant loading into the bay.

Just today we approved the budget in the Senate. That includes about $15 million in the State of Maryland—we are a small State—for new operating moneys to begin the task of cleaning up the Chesapeake Bay.

The State of Virginia and the State of Pennsylvania are also moving forward in the cleanup efforts.

In addition, we have $24 million new in our capital budget, and part of these moneys includes the startup of a $5 million intercept hatchery originally planned for the northern part of the Chesapeake Bay in the Susquehanna Flats area, which is one of the traditional and most productive areas for rockfish spawning. The idea

is that we would catch live rockfish and shad, which we have trouble with in the State of Maryland, and spawn the fish out and release the fish, because at that point the Susquehanna River is dammed at Conowingo, and the fish cannot go up to their traditional spawning grounds.

We are moving forward in Maryland to counter the pollution problem. It will take decades, and it will take the active involvement of the Federal Government. I would urge the passage of a strong Clean Water Act with our $10 million for the matching grants to the States of Maryland, Virginia, and Pennsylvania to enhance our cleanup efforts.

But while we are cleaning up the pollution problems that no doubt impact the lack of success of the spawning rockfish, while we are cleaning that up, we need to restrict the fishery pressures. That is the other manmade influence on the fishery population, the declining fishery stocks of the rockfish. That is where we need the Federal help because in Maryland, not unlike other States, we have just not been successful in overcoming the interest of the commercial watermen in preventing the depletion of the fishery stocks. I am sure that this is true in many other States.

In addition, we have a very large recreational fishery that is centered around the striped bass. The rockfish is the key in our commercial fishery in the State of Maryland, both recreationally as well as commercially. It has been the traditional sportfish king. It is also the traditional commercial king in the State of Maryland.

We do need Federal help. We need Federal action. I would urge this subcommittee to report favorably on H.R. 4884.

I would conclude by saying that, as far as the cleaning up of the pollutants that are impacting the spawning success, during your hearings you may ask some of the scientists that are testifying, but even with millions of dollars spent in Federal moneys, the research that has been done to date has really not identified what the problem is, whether it is the toxics, whether it is the sediment loading, whether it is the nutrient loading, whether it is even the acidity, the increased acidity of the rainfall, causing the leaching of certain metals such as aluminum and lower pH levels in the headwaters of streams. We don't know what is causing the decline in the striped bass spawning. We have not figured that out.

It could be a synergistic effect of different toxics—synthetic organics, heavy metals. It could be a synergistic effect of the nutrients combined with the increased sediment loading. We know that something artificially is impacting that spawning success.

While we get a handle on that over the next 5 or 10 years and can bring back the reproductive success, I would urge the subcommittee to enact a moratorium until we can get a handle on that, until our scientists can tell us where the problem is, and until we can get the source of pollutants under control in the State of Maryland.

[Statement of Gerald W. Winegrad follows:]

STATEMENT OF HON. GERALD W. WINEGRAD, A STATE SENATOR IN THE STATE OF MARYLAND

I am appearing in support of H.R. 4884, a bill to impose a moratorium on the taking or possession of Atlantic striped bass from North Carolina to Maine. In Maryland, Morone Saxatilis is commonly referred to as a rockfish.

By way of introduction, I represent District 30 of Anne Arundel County in the Maryland Senate. My district includes portions of the Chesapeake Bay both north and south of the Bay Bridges, and direct tidal tributaries of the Bay including the Magothy, Severn, South, West and Rhode Rivers. The harvesting of finfish and shellfish and their marketing is an integral part of the commerce and lifestyle of my District. Both recreational and commercial fishing activities are important elements of the social and economic fabric of the Annapolis area that I represent. This area includes not only watermen who harvest rockfish but seafood packing houses, retail seafood outlets, seafood restaurants and all the subsidiary business interests that service the seafood industry.

I should also mention that I serve as a member of the Chesapeake Bay Commission, consisting of representatives of Maryland and Virginia and am the Senate representative on the State Water Quality Advisory Committee.

There is an urgency for passage of H.R. 4884 because current striped bass stocks may be at or below the levels necessary to sustain a viable commercial and recreational fishery. Unless we act immediately to prohibit the taking of striped bass, present reproductive rates will not replenish striped bass stocks. This means that striped bass may be on the way to commercial extinction. A petition was filed on November 23, 1983 with the Maryland Secretary of Natural Resources to declare the rockfish an endangered or threatened species in Maryland.

On November 8, 1983, I pre-filed SB47 to establish a moratorium on the taking or possession of striped bass in Maryland after January 1, 1985 if the 1984 spawning season did not produce a high number of juvenile rockfish. The commercial watermen in Maryland, particularly the commercial netters, vigorously opposed this legislation. Only after 3 commercial netters went to court and successfully challeneged departmental regulations that were to be effective March 1, 1984 did the Senate move SB47 to provide for a moratorium until June 1, 1984 to protect the rockfish during the spring season. This bill is now pending in the House of Delegates.

As you know, the rockfish is a migratory species.

One of the common arguments raised against a moratorium in Maryland is that less than 10% of the harvest of striped bass occurs in Maryland and it would be foolhardy for us to protect the fish in our waters without sufficient protection throughout the other coastal States. Many Maryland watermen and government officials have stated they would support a ban on the harvesting of rockfish only if it were applied to the entire Atlantic Coast fishery. H.R. 4884 would do just that. Maryland's commercial and recreational fishermen and seafood retailers are reluctant to support a cloture of the striped bass fishery if other States are going to permit the harvesting of the fish after they leave the Chesapeake Bay.

Maryland has acted through legislation and by regulation to restrict the harvest of striped bass. In 1983, the Legislature raised the minimum size for rockfish to 14 inches. The Department of Natural Resources has also:

1. Closed the spawning reaches of key rivers from April 1 to May 31;
2. Closed the ocean fishery from March 1 to May 31;
3. Approved a 5 creel limit for recreational fishermen;
4. Prohibited anchor gill nets in closed areas from March 1 to May 31; and
5. Restricted mesh size to 3½" or smaller.

Further restrictions have been proposed to reduce the striped bass harvest by 55% in compliance with the Atlantic States Marine Fisheries Commission plan.

Unfortunately, most other coastal states are not as far along as Maryland in meeting this 55% reduction. Rhode Island, of course, has closed its striped bass fishery. Three commercial netters have successfully challenged, on a procedural basis, several of Maryland's restrictions during this present spawning season and a full court hearing is scheduled for March 28 to decide this issue.

We in Maryland fully realize that Maryland is the nursery for over 90% of all striped bass on the Atlantic Ocean. Rockfish are an anadromous species returning to the freshwater reaches of tidal rivers of the Chesapeake Bay to spawn. Of all statistics, the most alarming is the failure of rockfish to produce enough surviving offspring to ensure the continued survival of the species at present harvesting levels.

For 30 years, Maryland has conducted a young-of-the-year striped bass survey that is a recognized and respected measure of the reproductive success of rockfish in Maryland's waters. This young-of-the-year index measures the number of juvenile

rockfish taken per seine haul at different points around the Bay at different times in the summer and fall. The index is a highly accurate tool for predicting future stocks of rockfish. See Table 1.

Two of the last three years have produced indices of 1.4(1983) and 1.2(1981). These are the lowest young-of-the-year indices during the entire 30 year period. Fishery experts agree a juvenile index of 8 is absolutely essential to ensure that a moderate harvest can occur while permitting enough fish to return to their spawning grounds. Further, there has generally been a dominant year class of rockfish every six years: 1958—19.2 young-of-the-year index; 1964—23.5; and 1970—30.4. No such dominant year class has occurred since 1970.

With this lack of reproductive success, landings of striped bass in Maryland have been significantly reduced to 359,000 pounds in 1983, the lowest in over 100 years of record keeping. In 1982 the figure was 475,000 pounds. This compares with from 3 million to 5 million pounds harvested each year in the 1960's and to harvests of nearly 5 million pounds in 1973 and 2.7 million pounds as recently as 1975. This documented trend is reflected coastwide as Table 2 illustrates.

Despite this alarming decline in the striped bass fishery, Maryland, and most of her sister States, has been slow to respond. Until recently the commercial fisherman has successfully resisted most restrictions on taking rockfish. This is in spite of the relatively few commercial netters who land sizable numbers of rockfish. According to Departmental catch records, 34 netters caught 56.5% of the total rockfish catch in Maryland in 1981. Two netters accounted for 10% of the harvest. Five percent of the commercial rock fishermen accounted for over 50% of the catch in 1981. During the 1982-1983 fishing season, only 8 commercial watermen reported catching 5 tons or more of rockfish. That means no more than 8 Marylanders grossed over $16,900 from rockfish sales during the latest fishing season.

In February, 1984, biologists at the Department of Natural Resources were polled and unanimously supported a ban on rockfish harvesting, bi-state Fisheries Management Workshop consisting of biologists, administrators, sportsmen and seafood industry representatives recommended to the Governors of Maryland and Virginia in October, 1983, found that "A total moratorium on the catching of striped bass is the most easily implemented management strategy for both Maryland and Virginia". Again, the socio-economic problems dealing with the commercial watermen and recreational sports fishing interests has thwarted such a moratorium in Maryland and Virginia. The States have failed to act in a consistent fashion despite the overwhelming decline of this species. Clearly, we need a uniform and consistent Federal Act and I suggest H.R. 4884 be enacted.

Maryland is beginning a major effort to restore the biological integrity of the Chesapeake Bay. This year's budget includes $15 million in new operating monies and $24 million in new money on the capital side. Included in these initiatives is a new $5 million intercept hatchery for rockfish and shad. Virginia and Pennsylvania are joining us in these efforts to restore the Chesapeake. Hopefully, the Congress will also assist this interstate effort by reauthorizing a strong Clean Water Act with $10 million in matching federal dollars for the next four years for the Bay clean-up efforts.

These efforts to reduce the flow of nutrients, sediments and toxics from sewage treatment plants, farm fields and urban development will take years to implement and will cost hundreds of millions of dollars. Clearly, manmade pollution is a major element behind the failure of reproductive success of rockfish. We do not precisely know why or how, but it is clear that the influx of nutrients, toxics and sediments has had a negative impact on spawning success. We are committed to ending this manmade degradation.

However, this is only one element in the decline. The rockfish stocks have been and are over-fished. Biologists uniformly agree that we must severely restrict the take of striped bass or lose the brood stock and the fishery. We can control the pollution and must. We can control the harvest and must. Until we turn around the alarmingly poor reproduction of the striped bass, we are in desperate need of a coast-wide moratorium on the harvest of striped bass.

I urge this subcommittee and the full Committee to report H.R. 4884 to the House of Representatives and move the measure quickly through Congress.

TABLE 1 Young-of-Year Striped Bass per seine haul by area and year

Year	Nanticoke River	Choptank River	Head of Bay	Potomac River	Yearly Average
1954	25.1	1.2	0.9	5.2	5.2
1955	5.9	12.5	4.4	5.7	5.5
1956	8.2	9.8	33.9	6.2	15.2
1957	1.3	2.2	5.0	2.6	3.2
1958	21.8	19.5	28.2	8.4	19.2
1959	1.8	0.3	1.9	1.6	1.6
1960	4.7	9.0	9.5	4.3	7.1
1961	1.5	6.0	22.0	25.7	16.9
1962	6.6	6.1	11.3	19.7	12.2
1963	4.1	5.4	6.1	1.1	4.0
1964	13.3	10.3	31.0	29.2	23.5
1965	21.7	9.5	2.1	3.4	7.4
1966	3.2	13.7	32.4	10.5	22.1
1967	4.1	5.3	17.4	1.9	7.8
1968	9.0	6.3	13.1	0.7	7.2
1969	6.2	4.8	25.7	0.2	10.2
1970	17.1	57.2	33.1	20.1	30.4
1971	2.0	6.3	23.7	8.5	11.8
1972	9.8	11.0	12.1	1.8	8.5
1973	1.2	1.3	24.4	2.1	9.0
1974	4.0	15.3	19.8	1.5	10.1
1975	5.2	4.7	7.6	7.7	6.7
1976	1.7	2.4	9.9	3.2	4.9
1977	1.0	1.2	12.1	1.9	4.9
1978	4.8	6.0	12.5	7.9	8.4
1979	0.9	2.8	8.9	2.1	4.2
1980	1.8	1.0	2.3	2.3	1.9
1981	2.4	1.3	0.3	1.4	1.2
1982	6.2	13.0	5.5	10.0	8.4
1983	1.0	.9	1.2	2.0	1.4

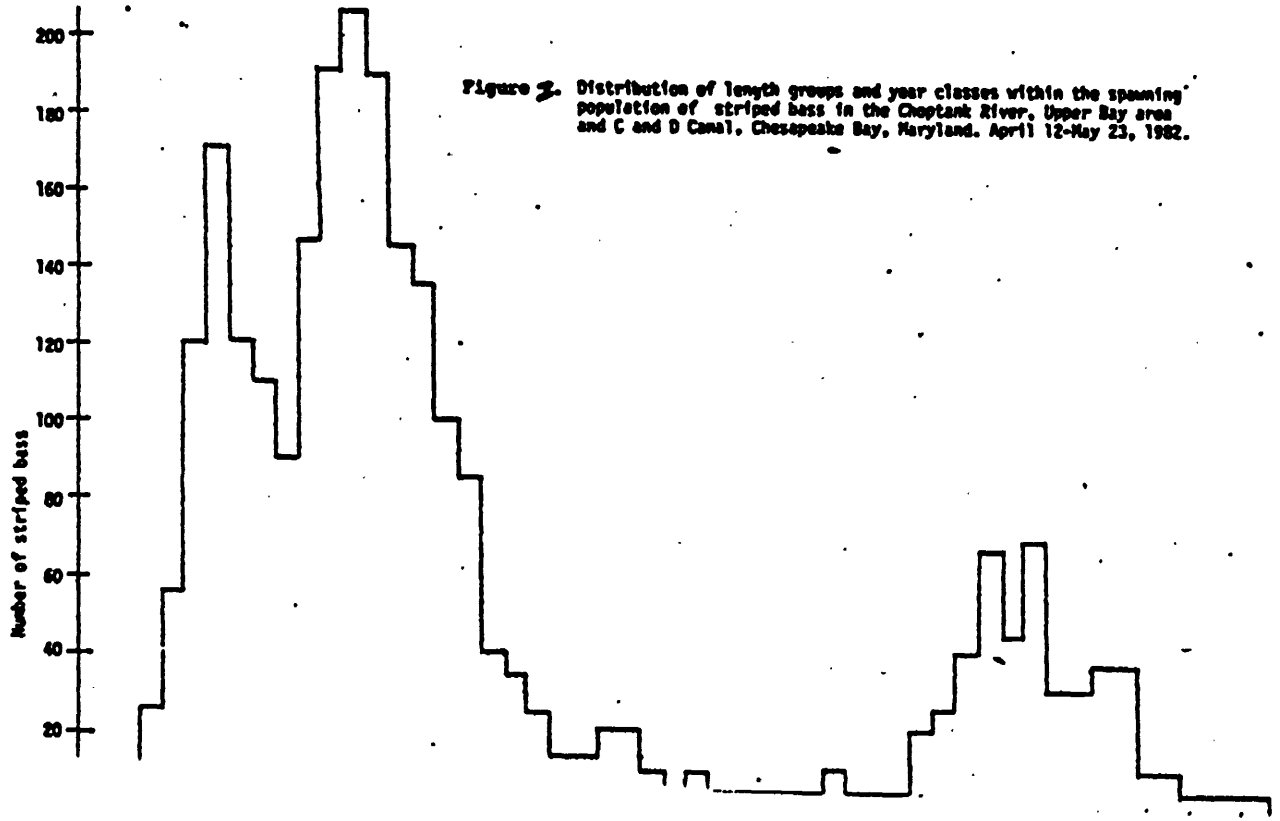
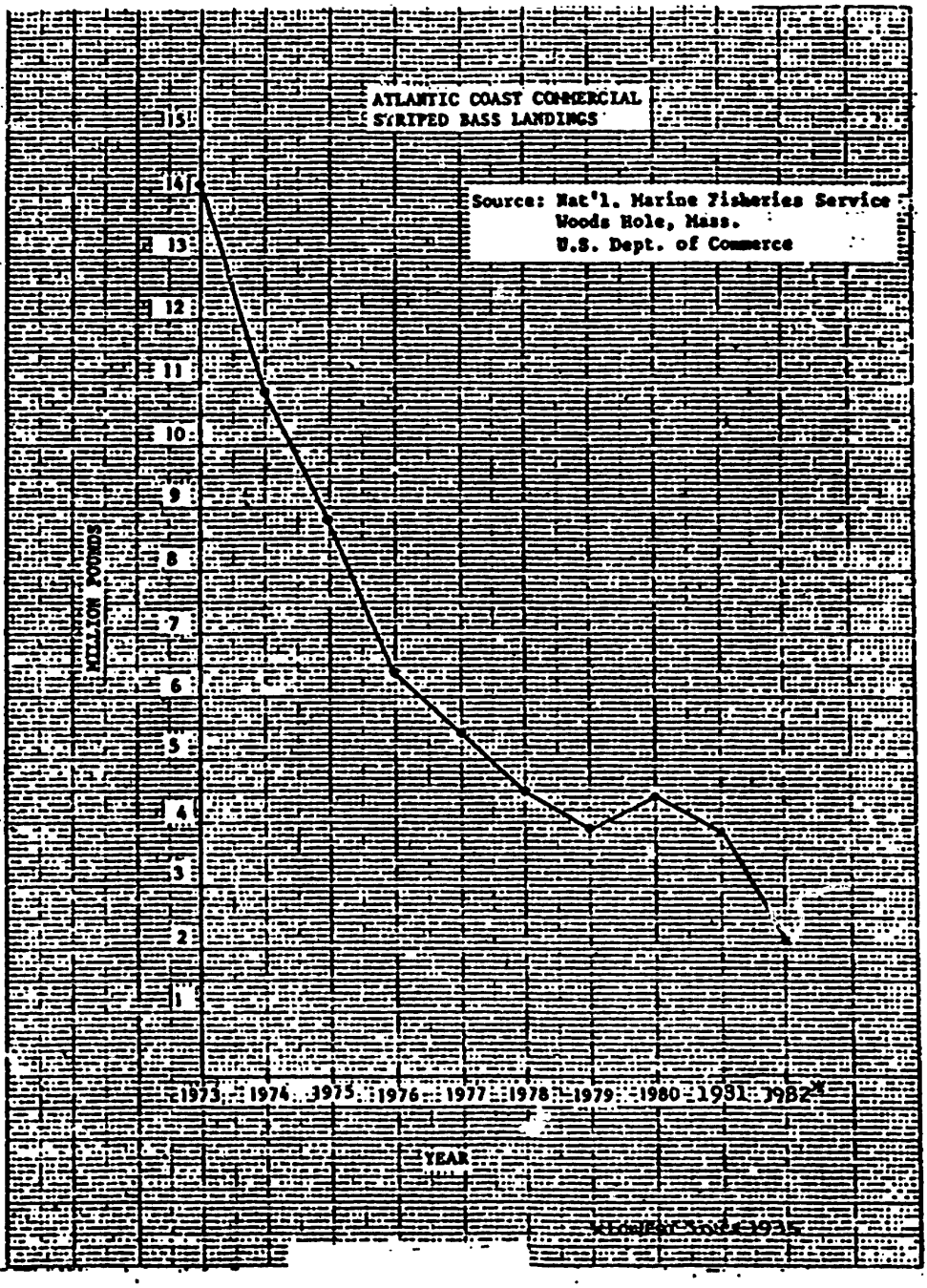


Figure 2. Distribution of length groups and year classes within the spawning population of striped bass in the Choptank River, Upper Bay area and C and D Canal, Chesapeake Bay, Maryland. April 12-May 23, 1982.

TABLE 2


ATLANTIC COAST COMMERCIAL
STRIPED BASS LANDINGS
Source: Nat'l. Marine Fisheries Service
Woods Hole, Mass.
U.S. Dept. of Commerce
MILLION POUNDS
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982*
YEAR

Mr. BREAUX. Thank you, Senator.

Let's go ahead and ask you a couple questions, and then we'll go ahead and excuse you so you can get back to your session.

What you are recommending to this committee has to be looked at in light of the fact that I think there is a recognition of the fact that the Chesapeake Bay is a national treasure, if you will, that needs the national attention.

The President has recommended this year, I think, something like $10 million just on the Chesapeake Bay cleanup, which hopefully the funds could be used certainly to help the condition of all of the fisheries associated with the Chesapeake Bay, including the striped bass or rockfish.

The problem I have is that you obviously are a person who is knowledgeable on the problem and directly work with the people who are associated with the conditions that we are observing the Chesapeake with regard to the striped bass.

I am just, quite frankly, very concerned that Members of Congress who are very, very far removed from the problem, certainly further than the Maryland Senate and the Maryland House is, Members of Congress on this committee who have absolutely probably no striped bass anywhere in their districts—if you're from Kentucky or perhaps the Southwest, the west coast, or from Alaska—that we just don't know a heck of a lot and are not that attuned to the various interests dealing with the striped bass.

But you are really recommending that the Federal Government come in and take over and come up with a legislatively mandated management plan, which, in effect, is a moratorium.

But my question is very simple, if it is a serious problem, and I grant that it is, why don't you just get the Government on a local level and urge the local States to come up with the same plan and do something about the problem, why Congress?

Mr. WINEGRAD. There have been attempts to do that through the Mid-Atlantic Fisheries Commission. The commission has agreed with a call by Governor Hughes of the State of Maryland to come up with a management plan, and that management plan, I am sure you are going to hear testimony on it, was to devise regulatory mechanisms for all the States in the Atlantic Coast Fishery to reduce fishing pressures on the striped bass by 55 percent. These figures were to be verified by the Mid-Atlantic Fisheries Commission.

Now the States have recently met and submitted these. They were supposed to be in by March 1, this month. Several of the States, it is my understanding, have submitted plans showing how they will comply with the 55 percent. I understand Virginia has a plan for a 53-percent reduction.

The problem is that not all the States are coming into compliance, so that what happens is that the striped bass is a migratory species. It doesn't just stay in the Chesapeake Bay or just doesn't stay off the coast of North Carolina. Maryland cannot manage it alone. So, your suggestion is a sound one, but it is not happening as it should happen—not quick enough, not uniformly enough, and not productively enough to assure that we can continue even harvesting pressures at 55 percent reductions unless we bring up the spawning success of the fish.

What the scientists tell us—that is, if we all would enact regulations restricting by 55 percent present takes, that it would assure a sixfold mathematical increase in the number of eggs that would be dropped in Maryland's waters when the fish spawn.

Mr. BREAUX. You have to understand that my argument has nothing to do with the science of the thing. If the scientists tell us that we should have a moratorium, then I think we should have a moratorium. My concern is that this is basically a State problem relating to a fish that lives and operates within State waters; true, more than one State, but basically not within the Federal Fisheries Conservation Zone. That is basically my problem.

Mr. WINEGRAD. I guess the best way—I'm in Government; you're in Government—the best way to answer that is the same reason why we need congressional action, for instance, to regulate the disposal of high-level nuclear waste. It is just because the States cannot get together and agree as to who is going to handle what and how they are going to handle it and who is going to be the recipient. It is the same thing.

It is like telling the States, "Look, you're going to have to tell—every one of the elected officials is going to have to tell his or her commercial watermen and recreational fishermen why they're going to be significantly restricted in harvesting rockfish in their districts." I think that is part of the problem, that in many of the districts in Maryland, much so more than mine—Congressman Dyson is well aware of this—on the Eastern Shore the commercial interests are very dominant. Even though there may be only a few hundred people that presently harvest rockfish even for part of their living, they are very dominant in certain areas. So it is very difficult politically, that is the problem, to enact meaningful restrictions on the striped bass.

I sponsored legislation this year—it is pending right now in the Maryland legislature—that would impose a total moratorium on the taking and possesion of striped bass in Maryland. It is Senate bill 47. It would be triggered on January 1, 1985, if we did not have a very good reproductive year in 1984 with the present restrictions we have in Maryland.

That bill was vigorously opposed by all commercial watermen interests, and the Department of Natural Resources, because they were going the regulatory route. What has happened is that the watermen successfully went into the circuit court in my district, in Anne Arundel County, and challenged the regulations that restricted the taking of rockfish right now as they're schooling up, coming up the bay, and going to the headwaters for freshwater to spawn. They successfully challenged the regulations.

We are having a full hearing. There is an injunction that has been issued against the enforcement of the regulations to protect that brood stock while they are on their way to spawning.

They successfully challenged the regulations. The Department of Natural Resources is under injunctive order not to enforce the regulations.

So what we did, the only way we got the bill out of committee, was to amend the bill to impose a temporary moratorium until June 1, 1984, to allow the department time to enact correctly the

regulations and to fight the legal issue in the courtroom, and to get us through the spawning season.

In spite of the agreement in the Senate, the House, just before I left Annapolis, passed the bill back to us after the commercial watermen and their elected representatives sat down with the Secretary of Natural Resources. On the House side there was agreement reached that, instead of a moratorium, they would put them back to ground zero where they were when they went to court and just amend the bill to provide that what would happen is that the regulations would be put into law.

So where we are now is the Senate and the House disagreeing. We think there should be a moratorium at least until June 1. Now they have reimposed the regulations through the statutory mechanism. Again, we are back at ground zero while they continue the harvest—I mean a very intensive harvest—of these fish that are schooling up and going to the headwaters to drop their eggs.

Mr. BREAUX. Thank you very much.

Mrs. Schneider?

Mrs. SCHNEIDER. I would just like to pick up on that point because it is illustrative of what is happening in some of the other States, and I appreciate your taking your time to be with us today, Senator Winegrad.

I think what I would like to focus on are both the politics of the proposals, which you have just been discussing, and the politics of the enforcement within each State boundary.

Now the politics of the proposals, as you have explained, have now been caught up not only in the State legislature, but also in the courts; is that right?

Mr. WINEGRAD. That's correct.

Mrs. SCHNEIDER. Is there any way that you could give us a time line, some kind of prediction, as to when you think that there might be a plan coming out of Maryland, if ever, that would reach the kind of recommendations being made by the Atlantic States Fisheries Commission?

Mr. WINEGRAD. We have a plan that has been disrupted because of this court decision. The hearing is scheduled for March 28 in the circuit court of Anne Arundel County. I do not know how soon after that the circuit court judge will enter an opinion. I would assume that, because of the sensitivity of this issue and the fact that the spawning season is occurring right now, and will continue to occur until the end of May, that the judge would enter an opinion very quickly after that.

However, that is just the first round of the regulatory mechanism. We also have a new set of regulations to comply with the 55 percent catch reduction agreement with the Atlantic States Fisheries Commission. That is due to be promulgated and effective this fall. The Department of Natural Resources is working on this right now, and they will be presenting that to our regulatory review committee in the legislature, it is my understanding, within the next 60 days.

Mrs. SCHNEIDER. To those who might say, "Well, perhaps this is something that should be handled by the States individually or collectively," who are arguing on the side of States' rights, your response would be that the degree of political involvement and the

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degree of the special interest, as you mentioned, the watermen and the commercial fishermen were dominant in this particular legislative example—these are the kinds of things that would detain us from moving as rapidly as some of the scientists might recommend?

Mr. WINEGRAD. That's correct. I should give, by way of illustration, these are Department of Natural Resources of the State of Maryland catch records. What I did when I introduced my bill and we had hearings in Annapolis was to look at how many people in the State were actually impacted significantly by the moratorium on taking rockfish, how many people made their living on the rockfish. What we saw—of course, watermen may argue that not everything is reported, but it is required to be reported by law—what we saw, that there were eight fishermen in the entire State of Maryland in the last catch season, 1982 to 1983, that took more than five tons of striped bass, only eight in the entire State of Maryland. That means that only eight people in the State of Maryland grossed, not netted but grossed, more than $16,900 in a year on the striped bass in the most recent year.

For those that took even 5,000 pounds of rockfish, there were only 14 more watermen. So there were only 22 watermen that even took over 5,000 pounds of rockfish in the entire State of Maryland.

That gave way to suggestions by many legislators that we would be better off to save the species, shut it down, and just compensate these people on a per-pound basis of what they had taken in the previous year. There have been actual discussions of that, that we would actually enter into a rebate program, if you will, given the previous year catch records for the watermen that were harvesting striped bass.

It is a case, clearly, of the tail wagging the dog in the State of Maryland. We have been waylaid in responding to the severe reproductive problems that the rockfish are experiencing.

I will end by saying our shad fishery in the State of Maryland, which has been a traditional fishery for hundreds of years, the shad have been a very plentiful fish in the State of Maryland, and are the focus of many old political fundraisers called "shad bakes" in the State of Maryland. That fishery grew so low from the lack of reproductive success—again, another anadromous fishery that comes to freshwater to spawn in the Chesapeake Bay, and because of pollution problems, is lacking success—what happened with the shad fishery is that the commercial harvest became so low, because of declining numbers; there was so little resistance that the Department of Natural Resources actually imposed a moratorium by regulation. Now the shad fishery is shut down for the third year in a row. There is not even a peep anymore out of the commercial watermen, because the fishery went so low. That is what we are fearful of happening to the rock fishery in the State of Maryland, also.

We are down now, last year, 1983, to 359,000 pounds landed. In 1973, which was the last really large year, there were 5 million pounds landed, and it went down to 359,000. This is the lowest catch since recordkeeping began over 100 years ago in the State of Maryland.

Mrs. SCHNEIDER. Let me ask you—a little earlier in your testimony you had something to the effect that in Maryland you had been

arguing for approximately 5 years before coming to this point on a management scheme; is that correct? Did I hear 5 years?

Mr. WINEGRAD. It is longer than that.

Mrs. SCHNEIDER. It's longer than that.

Mr. WINEGRAD. It has been longer than that. There have been crises before in the rockfish populations. We have had the 14-inch proposal since—Congressman Dyson knows very well; he sat on the committee with me, and we were wrestling with some of these very same issues 6, 7, 8 years ago in Maryland.

Mrs. SCHNEIDER. I raise this question because I think that some of my colleagues will certainly say, "Well, let's give the Atlantic States Marine Fisheries Commission some more time." I think what the scientists are saying, and many others, and the evidence is reporting, and the example that you have given of the political intricacies that are involved in having established a management plan, surely indicate that time is not on the side of the striped bass.

Let me move from the creation of a management plan just briefly into the enforcement of such a plan. Serving on the committees that you do, have you been involved in the inquiry as to how one might enforce the 55-percent reduction in catch?

Mr. WINEGRAD. I do sit on the Chesapeake Bay Commission, which is a bi-State commission between the States of Maryland and Virginia. We have discussed the striped bass issue. As far as I know, the enforcement is left solely up to the individual States. There is no enforcement authority in the commission itself. Therefore, the enforcement is up to the individual States.

I know one of the weaknesses in our proposals—and I have questioned this—is that we have no plans whatsoever to increase the number of natural resource policemen when we enact fairly intricate regulations as to mesh size, as to times of fishing, times of take, closure of spawning regions—very, very specific and complicated regulatory mechanisms. We have absolutely no budgetary support for an enhanced enforcement effort. That is one of the very large weaknesses in this program, and I should say it was because of that that a management group consisting of biologists and commercial individuals between the States of Maryland and Virginia that led up to the Chesapeake Bay Conference recommended a moratorium as the most easily implemented and best management technique as far as an implementation standpoint. There is nothing easier to enforce than a moratorium.

Mrs. SCHNEIDER. Thank you.

Mr. BREAUX. Before we get to the questions on this side, I think what you do is that you very eloquently point out the reason why legislators should not be doing fishery management plans——

Mr. WINEGRAD. There is no question.

Mr. BREAUX [continuing]. Whether it is your State or whether it is this Congress.

Mr. WINEGRAD. There is no question about it.

Mr. BREAUX. If you cannot handle it because of the politics on a local level, there is no reason that Congress should be making management plans or whether striped bass should be taken, or taken at the 55-percent reduction level, or what have you. You should give that authority to the head of your fisheries operation within the

State or you should vote to give to the Atlantic Fisheries Commission and make what they come up with mandatory on the States. But we should not be drawing those plans here in this committee.

I would dare recommend to the State legislature as well that Maryland should not be drawing up those plans, because it is too political. Fishery management experts should do that.

Mr. Studds?

Mr. STUDDS. Mr. Chairman, I won't take much time.

Senator, I just wanted to ask you, as I understand it, your State permits the netting of, you say, rockfish; right?

Mr. WINEGRAD. That's correct, Mr. Studds.

Mr. STUDDS. Does any other State do that, to your knowledge?

Mr. WINEGRAD. Yes, certainly.

Mr. STUDDS. Who does that?

Mr. WINEGRAD. Virginia allows it. As a matter of fact, you can probably—it's easier to say which States don't allow it. I understand Massachusetts banned it sometime after World War II. I know that North Carolina permits it. North Carolina has a very large ocean fishery for striped bass. Their vessels will take tons at a time with nets. Those fish in many instances are schooling up to make their spring spawning run into the Chesapeake Bay. They're coming down from the Atlantic Coast Fishery and schooling up at the mouth of the bay.

The arguments by Maryland watermen are: Why should we not be able to net or significantly take rockfish when the North Carolina people are down there catching the same fish we are trying to protect and allow to spawn, taking huge quantities out in the open ocean? I know North Carolina does; I know Virginia; I know Maryland; I think the State of Delaware. Going up the coast, I am not sure about New York, but I think it is until you get into the New England States that you see the actual banning of netting.

Mr. STUDDS. We can get the figures State by State. I had not realized that netting was as widespread as you say that it is.

You say in your testimony that further restrictions have been proposed in Maryland to reduce the striped bass harvest by 55 percent in compliance with the U.S. Marine Fisheries Commission plan.

I gather, listening to the gist of your testimony, that you are not at all optimistic about that or anything else of substance being effective in the State of Maryland, given the situation there; is that right? Are you not saying to us that, in your judgment, your State is unable, for whatever reason or reasons, to act and, therefore, you call in the Federal Government to act?

Mr. WINEGRAD. I am saying that the political situation is such in the State of Maryland that we are not willing to act on a moratorium.

Mr. STUDDS. How about the 55-percent——

Mr. WINEGRAD. Even though I firmly believe, in conferring with biologists in our own department of natural resources, that a moratorium is soundly warranted from a biological standpoint, we do not know—no one who comes before you today can tell this committee with any degree of assurance why the striped bass is not reproducing successfully, why the young fry are not surviving. No one can tell you that right now.

Mr. STUDDS. I understand that. What I want to know is, what, in your judgment, is the likelihood of the State of Maryland being successful in attempting to execute a 55-percent reduction in its catch?

Mr. WINEGRAD. To be quite frank with the committee, I believe that we will, by the beginning of next year, have in place the regulatory mechanisms that would effectuate a 55-percent reduction in the State of Maryland. I think that we will, despite challenges by the watermen in the court system, I think we will have those mechanisms in effect, perhaps by the beginning of next year.

Mr. STUDDS. Then you are saying that in your judgment it is not adequate, is that right, even if you are able to do that?

Mr. WINEGRAD. It is not adequate in the State of Maryland alone. It is not adequate because we have no real assurances that that will be done in the entire coastal fishery——

Mr. STUDDS. I understand that. What if all the States did it; would that be adequate?

Mr. WINEGRAD. What the scientists say with the Mid-Atlantic Fishery Commission, and they are going to testify, is that that would increase the number of eggs that would be dropped in the spawning reaches sixfold. Whether you have the same survival rate that we have had, which has been very poor, 1.4, 1.2, in the young of the year, if you can increase that to an 8, then you can sustain a continuing harvest and still have barely enough fish coming back to spawn to assure the survival of the species.

The scientists can better answer that, in my opinion. Because of the uncertainty surrounding the lack of reproductive success, I think that the moratorium is warranted. I don't think the 55 percent goes far enough. I do not.

Mr. STUDDS. I understand. Thank you.

Thank you, Mr. Chairman.

Mr. BREAUX. Mr. Dyson?

Mr. DYSON. Thank you, Mr. Chairman.

First of all, although I don't agree with my colleague today, I would like to welcome him here to the Merchant Marine Committee.

I think he knows where I stand, as does the gentlelady from Rhode Island. I represent commercial watermen up and down the Delmarva Peninsula.

I think that, in response to one of the questions that was asked by the chairman—he offered the question of giving the authority to the State, in our case, the Tidewater Fisheries Administration, to manage the fisheries. I think you know yourself that the Secretary of the Department of Natural Resources in Maryland, who was a member of the same committee that both you and I served on in the Maryland State Legislature, adamantly opposed an outright ban on rockfish harvesting. I think that the department was opposed because a moratorium, especially a Federal one, does not give the States a chance to act on this issue.

The Atlantic States Marine Fisheries Commission has proposed a 55-percent reduction and it is my understanding that almost all of the States that are signatory to that compact are, in fact, abiding by it, except again the States of North Carolina and Delaware. Of those two States, I think North Carolina accounts for about 2 per-

cent of the rockfish catch, and Delaware accounts for about 5 percent. Clearly, they don't contribute as much as some of the other States—certainly not as much as we do in the Chesapeake Bay region or up and down the upper parts of the coast.

It is also my impression that a total ban doesn't have the support of State fisheries councils and agencies like our Department of Natural Resources. Those groups would not be given the opportunity to act responsibly if a ban is enacted.

The danger here is that we are going to do something that the chairman of this committee has indicated we have no business doing. We have representatives here from all coasts and from the interior of this country that are going to make a decision that, if it supported a ban, would have a disastrous economic impact on the State of Maryland.

I heard you indicate that seven watermen were the primary beneficiaries of a tremendous windfall, because of the catching of rockfish. I have been told by Dr. Krantz that it is around 500 to 600. So, clearly, we are talking about a lot of people. We are talking about an industry that brings about $51 million to the State of Maryland, a very significant industry.

Mrs. SCHNEIDER. Would the gentleman——

Mr. DYSON. Yes, I will yield in a minute.

I think we also have the broader issue of management of the whole Chesapeake Bay region. I think that you know that the EPA and McC. Mathias' $27 million study identified a number of culprits, many of which are identified in the bill that I have introduced, which was cosponsored by my colleague from Rhode Island. It says we have to approach the pollution problem on a regional basis. We have to look at it that way. We have to give the States incentives to fight this pollution.

I don't think that an outright ban provides that kind of incentive. In fact, I think this goes the other way. I think this would be very damaging.

I do know that our State, the Maryland General Assembly, and particularly the Environmental Matters Committee in the House of Delegates, took initiative to comply with the 55-percent restriction.

It is clearly a better way to go than an outright ban, an outright moratorium, which I think will only make obsolute the clean-up of packages that Governor Hughes has offered in Maryland, that Governor Robb is offering in Virginia, and that the Governor of Pennsylvania is offering there.

Of course, obviously, you know where I stand.

The Chesapeake Bay is the spawning ground for 90 percent of the rockfish in this country. Obviously, it is of great significance to us.

I am obviously opposed to this total ban on catching rockfish. I very much feel that there is a broader issue here that has to do with trying to manage the species and improving the whole habitat. I think we are overlooking that. The Atlantic States Marine Fisheries Commission indicates that all the States that are part of the 55-percent compact will, in fact, do their part. They estimate that the fishery can be restored within 10 to 12 years. I assume, of course, that they mean this depends on the other enhancements as well, like improving the water quality in the region.

With that, I will stop and yield to the gentlelady of Rhode Island.

Mrs. SCHNEIDER. I thank my colleague, and especially for his leadership in addressing one aspect of the problem of the decline of the striped bass, and that is addressing the pollution in the Chesapeake Bay. With your leadership on that element of one of the solutions, I think we are off to a good start.

However, I would like to remind my colleague that this committee very frequently takes action on regional or local issues, whether it be what is going on in Alaska or down in Texas, or whatever. So that is not at all unusual for us to be making determinations relating to strictly the east coast.

But on a more specific question, you had mentioned the commercial value of the fishing industry to Maryland. Obviously, being from Rhode Island, it is very important to our State, too. But I wondered if, in checking out the economic impact, if you had reviewed the economic impact, what it might be, without the survival of this particular resource. That is, basically, what we are talking about.

There is testimony given by Dr. Boreman, which will be given in a short while, where he says that the commercial catches last year seriously depleted coastal migratory stock along the entire length of the Northeast coast. In 1983, it represented a drop of over 25 percent from 1982, and it is the lowest reported catch on a record that extends back to 1929.

When we are talking about economic impact, I think we ought to look into the future and not be in a position, as so often legislators are, of crises management and wait until we no longer have the fish, but rather do some long-range planning not only on the fish's survival, but on the commercial value and the commercial economic impact of those fish.

Mr. DYSON. Well, since it is my time, if the gentlelady would yield back——

Mrs. SCHNEIDER. Certainly.

Mr. DYSON. I don't think we should predicate any of this on the State or States not doing anything. Clearly, if the States do nothing, we are not going to have the rockfish much longer. We are not going to have a Chesapeake Bay, either, for that matter. EPA, by implication, indicates the same.

The situation here is that we have formed a group, the Marine Fisheries Commission, and a number of States are part of that, including our own and including Rhode Island, I believe.

Again, we have, two laggards in the group. But, in my opinion, they are not significant. One accounts for 2 percent of that catch and the other accounts for 5 percent.

However, in time, it is my impression that if we abide by this, we will see a restoration of the fish population.

Again, I think that our State has taken that position. They have made many proposals, some of which you are involved with and others you are not. A lot of these proposals are not popular with the watermen; they are not popular with my constituency, but I think that they realize that they, too, have to do something. It is my impression, also, that they have endorsed the recommendation of the Atlantic States Marine Fisheries Commission, I'm sure not very willingly, but they realize that something has to be done.

I just think, Mr. Chairman, for the benefit of the rest of my colleagues on the committee, that this is the more proper role to take, the better way to go. Clearly, we in Congress should not be playing a role in this.

Mr. WINEGRAD. If I may respond to a couple of questions, I would be in complete agreement with you if we had entered on this cooperative effort 8 or 9 years ago. We are too far down now with the rockfish stock so significantly depleted and the reproductive success so poor, 2 of the last 3 years being the poorest in 30 years of recordkeeping, that time is not on our side.

Mr. DYSON. Well, I agree with that, but a lot of other adverse things have been affecting the habitat areas, a lot of things that you and I could do nothing about.

Mr. WINEGRAD. But they didn't occur overnight.

Mr. DYSON. Hopefully, that is going to be turned around. Obviously, I wish we could have done something 8 or 10 years ago. But the experts are telling us that if the State and States comply with the 55-percent recommendation now, we can hope to recover in 10 to 12 years some of the fish that we have lost.

I agree with the lady from Rhode Island. If we don't do anything, we are all going to go to you know where in this situation.

Mr. WINEGRAD. But, essentially, the Federal Government has left it up to the States since the inception of the fishery. Where we are at now is that we have not developed fishery management plans, we have not developed game plans to assure the long-term success of the fishery. Until we can assure time to let the pollution control programs that effect, to bring the reproductive success up, to develop fishery management plans, it is absolutely essential that we close down that fishery to assure that we have a maximum number of fish that can reproduce out there. Otherwise, we may right now already be beyond the point of sustaining even a 55-percent reduced yield if reproduction doesn't significantly increase. We may be already beyond the point of sustainable yield even at 55-percent reduced rates.

To show you how weak our program is in the Chesapeake Bay, Maryland and Virginia do not have any fishery management plans for any of the commercially harvested species, whether striped bass, blue crab, oyster, soft clam, menhaden, white perch. There is absolutely not one comprehensive fishery management plan. We don't know where we are going because we don't know where we've been. We don't have accurate figures on how many fish are out there. We don't have accurate figures on how many fish are being taken. We need desperately to develop fishery management plans in the Chesapeake Bay, as well as the entire Atlantic Coast Fishery. Until those plans are developed and until we bring back that reproductive success, I suggest that the only prudent course is a moratorium.

Mr. BREAUX. I guarantee you if you don't have them, we don't have them.

Mr. WINEGRAD. There are no fishery management plans in the bay, even for the striped bass right now.

Mr. BREAUX. Senator, we thank you very much, particularly for taking your time out from being in session in the State legislature to be with us to present your thoughts and your recommendations.

With that, we have asked you questions, and we will excuse you. You can go back to your duties.

I would like to bring up Dr. John Boreman.

Dr. Boreman?

Mr. WINEGRAD. Thank you very much.

Mr. BREAUX. Dr. Boreman, why don't you go ahead and lead off, representing the Northeast Fisheries Center for the National Marine Fisheries Service?

STATEMENT OF JOHN BOREMAN, CHIEF, COASTAL FISHERY RESOURCES INVESTIGATION, NORTHEAST FISHERIES CENTER, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Dr. BOREMAN. All right.

Mr. Chairman and members of the subcommittee, since 1980, I have been the National Marine Fisheries Service Project Manager for the Emergency Striped Bass Study. My responsibilities as Project Manager have included the oversight of a monitoring program for the striped bass in the Northeast United States. This program began in the spring of 1980.

The objective of the monitoring program is to determine the current status of coastal striped bass stocks. To achieve this objective, four monitoring surveys were implemented: a survey of the distributions of early life stages, that is, the egg, the larva, and the juvenile, in major striped bass rivers; a survey of the spawning population during the spawning season in the Maryland portion of Chesapeake Bay; a survey of juvenile production in the major rivers; and a survey of the commercial and recreational fisheries.

The monitoring program has been conducted through State agencies, including leading scientists from North Carolina, Virginia, Maryland, New Jersey, New York, Rhode Island, and Massachusetts, and the University of Maryland, the Virginia Institute of Marine Science, and the University of Rhode Island.

The purpose of this testimony is to summarize the findings of the monitoring program of the Emergency Striped Bass Study.

The coastal fishery for striped bass in the Northeast United States is currently supported by production from populations which spawn in the Hudson River, the Chesapeake Bay, and possibly the Roanoke River in North Carolina. The Delaware River, once a major spawning area for striped bass, has suffered extremely poor production during the past several decades, eliminating this system as a major contributor to the coastal fishery. The Chesapeake Bay has been the major source of the coastal migratory stock that ranges from North Carolina to Canada. The Hudson and Roanoke Rivers may be significant contributors to adjacent coastal areas and along the entire coast when Chesapeake production is low.

Production in the Chesapeake Bay and the Roanoke River/Albermarle Sound region has been poor in recent years, and I draw your attention to Figure 1 of my testimony, which shows reproductive indices in terms of index of juvenile production for five different areas along the coast, actually four different areas—the first area being the Roanoke River/Albermarle Sound time series, as collect-

ed by Dr. William Hassler of North Carolina State University since 1955.

The second series is a series of juvenile abundance indices from the Virginia portion of Chesapeake Bay, and that time series goes back to 1955.

The middle time series is for the Maryland portion of Chesapeake Bay, and this is probably the most familiar to members of the committee, the so-called Maryland Index.

The two series on the bottom, both were collected in the Hudson River, one by a consultant to the Hudson River Power Companies, Texas Instruments, and the second-time series developed, which is the most recent data on the Hudson, was collected by the New York Department of Environmental Conservation.

A healthy spawning population, with a constant level of production, should have over 75 percent of the eggs deposited by females between the ages of 5 and 10 years. In 1982 and 1983, the majority of female spawners in Maryland were older than 11 years. The abundance of both male and female spawners 6 to 9 years was greatly reduced, and the area and the duration of spawning were much less than in previous years. All these facts point to a severely stressed population in Chesapeake Bay, the major production area for the Northeast.

Conversely, as you can see from figure 1, the Hudson River, which has historically accounted for far fewer fish in the coastal migratory stock, has maintained a relatively stable production level since 1969. In fact, last year's index was one of the highest on record.

The coastal migratory stock of striped bass is under year-round pressure from commercial and recreational fisheries. From Maine to Delaware most fish are caught in the spring, summer, and fall, and from Maryland to North Carolina most fish are caught in the fall, winter, and spring.

The 1982 and 1983 commercial catches indicate a seriously depleted coastal migratory stock along the entire coast. Reported commercial landings of striped bass from Maine to North Carolina for 1983, which were 1.6 million pounds, represent a drop of over 25 percent from the 1982 level of 2.2 million pounds, and is equal to the lowest reported catch on a record that extends back to 1929.

I draw your attention to Figure 2 in my testimony, which represents the reported commercial landings for various regions of the country. I broke out North Carolina by itself; Virginia and Maryland, representing essentially Chesapeake Bay landings; Delaware to New York on the bottom left; and Connecticut to Maine on the bottom right.

In the middle is our entire time series going back to 1929 for the entire coast from North Carolina to Maine.

The biggest drop in reported landings occurred in States—this is between 1982 and 1983—occurred for the States south of New York, which primarily rely upon the younger age groups. These are ages 2 to 4 years.

The New England fisheries, which rely on slightly older age groups—their landings concentrate on 4- to 6-year-olds, are beginning to show similar signs of collapse. The New England fisheries

have suffered less than the other areas, also because of the higher contribution from the nearby Hudson River spawning grounds.

The recreational fishery for stripers in the Northeast has also suffered a marked decline. The latest available catch data, which is for 1980, indicates that the recreational catch for that year was the lowest since the coastwide survey began in 1960.

In summary, I have six points:

One, the production indices for striped bass spawned in the Chesapeake Bay, the Delaware River, and the Roanoke River are the lowest on record.

Two, dominant year classes—that is, years of exception production—have not been produced in the Chesapeake since 1970 and in the Roanoke River since the mid-1970's. It is the dominant year classes that have traditionally supported the coastal fisheries and have contributed the most individuals to the spawning populations.

Three, the Maryland spawning population currently lacks representation in the age groups that have historically contributed to over 75 percent of the total annual egg deposition. Contribution of the majority of females is still being made by the 1970 and older year classes.

Four, recreational and commercial landings of coastal striped bass stocks have declined steadily in recent years. The decline has been most dramatic in the States south of Delaware.

Five, several commercial fishing operations have ceased activity due to the scarcity of striped bass. More are expected to follow.

Six, the number of year classes making a significant contribution to the coastal fisheries has been reduced due to the lack of dominant-year classes since the early to mid-1970's and continuous poor production in recent years.

It is my opinion, as a stock assessment scientist, that fishing mortality on the coastal stock of striped bass should be minimized until production rises to an acceptable level. At the current low stock levels the number of eggs produced is directly related to the ultimate strength of the year class regardless of survival conditions.

Minimizing fishing mortality will increase the number of spawners and the total egg production of the stock.

Finally, other stresses such as habitat degradation and environmental contaminants may be contributing to the recent decline in production and should be reduced as much as possible to prevent a return of the current situation once fishing pressure is reintroduced.

This concludes my statement, Mr. Chairman.

[Charts of John Boreman follow:]

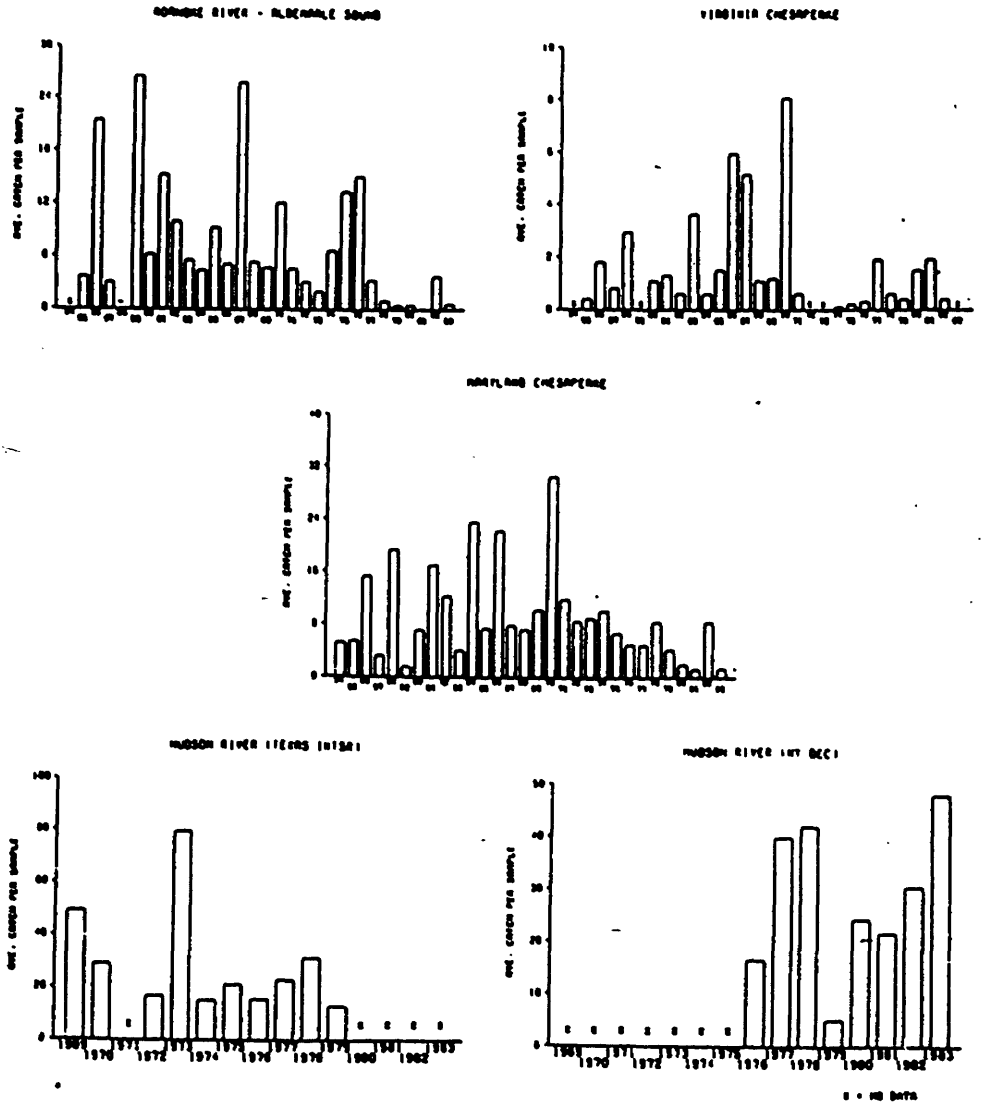

Figure 1. Abundance indices for juvenile striped bass in major spawning areas along the Northeast Coast of the United States.

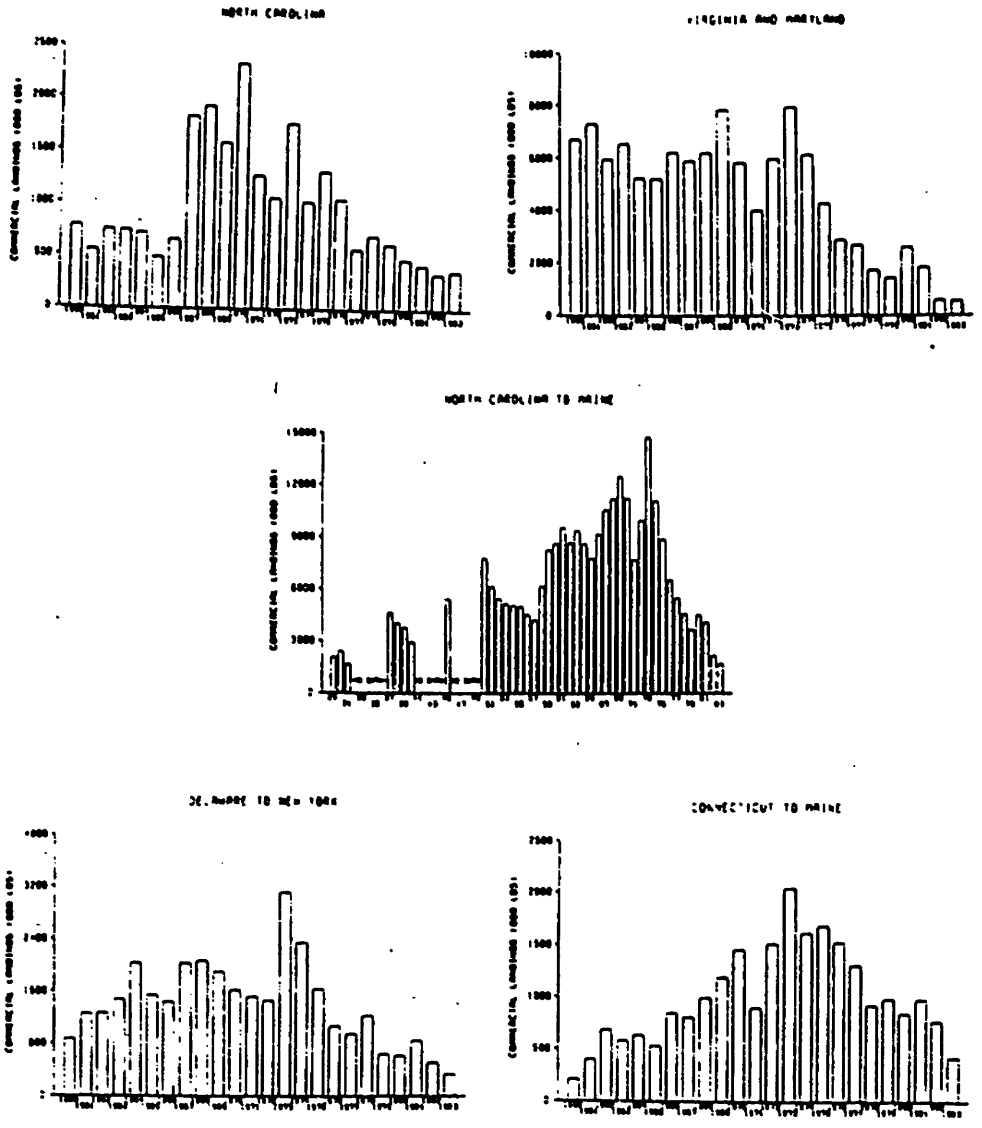

Figure 2. Reported commercial landings of striped bass in the Northeast States, 1960-1983.

Mr. BREAUX. Thank you, Dr. Boreman.

Next we will hear from Mr. Robert Pond, representing Stripers Unlimited.

Mr. Pond?

STATEMENT OF ROBERT B. POND, EXECUTIVE DIRECTOR, STRIPERS UNLIMITED, INC., SOUTH ATTLEBORO, MA

Mr. POND. Thank you, Mr. Chairman.

It is rather interesting to be here to speak to you again. I see Representative Studds, whom I testified before during the PCB conference we had a few years back.

One of the things that I am going to bring to your attention is the lack of recruitment into the fishery. I don't think that has been addressed. It is more lack of recruitment, rather than overfishing, that is affecting the striped bass population.

Going a little into the background of the work we did, I am a fishing lure manufacturer. I have been making striped bass fishing lures for 40 years. When Edenton National Fish Hatchery took some Maryland striped bass eggs and tried to hatch them in 1969, they found out that it was a buoyant egg, an egg that floated in the tide lines. Now all striped bass eggs normally need a 100-mile long river. If they don't have it, they sink to the bottom. They are heavier than water, but when they arrived at the hatchery, they all floated out of the jars when they used the Maryland egg.

Here was a tidewater spawner where the nursery ground and spawning ground were exactly the same. That didn't exist anywhere else. The Hudson River doesn't have it. The west coast doesn't have it. It just doesn't exist anywhere else.

When this was reported to the Southeast Division of the American Fisheries Society in the fall of that year, the following year, 1970, Louisiana sent two people up there, Arthur Williams and Dudley Carver, to pick up eggs from the Chesapeake Bay and bring them back to Louisiana to raise up, because they knew then they could put these eggs in the tide lines and have a tidewater fishery, which nobody had. All the other fisheries were long river systems.

As a manufacturer of fishing lures, this was like getting into a candy shop. Here I could picture striped bass all along the coast in every spawning river replacing stocks we had lost in New England.

So, in 1970 I was also on the spawning grounds, and I took fish down to Edenton from the spawning grounds. We had a great deal of mortality.

We started a hatchery in 1971. Dudley Carver came back in 1971 and 1972. In 1971 we had complete failure. We brought eggs to the University of Rhode Island, and Dr. Wm. Onley did a study on them. We found we had high levels of PCB's in the eggs, an extremely high level, and high levels of DDT.

We were concerned, naturally, because this was where our business lay, in the Chesapeake Bay. The fish that we had on the coast were Chesapeake Bay stock. We were concerned that this fishery was being impinged upon by the contaminants.

Another thing that bothered us was that we just did not know how these high levels of contaminants—we were getting levels of contaminants that no fish egg had ever seen before, and yet we

were getting survival, even though it was only 2 percent. We realized that we were into something that we did not understand.

We asked that someone come down and look—we didn't care who—to look at the eggs and the larvae and tell us what we were seeing. We were seeing tremendous mortality at different levels.

We would write to people, and they would say, "Well, it's probably your hatcheries." Then we went out into the wild and took eggs and found the same mortality. We kept saying, "Please come down."

In 1973, we published a report saying that we need genetic research. In 1975 we filed for the first time under the Endangered Species Act. We filed again in 1982 and again this year.

Let me go through my testimony.

We are saying that the loss is because of a changed embryo, an embryo that is not the same as it was back in 1950, completely altered. This is all over the United States, the west coast, the southern reservoir system, and on the east coast.

We are also saying that the loss of the larvae in the Chesapeake Bay system is due to herbicidal rain. Now maybe no one will back us up on this, but this is the way we see it. We see it as a manufacturer of fishing tackle, and we are very much concerned with the fact that we only have one population of possible spawners left in Chesapeake Bay.

I am the executive director of Stripers Unlimited, Inc. I am here to seek help in saving the unique Chesapeake Bay strain of striped bass, which is teetering on the brink of extinction.

In the spring of 1983, our 13th year of observing eggs and larvae of the Chesapeake Bay striped bass, we observed and photographed abnormalities in the development of the striped bass larvae. They ceased to utilize the oil in their oil globule, which is considered so necessary in the early developmental stages of the eyes and the nerves. They also did not seem to develop a working syncitium or a vascular system for utilizing this material.

According to Romeo Mansueti, in his work with Maryland striped bass in the 1950's, oil and yolk were used more or less simultaneously. A.J. Lippson, who worked with Mansueti and sketched the larvae, confirmed this fact. She stated that she observed the oil and yolk being used more or less simultaneously and the development of the vascular system of the yolk sac syncitium during her work with the Maryland striped bass larvae in the 1950's.

Serge Doroshov of the University of California at Davis and Eldrige and Whipple of Tiburon Laboratory in California have, in separate studies, found that California striped bass, which are also in serious trouble, no longer utilize the oil in the oil globule, as in previous years.

Jack Bayless, in his published work on South Carolina striped bass, observed this same anomaly in the South Carolina striped bass larvae, although not in the white bass/striped bass hybrid.

Rogers and Westin of the University of Rhode Island published their observation of the same anomaly in their work with the Maryland striped bass larvae in the 1970's.

At Edenton National Fish Hatchery, the same lack of oil absorption was observed in the third generation Maryland striped bass raised at that facility in a clean environment.

We preserved samples of these Maryland larvae last spring and took them to Dr. Richard Wolke, a fisheries pathologist at the University of Rhode Island. He sectioned them and reported a developmental problem in the syncitium area which he felt required the expertise of a developmental anatomist.

We spent late spring and summer consulting with scientists at the Woods Hole Oceanographic Institute and with scientists at other institutions. Recommended by these scientists, as foremost in his field, was Dr. John P. Wourms, a developmental biologist at Clemson University.

We sent photographs and our reported observations to him as well as Dr. Wolke's report. We discussed the problem with him, and he suggested a possible genetic change had taken place and proposed that genetic research be done at the cellular level. He stated, "Even on the preliminary information, the evidence is striking—something is radically wrong with the early embryonic development of striped bass. Unless corrected, this could lead to complete reproductive failure."

As everyone is now aware, a drastic decline has taken place in the Chesapeake Bay fisheries in the last decade, not only in striped bass, but herring, shad, white perch, yellow perch, and even the panfish of the upper bay. Up to 90 percent of the bay's grasses have also disappeared from the upper bay. There has been a serious lack of recruitment of young fish into the fishery. From 1970 to 1976, there was a complete turnover in the catch statistics of striped bass in Chesapeake Bay. By 1976, 90 percent of the catch was larger fish, a complete reversal of the traditional fishery, which used to consist of 50-80 percent small fish.

Chemical contaminants in Maryland striped bass were exceedingly high during this period.

During the spring spawning run, application of preplant chemicals occurs on the Chesapeake Bay watershed. Rainfall during the spawning season brings a startling rise of these chemicals into the river systems. Studies over a 3-year period indicate that the striped bass larvae disappeared after these rainfalls. This was also observed in a hatchery. Offspring of late spawners seemed to survive if rainfall is low.

There is need for genetic research of the striped bass population, and this will not occur until a multidisciplinary approach is taken. Fisheries biology is limited and developmental biology and developmental genetics are essential if we are to find the cause of the decline and correct it before it is too late. Time is running out. The fishery needs to be spared from further harvest, and funding for this type of research is needed immediately.

That is the end of my testimony. I have backup information on the rainfall.

Mr. BREAUX. We might make it part of our record, Mr. Pond and we will certainly make it available to all of the members.

Now I would like to hear from Mr. Gordon Colvin, who is director of the Division of Marine Resources of the New York Department of Environmental Conservation.

STATEMENT OF GORDON C. COLVIN, DIRECTOR, DIVISION OF MARINE RESOURCES, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. COLVIN. Thank you, Mr. Chairman and members of the subcommittee.

I thank you on behalf of the International Association of Fish and Wildlife Agencies for the opportunity to present our views with respect to pending legislation related to striped bass.

The International Association strongly supports the establishment and maintenance of viable working partnerships between State and Federal Governments with respect to the management of those fish and wildlife species that regularly migrate across State and national boundaries. With respect to those marine and estuarine species which are exploited mainly in the internal waters and territorial seas of the several States, such as the striped bass, the International Association concludes that the cooperative management effort of the States functioning through the regional marine fisheries commissions, with the technical and financial support and cooperation of the Federal Government, is the most appropriate and effective means of managing such fisheries.

H.R. 4884 would establish a Federal moratorium over the fishing for Atlantic striped bass for a period of 3 years in the territorial sea of the coastal States from South Carolina to Maine. The adoption of a moratorium on the harvest of Atlantic striped bass is attractive at the present time for a number of reasons:

First, there is no question that Atlantic coast striped bass stocks are in need of considerable protection from fishing mortality in order to appropriately conserve and rebuild them. Imposition of a moratorium would unquestionably constitute the most complete means of reducing total fishing mortality and would further constitute the maximum regulatory action possible.

Second, a moratorium is presently one of the few management measures which some users of the resource have been able to agree upon.

Third, a legislative moratorium can probably be imposed more quickly than other strategies for reduced mortality implemented through State legislation or through State or Federal regulatory actions.

However, the introduction of Federal legislation imposing a moratorium does suffer from certain serious drawbacks which are as follows:

First, most importantly, a Federal moratorium seriously impinges on traditional areas of State jurisdiction. The International Association advocates the continuation of the existing State/Federal partnership and the imposition by States of management measures deemed appropriate through the interstate management program.

Second, a moratorium on the harvest of all Atlantic striped bass is probably not necessary at this time. Actions by the striped bass sub-board of the Atlantic States Marine Fisheries Commission have made it clear that measures, short of a total moratorium, would be sufficient at the present time.

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Third, the Hudson River striped bass population and its coastal migratory component is presently in a healthy condition. While strong conservation measures are needed to maintain the viability of the Hudson River stock, it is equally clear that such measures are in place, and the condition of that stock does not warrant a moratorium at the present time.

Therefore, it is the recommendation of the International Association that a federally sponsored moratorium not be implemented.

The International Association would also like to make the subcommittee aware of its strong support for the continuation of the studies initiated under the Emergency Striped Bass Program. The Emergency Striped Bass Program has been extremely valuable in bringing to light important information on the status, causes of decline, and economic impacts related to striped bass fisheries on the eastern seaboard.

To date, researchers have not yet conclusively demonstrated a specific cause or causes for the decline in striped bass. The recent report submitted by the emergency striped bass study team recommended continuation of the investigations related to potential causes for decline in coastal migratory stock production. There is no question that these research efforts should continue.

The International Association strongly endorses reauthorization of section 7 of the Anadromous Fish Conservation Act as well as increasing appropriations to carry out those studies.

Again, I thank the subcommittee for the opportunity to present the views of the International Association with respect to these important legislative matters.

[Statement of Gordon Colvin follows:]

STATEMENT OF GORDON C. COLVIN, DIRECTOR, DIVISION OF MARINE RESOURCES, NEW YORK STATE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. Chairman, Members of the Committee, thank you on behalf of the International Association of Fish & Wildlife Agencies for the opportunity to present our views with respect to pending legislation to striped bass.

SUMMARY

It is the long standing policy of the International Association that fish and wildlife resources occurring within the boundaries of, and in the territorial seas adjacent to, individual states are held in trust by the states for the enjoyment, appreciation, economic and scientific benefit of present and future generations. Management agencies must strive to improve the quality and quantity of fish and wildlife resources and their habitats and ensure, at the very least, that these resources are passed on to succeeding generations in a viable condition. In addition, management must establish as a high priority the development and/or maintenance of adequate numbers to ensure the aforementioned benefits and optimal numbers of high interest species.

The International Association strongly supports the establishment and maintenance of viable working partnerships between state and federal governments, with respect to the management of those fish and wildlife species that regularly migrate across state and national boundaries. With respect to those marine and estuarine species which are exploited mainly in the internal waters and territorial seas of the several states, such as the striped bass, the International Association concludes that the cooperative management effort of the states functioning through the regional marine fisheries commissions, with the technical and financial support and cooperation of the Federal Government, is the most appropriate and effective means of managing such fisheries.

It is, therefore, recommended that legislation under consideration be carefully crafted so as to maintain these traditional state/federal relationships and to provide

that states, either individually or working cooperatively through interstate commissions, maintain their preeminence in the management of fisheries occurring primarily within their internal waters and territorial seas.

Section 7 of the Anadromous Fish Conservation Act is an example of the type of legislation which has maintained and fostered the cooperative relationship between states and the Federal Government which the International Association strongly supports. This legislation has resulted in the conduct of studies of the extent and causes of decline in Atlantic Coast striped bass populations over the past five years. These studies, supported by federal appropriations, have been conducted both by federal agencies and their direct contractors as well as by states under grants awarded through the program. Together, these studies have documented the extent and economic impact attributable to the decline in Atlantic Coast striped bass populations. They have also served to identify the possible causes of this decline. The International strongly supports the reauthorization of Section 7 of the Anadromous Fish Conservation Act and the appropriation of funds to carry out further study with respect to the causes of decline.

H.R. 4884—THE ATLANTIC STRIPED BASS RESTORATION ACT OF 1984

H.R. 4884 would establish a federal moratorium over the fishing for Atlantic striped bass for a period of three years in the territorial sea of the coastal states from South Carolina to Maine. It would further provide that the moratorium may be extended by the administrator of the National Oceanic and Atmospheric Administration or lifted following his determination that the stocks of Atlantic striped bass have recovered to levels sufficient to produce a reproductive index equal to 80% of the average index of the juvenile populations attained during the calendar years 1954 through 1974.

The adoption of a moratorium on the harvest of Atlantic striped bass is attractive at the present time for a number of reasons:

First there is no question that Atlantic Coast striped bass stocks are in need of considerable protection from fishing mortality in order to appropriately conserve and rebuild them. The recent report of the Emergency Striped Bass Study Team recommends imposition of a substantial reduction in fishing mortality from the present level, not excluding consideration of a moratorium, based on the current depleted status of the Chesapeake Bay stock. The Hudson River stock which is presently in excellent condition also requires careful conservation due to the high levels of fishing effort on that stock attributable to the decline in availability of the Chesapeake Bay fish as well as continuing high demand, therefore commanding high prices in the commercial marketplace for the species. Imposition of a moratorium would unquestionably constitute the most complete means of reducing total fishing mortality, and would further constitute the maximum regulatory action possible for fishery managers and government.

A moratorium is presently one of the few management measures which some users of the resource have been able to agree upon as appropriate. Most management masures short of a total moratorium do result in a partial change in the allocation of that portion of the resource which would be subsequently available for exploitation. Regrettably, until now, many resource user groups have been unable to agree on management measures other than a moratorium because of their concern with respect to the equitability of such allocations among competing users.

A legislative moratorium can probably be implemented more quickly than other strategies for reduced mortality implemented through State legislation or through state or federal regulatory actions. Such a legislative moratorium would not be subject to administrative procedures and potential judicial review that make administrative actions vulnerable. Moreover, if done on a coast-wide basis, it would affect the entire resource at the same time, rather than following the state-by-state procedure with its political short-comings that have been evidenced in the past.

However, the introduction of federal legislation imposing a moratorium does suffer from certain serious drawbacks which are as follows:

Most importantly, a federal moratorium seriously impinges on traditional areas of state jurisdiction. Application of federal control over the harvest of a species in the territorial sea (and, perhaps, in internal waters) would seriously jeopardize the existing cooperative relationship between the states and the federal government in marine and estuarine fisheries management. The International Association advocates the continuation of the existing state/federal partnership and the imposition by states of management measures deemed appropriate through the interstate management process.

A moratorium on the harvest of all Atlantic striped bass is probably not necessary at this time. Clearly, H.R. 4884 envisions a goal of rebuilding the Chesapeake Bay brood stock to the point where it is capable of producing average year-classes of striped bass. Actions by the striped bass sub-board of the Atlantic States Marine Fisheries Commission have made it clear that measures, short of a total mortorium, namely, a 55% reduction in fishing mortality rate beyond that incorporated into the base striped bass management plan, would be sufficient to accomplish that goal.

The Hudson River striped bass population and its coastal migratory component is presently in a healthy condition. While strong conservation measures are needed to maintain the viability of the Hudson River stock, it is equally clear that such measures are in place, and the condition of that stock does not warrant a moratorium at the present time.

The proposed legislation contains some technical flaws that should also be addressed in the sub-committee's ongoing review. These are as follows:

The bill applies to the taking of striped bass only in the territorial sea. If the bill is to accomplish its goal it should establish a moratorium on all harvest of striped bass, including both the Fishery Conservation Zone and the internal waters of States.

The bill provides that it is unlawful to "fail to return to the water *live* Atlantic striped bass . . .". Such a provision is likely to insure efforts on the part of some fishermen to kill the fish so they need not be returned. At any rate, it is a completely unenforceable provision and the word, "live," should be stricken.

The bill establishes juvenile populations attained during calendar years 1954 through 1974 as the basis for lifting or extending the moratorium. This provision is invalid. First, it cannot and should not apply to any spawning estuary other than Chesapeake. Secondly, the years in question may be uncharacteristically high in terms of historic levels, just as the year since 1974 have been uncharacteristically low. In reality, the period of years should extend over a longer period of time.

The bill does not adequately address production in the Hudson River or other spawning estuaries and should only apply to the Chesapeake Bay stock. This leaves the entire matter of striped bass production from the Hudson River, Roanoke River or other areas, and their appropriate use, unaddressed. In fact, it will be very difficult to implement appropriate means of handling these matters legislatively. This complicated situation gives further justification for continuing to support the interstate cooperative efforts to manage Atlantic Coast striped bass.

The provisions for terminating and extending the moratorium are not sufficiently detailed. While providing for consultation with states, the means of such consultation and the influence to be accorded are not identified. Moreover, regional fishery management councils established under the Fishery Conservation and Management Act should similarly be consulted.

Therefore, it is the recommendation of the International Association of Fish & Wildlife Agencies that a federally-sponsored moratorium not be implemented, but that Congress continue to carefully monitor the efforts of states through the Atlantic States Marine Fisheries Commission working cooperatively with the National Marine Fisheries Service and the Regional Fishery Management Councils to effect further reductions in the mortality of Chesapeake Bay stocks of striped bass as they are presently proposing to do in a systematic and disciplined manner.

SECTION 7 OF THE ANADROMOUS FISH CONSERVATION ACT

This statute authorized the conduct of the Emergency Striped Bass Study. As initially authorized and extended, the study addressed three major issues related to the decline in Atlantic Coast striped bass stocks:

1. Assessment of the current status of the coastal migratory stocks;
2. The determination as to why production has declined in key areas along the Coast;
3. Evaluation of the economic impact the decline of striped bass fisheries may have on coastal communities.

The Emergency Striped Bass Study has been extremely valuable in bringing to light important information on the status, causes of decline and economic impact related to striped bass fisheries on the eastern seaboard. To date, researchers have not yet conclusively demonstrated a specific cause or causes for the decline in striped bass. However, the studies have clearly identified economic impacts attributable to the decline and have documented many scientific aspects of the decline. Certain of these studies related to the causes of decline have suggested strongly that additional research may be fruitful. The recent report submitted by the Emergency Striped Bass Study team recommended continuation of the investigations related to

potential causes for decline in coastal migratory stock production. Investigation was recommended to include the following elements:

1. Field studies on the direct and indirect affects of contaminant mortality on striped bass.
2. Identification of potential predators on early life stages of striped bass.
3. Studies on the inter-active effects of pH contaminants and other environmental variables on survival of striped bass.
4. Studies on the importance of disease as an agent contributing to mortality of striped bass.
5. Further marking studies to determine the level of fishing and natural mortality.
6. Continued studies on the importance of factors controlling the production and distribution of food items that appear in diet of young striped bass.
7. Further development of stock recruitment theory as it pertains to the coastal stock of striped bass.

There is no question that these research efforts should continue. The International Association strongly endorses reauthorization of Section 7 of the Anadromous Fish Conservation Act, as well as increasing appropriations to carry out these studies. We have previously recommended that fiscal year 1985 appropriations of $1.0 million be authorized for these studies. Reauthorization of the Emergency Striped Bass Program and continued appropriations for conduct of its studies are again strongly recommended.

CONCLUSION

Again, I thank the sub-committee for the opportunity to present the views of the International Association of Fish and Wildlife Agencies with respect to these important legislative matters. We look forward to continuing to work with the sub-committee in its further deliberation of these issues.

Mr. BREAUX. Thank you very much, Mr. Colvin.

Next we will take testimony from Dr. Phillip Goodyear with the Fish and Wildlife Service.

Dr. Goodyear?

STATEMENT OF C. PHILLIP GOODYEAR, FISHERIES BIOLOGIST, RESOURCE ANALYSIS SECTION, NATIONAL FISHERIES CENTER, LEETOWN, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Dr. GOODYEAR. Thank you, Mr. Chairman.

I have been the U.S. Fish and Wildlife Service project manager for the emergency striped bass study since 1980. My responsibilities in this position have included the oversight of studies to determine the factor or factors responsible for the decline in the striped bass stocks along the northeast Atlantic coast. These studies have been conducted by scientists from State resource agencies, universities, the National Marine Fisheries Service, and the Fish and Wildlife Service.

Possible causes for the decline of striped bass are numerous, complicated, and interwoven. During the development of the research plan for the study, we considered nearly all the biological aspects relative to the species and its habitat. Actual studies have concentrated primarily on the influence of environmental contaminants and fishing pressure. We have also conducted studies related to the availability and importance of food organisms for developing striped bass larvae and additional studies to identify the predators of larval striped bass.

Thus far, studies on the influence of contaminants have shown that striped bass eggs, larvae, and adults contain various quantities of numerous organic and inorganic contaminants. No single con-

taminant stands out as being primarily responsible for the decline of the coastal migratory stock. However, under laboratory conditions combinations of contaminants at estimated environmental concentrations have been found to decrease the survival rate of larval striped bass, especially in fresh or slightly brackish water and may also affect survival in the field.

These studies have also determined that striped bass are more susceptible to acute exposure to several contaminants than other common species like sunfish, catfish, and minnows. This would imply that striped bass would be one of the first fish in the estuaries to succumb to common toxicants.

We have also found that larval nutrition seems to play an important role in the survival of striped bass larvae and that increase in sewage tratment and chlorination may be reducing the amount of nutrients for zooplankton, causing a decline in their numbers. Zooplankton are the primary food for striped bass larvae. The loss of this food could be leading to the starvation of larval bass.

The Hudson River had the highest concentrations of PCB's and DDT of all the rivers studied. Fry from the Hudson also exhibited higher mortality under laboratory conditions than did fry from other locations.

In addition, vertebral strength of the backbones, known to be influenced by contaminants, was weaker in bass from the Hudson than in fish studied from other areas. Hudson River fish raised in clean laboratory water did not suffer these effects, which suggests that the poorer state of the Hudson River fish is caused by their environment rather than some genetic factor.

The differences in population trends between the Hudson River and Chesapeake stocks are revealing. Both stocks may be stressed by contaminants, but the stock is declining only in the Chesapeake where there is much greater fishing pressure on the smaller fish. We have determined that this greater fishing pressure would magnify the impact of any contaminant-related mortality, leading to a greater impact on production in the Chesapeake than in the Hudson.

If fishing pressure on a stock is too high, it can lead to reduced landings in two ways: recruitment overfishing and growth overfishing. Recruitment overfishing occurs when fishing reduces the spawning population so that production is lowered. Growth overfishing occurs when the catch of smaller fish is so intens that the fish are caught before they have had a chance to grow to their optimal size. We have determined that striped bass have historically been subjected to growth overfishing, but we are not able to conclusively determine whether they have also been subjected to recruitment overfishing.

The problem occurs because the exact relationship cannot be determined between adult stock size of striped bass and the number of offspring they produce that eventually become adults. It is likely that at the present low stock level both recruitment overfishing and growth overfishing are occurring. They, in turn, are magnifying the effects of other stresses on the stock such as mortality resulting from pollution. Evidence that is available indicates that the coastal migratory stock cannot continue to support the present level of fishing activity.

As a part of the Interstate Striped Bass Management Program which is administered through the Atlantic States Marine Fisheries Commission, I examined the influence of the provisions of the existing management recommendations in the management plan on the growth of the stock. I estimated that the successful implementation of the existing plan would not be sufficient to arrest the decline in the stock. However, if, in addition to the implementation of the management plan, the fishing mortality rate were to be reduced by half, the population should begin to recover. This is the basis of the present efforts of the States to reduce fishing mortality an additional 55 percent beyond the recommendations in the management plan.

However, even if the present efforts are successful, it would take many years to rebuild the stocks. Present estimates of the rate of population increase that would result from the combination of protective measures indicate that the mean population size would double from generation to generation, or about every 8 to 10 years. At that rate, it could take several decades to restore the stock.

More severe reductions in fishing mortality would increase the rate of recovery. Conversely, unrestricted fishing would probably eliminate the Chesapeake stock as a viable resource and may endanger its existence. The elimination of fishing as a source of mortality has the potential to cause the population to increase tenfold to twentyfold from generation to generation. Thus, it is theoretically possible to restore the stock to the level of abundance of the 1960's in little more than a decade.

My remarks related to fishing mortality should not be taken to absolve other agents of mortality as possibly contributing to the decline in the stock. Fishing mortality has a profound influence on the lifetime expected egg production of the average female entering the population, as illustrated by the figure in the attachment. The effect of a 50-percent reduction in survival of the larvae due to any cause is much less than a corresponding fishing mortality of 50 percent because the females spawn year after year, and a 50 percent reduction in year class strength from year to year aggregates over time.

Nonetheless, any systematic mortality of the young caused by agents such as contaminants will reduce the stock available to fishermen. As a consequence, it is important to determine if such mortality is actually occurring in the field as laboratory results seem to indicate. If they are causing mortality, then actions to eliminate the sources of contaminants would increase the number of striped bass that could be removed by fishermen without endangering the stock.

Based on the results of the studies performed to date and the current status of the stock, I believe that the fishing mortality should be minimized. At the very least, it should be reduced by half to establish a positive population growth, and the population should be carefully monitored to establish whether the management actions are having the desired effect.

This concludes my prepared statement. Thank you.

[Chart of Mr. Goodyear follows:]

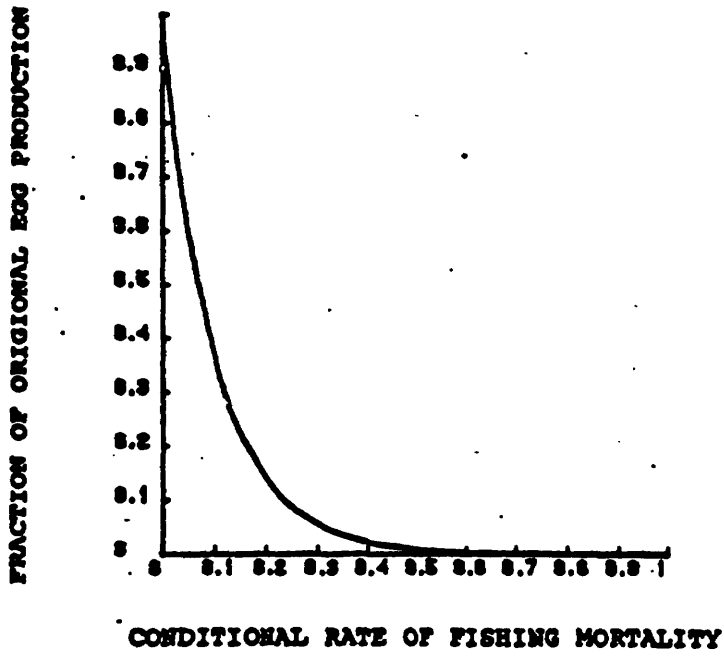

Figure 1. Effect of fishing mortality on the proportion of eggs produced by an average female striped bass during her lifetime relative to that she would have produced in the absence of fishing.

Mr. BREAUX. Thank you very much, members of the panel, for your presentation.

Let me start off. Mr. Colvin, you are speaking on behalf of New York as well as also representing the International Association. I know that New York apparently has decided in a major way to bite the bullet with regard to striped bass as far as implementing some changes to your State fishery laws to try to conform to the plan recommended by the Atlantic States Commission.

I also note that you are also saying at the same time that, "We in New York, yes, we have done it. Yes, we have put these restrictions on our people in the fishing industry, but, no, we don't want the Federal Government to come in and declare a moratorium or make the management decisions on these resident species."

Others have said, "Well, we're not going to do it until everybody does it. The only way we'll get everybody to do it is to get the Federal Government to tell everybody to do it, and thereby move into an area we haven't moved into before."

Can you tell the committee why New York's position, I think, is different in this area?

Mr. COLVIN. Mr. Chairman, I would like to make sure—while I do speak for the International today and I do represent the State of New York every day of the week, it is not with the official endorsement of the State of New York that I appear before the subcommittee, though I am happy to present a summary of my experiences.

Simply put, I think that what happened in New York is an example of the reason that the International and other organizations indicate that the system in place can work. The experience in New York suggested that the legislation that passed there last year was an extremely bitter pill for many users of striped bass in New York, but one that on balance, given the dialog that took place not just within the State political process, but also the influences on State political decisionmaking that came from without the State, that there can be success in implementing cooperatively with other States interjurisdictional management plans.

Mr. BREAUX. In New York, are you different with regard to how fishery management plans are handled on species that are within the State jurisdiction? How much discretion does your State director of wildlife and fishery resources have? Does the whole legislature of New York have to look at the plan and act on it? I know that seems to be the problem. I know it is a problem in Louisiana.

Mr. COLVIN. Yes, sir. In the marine fisheries of the State of New York, at the present time there is no executive regulatory authority. All management is taken by acts of the legislature.

However, the law that was passed last year on striped bass did delegate such authority to the department of environmental conservation, effective April of 1985. That is the first time such authority has been granted for marine fishery management in New York. It has been held for freshwater management for some time.

Mr. BREAUX. So the State commission has the authority to do this or it does not?

Mr. COLVIN. In a little over a year we will have for striped bass only.

Mr. BREAUX. Your State fisheries agency, what do you call it in New York? I'm sorry. Is it a commission?

Mr. COLVIN. It is a department of environmental conservation.

Mr. BREAUX. It is a Department of Environmental Conservation. In other words, they would be able to implement a striped bass plan within a year without having to go to the legislature for enactment of that plan?

Mr. COLVIN. That is right, Mr. Chairman. I should also point out that the authority to do so incorporates a provision that it be consistent with the objectives of the interstate management plan for the species in question.

Mr. BREAUX. On the other hand, on behalf of the International Association, you are saying, let's let the Atlantic States Marine Fisheries Commission do the job. They are in charge of managing a number of valuable coastal species. You mentioned surf clams and summer flounder and menhaden and herring and striped bass.

I also note that in each one of those I don't think we have ever implemented a plan. We got the plan, but we have never gotten a member of the commission of the States to implement those plans for those species. That is not a good track record.

Yet, I think you are telling us, on behalf of International Association, let the Atlantic Commisssion handle this. Every time they have tried to handle it so far, it has been—at least in these species—of no success.

Mr. COLVIN. Mr. Chairman, I wouldn't characterize the experience as no success. In fact, I think that the rate of success of State-by-State implementation of the management plans is increasing. There was a presentation by the staff of the commission at last fall's annual meeting that clearly indicated that, and they may well so testify later today.

I think, also, that our experiences with striped bass will underscore the need for continuation of these successes. Clearly, the interest of this subcommittee and of Congress and of the National Marine Fisheries Service and the U.S. Fish and Wildlife Service who both fund our activities and work with us in implementing them is strongly felt back home. I can guarantee that in New York.

I would also say that, with specific reference to this program, the Interstate Fisheries Management Program of the Commission is relatively new. Now it does, of course, build on an earlier predecessor that was around for some time, but with respect to the recent efforts of the Atlantic State Commission in the last few years, I think the types of plans we are writing and our experience with implementing are substantially improving.

I will underscore again, Mr. Chairman, that I think that the striped bass issue is going to enhance our improvement in all areas.

Mr. BREAUX. It is good to see you again, and thank you for your testimony. The two professional people, Dr. Boreman and Dr. Goodyear, we thank you very much. Obviously, your work indicates that something very desperately needs to be done. You do not address the question of how it should be done, but you do make some recommendations.

I think the study is a good study. I think the money was wisely spent. You can be congratulated for your work.

Mrs. Schneider? Questions?

Mrs. SCHNEIDER. I would like to identify myself with your remarks addressed to Mr. Boreman.

I did find your study and also your testimony very enlightening. However, I do have some questions based on the status of production.

You mentioned that the Delaware River was once a major spawning area for striped bass and has suffered extremely poor production during the past several decades, eliminating this system as a major contributor to the coastal fishery.

Dr. BOREMAN. That's correct.

Mrs. SCHNEIDER. "The Chesapeake Bay has been the major source—and you use the word major once again—of the coastal migratory stock that ranges from North Carolina to Canada."

Now, as a scientist, does it not concern you to notice that we have already written off the Delaware River as a spawning site? How long do we wait before we next write off the Chesapeake Bay, and wait for these various individual plans to come into implementation?

Dr. BOREMAN. First, let me clarify my testimony. When I referred to the Delaware River as once a major spawning area, I was at that time—a relatively major area, along the same lines as the Hudson River, the Roanoke River, and the Chesapeake Bay. It was one of four major areas. This goes back to the early thirties, and so on.

Recently there has been essentially no evidence of production in Delaware Bay, so we can assume it is not contributing the way it used to.

How long can we wait until the Chesapeake Bay is in the same situation as the Delaware River? That is basically up to you folks and up to the managers, to decide, if they are willing to go that far in terms of the loss in economic activity and the importance of striped bass as a resource.

Mr. DYSON. Would the gentlelady yield just a minute?

Mrs. SCHNEIDER. Yes, I would be happy to yield.

Mr. DYSON. First of all, I think it has been made very clear by the chairman of the committee we are not the managers of state fisheries In fact, we shouldn't be.

You really did not actually tell us what the culprit was in the Delaware Bay—the Delaware River, the Delaware Bay, as opposed to the Chesapeake Bay. I think we all know what it is. The Delaware Bay is more heavily industrialized than our Chesapeake Bay region is. It has probably been overwhelmed more than the Chesapeake has with pollution.

Hopefully, we are turning that around in the Chesapeake Bay. If we get the money from the President, then that will make a difference.

But I don't think we have identified over-fishing as one of the culprits, also, have we?

Dr. BOREMAN. No; definitely not. I don't think we can identify it as a culprit. I think the substance of Dr. Goodyear's testimony and my testimony is that at the current population level that we have in the Chesapeake Bay, the effort that is going into fishing currently is inhibiting the Chesapeake stock from rebounding, from returning to its former higher level of abundance.

I don't think we implicate it in terms of causing the decline in production. From the data we have and the time series available to us, which are catch records and juvenile abundance indices, we cannot really separate out the cause. We cannot perform autopsies on the fish to figure out how they died. All we can say is it can be one or the other. The evidence is there that we cannot eliminate either of them as a cause, but we cannot point our finger to either of them, either, as the cause.

Mrs. SCHNEIDER. May I reclaim my time?

Mr. DYSON. Since they're talking about doing an autopsy on things——

Mrs. SCHNEIDER. That's why we should be very—even more—interested in the situation.

Dr. BOREMAN. Excuse me. I'm speaking as a scientist.

Mrs. SCHNEIDER. That's right. Also, as a consumer, I presume.

I would like to refer to your recommendations. You mentioned that fishing mortality should be minimized until production rises to an acceptable level. What is an acceptable level?

Dr. BOREMAN. Once again, I have to yield to the managers of the stock to tell the scientists what they consider an acceptable level. If they give us a level, say the level of the catch in 1960's and early seventies, then we can determine what level of production would be necessary to maintain that level of catch and still prevent the stock from being—possibly being—fished down again.

Mrs. SCHNEIDER. Well, your recommendation that we, the Members of Congress, make the determination as to what an acceptable level of fisheries—or what an acceptable level of production is—is essentially assuming that we are going to make this judgment based on the commercial and economic value of the fishing industry. Now certainly that is part of the reason that we are here today, but I would like to know from a biological point of view, and as one who is concerned about a species as it nears the point of diminishing returns, what would be an acceptable level for the striped bass to rise to in order to guarantee that that species will be around not only in the next 10 years, but maybe through the next several decades?

Dr. BOREMAN. If you are asking me to give you what I feel is a trigger mechanism, which I believe your question is leading toward, at what level can we fish this stock, what indications do we have that would tell us, OK, go out and start fishing again or increase your fishing activity. We have seen the oldest time series that we have, and the one that we can relate most easily to catch, is the Maryland juvenile index of abundance, their fall survey. We have that time series going back to 1954.

Remember in my testimony I said that the dominant year classes—that is the year classes that are above the average, and this is much above the average—the average was 8, and the dominant year classes have had indices on the order of 15, 20, to 30. So that's what I'm talking about by dominant year class.

They are important to the fishery in terms of sustaining the catch over a number of years and supporting the fishery when other year classes, due to survival conditions, or whatever, have been poor and they cannot attain the abundance of dominant year

classes. They are also important in terms of providing fish to the spawning stock.

In terms of a long-term, running average, my suggestion would be to look at the abundance index from the Maryland survey, which is our longest and we can relate that easiest to catch. Instead of picking an individual year and relating a trigger mechanism to a year, I would suggest using a series of years in terms of a running average, which would avoid the problem that would occur when all of a sudden you get a dominant year class, the fishery opens up again, and you have a possibility of fishing down that dominant year class and not gaining anything in terms of that year class' contribution to future spawning populations.

If you use a running average, the effects of one good year class coming along will be tempered by the surrounding year classes, so it would be more reflective of conditions in the bay.

My suggestion would be that a running average of either 3 to 5 years of the Maryland index should be above the long-term average for the years that you consider provided an adequate fishery for the entire Northeast coast.

Mrs. SCHNEIDER. Could you tell me where did you come up with the conclusion that there ought to be a 55-percent reduction? What is the scientific model that this recommendation is based upon?

Dr. BOREMAN. I will answer the first part of that question. I will let Dr. Goodyear respond to the second.

The scientists involved in the Emergency Striped Bass Study came up with our first recommendation, which was to reduce fishery mortality as much as possible, not to exclude consideration of a moratorium on the catch. What we were saying was, get the mortality due to fishing as close to zero as possible.

The Scientific and Statistical Committee of the Atlantic States Marine Fisheries Commission, which is responsible for preparing the draft of the management plan and making recommendations to the Striped Bass Board, sat in during our deliberations. We invited them to sit in and listen to our discussions, so they would have an idea of the basis of our recommendations.

After endorsing our recommendation, they went ahead to decide that a substantial reduction, as much as possible, in their eyes was a 50-percent reduction, meeting the fishermen essentially halfway.

What happened was that Dr. Goodyear then took that 50-percent reduction in fishing mortality and applied his mathematical model to it to see what that translates into in terms of increased egg production, and that that egg production is sufficiently above what is needed to have the stock produce enough eggs to replace itself.

Mrs. SCHNEIDER. Well, what considerations, then, led you to call for the 55, rather than the complete moratorium, a 55-percent reduction? Obviously, there were considerations of a total ban and discussions. Why didn't you opt for the total ban?

Dr. GOODYEAR. Could I address that?

Mrs. SCHNEIDER. Yes.

Dr. GOODYEAR. First of all, after listening to the results of the Emergency Striped Bass Study—the meeting that John was referring to—the S&S Committee representatives asked the question:

Would the present recommendations of the management plan provide sufficient increase in population to stabilize the declining stock and perhaps reverse it?

What we did at that point was to say:

Well, we haven't looked at that, but it is an estimate that can be made from existing models of data.

We did perform the analysis, and it turned out that it would take approximately a threefold increase in the average lifetime egg production of a female recruit to the population in order for her to produce enough eggs to replace herself in her generation.

It turned out, when we looked at the management regulations that were in place, we could only expect about a twofold increase in fecundity based on new regulations in the management plan at that time.

The twofold increase would not permit the stock to recover.

The question then turned to, well, can we call for a moratorium? Most of the States that were there thought a moratorium at that time—most representatives thought that a moratorium would probably be impractical.

They then asked the question, would a 50-percent decrease in mortality provide protection against a decline? We repeated the analysis, and it would provide some margin of growth.

Mrs. SCHNEIDER. Why did they think that the proposal was impractical? The representatives from the States, I guess, are members of the administrative agency in each of the States that is in charge of marine fisheries, a legislative member and a person appointed by the Governor. So we are talking about a rather political entity who found the proposal for a complete moratorium impractical. I would like to know why.

Dr. GOODYEAR. The people who are represented on the Scientific and Statistical Committee are professional biologists that deal with the people to whom you are referring.

Mrs. SCHNEIDER. OK.

Dr. GOODYEAR. I don't recall State by State—at that point, I believe Rhode Island already had implemented a moratorium. I don't recall all the discussions.

Mr. BREAUX. Let me see if I have any questions on this side.

Mr. Studds?

Mr. STUDDS. Very briefly.

I would like to ask the two scientists, Dr. Boreman and Dr. Goodyear, I guess, a variation of the theme that is being pursued by the gentlelady from Rhode Island.

If, magically, every one of the affected coastal States were to adopt all of the recommendations of the commission, including the 55-percent reduction in effort, in your judgment, you have the luxury of saying, "The hell with politics"—scientifically, would the problem have been responsibly dealt with or not?

Dr. BOREMAN. My answer would be yes.

Dr. GOODYEAR. I would have to agree with that. One could achieve a faster rate of recovery in stocks by reducing fishing mortality more, but I think with the current estimates of the doubling of the population growth rate, it would have been dealt with responsibly.

Mr. STUDDS. I appreciate that.

Just while we have the scientists here, something I have always wondered about: the Hudson River stock, as opposed to the Chesa-

peake Bay stock, I gather from skimming a number of pieces of testimony here that it appears to be in relatively good shape, the Hudson River; is that correct?

Dr. BOREMAN. Let me give you a frame of reference. Our data base that you see in figure 1 of my testimony for production indexes in the Hudson only goes back to 1969. Therefore, in terms of what has happened since 1969, we have not seen the decline in production that we have seen in the Chesapeake.

Now whether the level that we are seeing in the Hudson is at, below, or above what was achieved historically, we don't know. I suspect it is probably at the level that we have seen on a historical basis.

Mr. STUDDS. Are those Hudson fish still with relatively high levels of PCB's?

Dr. BOREMAN. I think Gordon can best answer that.

Mr. COLVIN. The PCB level, the average PCB level, in the Hudson River fish in our samples for 1983 was below the five part per million FDA standard, but just below it. When we started aggregating data and looking at what frequency individual fish or composite fish samples exceeded the five parts per million standard, it was decided that those frequencies were too great to warrant an opening of the commercial fishery, so we have left it closed for the time being, but the trend is down.

Mr. STUDDS. I understand.

Finally, Mr. Pond, I want to thank you for the gift of those striped bass lures you made me a great many years ago. I have some bad news for you—they are bluefish lures. They are not——

[Laughter.]

Mr. POND. Oh. I must say thank God for the bluefish. They have kept us alive. They have supported us.

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. BREAUX. Mr. Dyson, do you have some questions?

Mr. DYSON. No, Mr. Chairman.

Mr. BREAUX. If not, we thank the panel. This panel will be excused, and we will take the next group as soon as we return from catching this vote on the floor.

The committee will be in recess.

[Recess.]

Mr. BREAUX. The subcommittee would please come to order.

What we would like to do, because of the lateness of the hour, is to try to combine our two remaining panels. Everybody will have the same amount of time. We just will have everybody together, so that we can ask questions.

If you would begin, Mr. Salia, we would be pleased to have your testimony, sir.

STATEMENT OF SAUL B. SAILA, CHIEF SCIENTIST, DIVISION OF MARINE RESOURCES, UNIVERSITY OF RHODE ISLAND

Mr. SAILA. Thank you very much, Mr. Chairman and members of the subcommittee.

It was my intention, first, to briefly review some of the recommendations of the emergency striped bass study, but this has been done adequately.

I would merely like to state that I find the summary findings of the emergency striped bass study as being factual and objective, and from these I think we can all conclude that the striped bass are, indeed, undergoing a serious decline in abundance.

The first version of the recommendation of the study report states, and I quote:

> Impose a substantial reduction in fishing mortality from the present level, not to exclude consideration of a total moratorium, until evidence indicates recovery of the coastal stock to an acceptable level of production.

The striped bass fishery has had a history of periods of high and low abundances, at least since the late 1880's. That is, the fishery has been characterized by the appearance of infrequent—that is, rare—dominant year classes, which support the entire fishery for variable lengths of time, depending on the relative year class strength, fishing mortality, and the appearance of additional moderately strong year classes during the life of the dominant year class.

Is there a real difference between the present period of low striped bass stock abundance and other periods of low abundance which makes this one of special concern? It is my judgment and professional opinion that our concern at present should be greater than it has been in the past for reasons which follow.

First, in addition to the possibility of additional chemical contaminant-induced mortality and possible degradation of the spawning habitat, there may also be significant increases in fishing mortality induced by sport fishing, as well as by some forms of commercial fishing.

Beyond the continuing increase in the number of sport fishermen fishing for striped bass, I think there is reason to believe that their efficiency has been substantially enhanced by recent technological developments, such as better boats equipped with small depth sounders and navigational gear, in addition to fishing gear improvements. There are technological improvements in commercial fishing gear, such as monofilament nylon gill nets, which have also significantly improved the catching efficiency of these forms of gear.

Fishing effort, and relatively efficient effort, has remained high in spite of the poor recruitment in the fishery.

In short, the striped bass is now believed to be subject to more fishing mortality than in any previous decline, as well as being subject to possible additional environmental contaminants.

The report of the emergency striped bass study indicates that recruitment over-fishing is presently occurring in the Atlantic coastal striped bass fishery. Recruitment fishing, as you recall, occurs when the strength of the year class produced falls below the recruitment occurring when the adult stocks are higher in abundance.

Because a natural event or events causing recruitment failure establish the same symptoms, recruitment failure due to fishing is very hard to establish. However, there are several exploited fisheries which have collapsed, probably due to over-fishing. These include the Downs herring, Norwegian herring, Japanese sardine, Georges Bank haddock, and Hokkaido herring, for example. In all

these cases exploitation was high enough before the collapse to cause substantial declines in the adult stocks.

It is my opinion that the Atlantic striped bass is in a more serious state of decline at present than it has been in the past for the reasons I stated above.

The Atlantic States Marine Fisheries Commission has adopted an interstate fisheries management plan for striped bass, I believe, in October of 1981. Presently, 12 States and two Federal agencies are involved with attempting to manage the species. Because of a lack of general compliance with this management plan and continuing poor recruitment, the Striped Bass Management Board of the Atlantic States Marine Fisheries Commission has recently recommended additional restrictions, which you have heard about. These additional restrictions have not been completely implemented by the States involved to date.

In view of the lack of complete implementation of the management recommendations, it seems to me the most reasonable and effective course of action to maximize the probability of recovery of the coastal stocks is to declare a temporary coastal moratorium on the striped bass fishery. However, I do not believe that the moratorium alone will be effective in the long term.

Any strong year class which may be produced will have a high probability of being rapidly depleted again by growth overfishing of subadult fish in some areas and by rapid overexploitation of the larger fish in others areas, if present management practices persist.

I, therefore, strongly recommend that during the period of the proposed moratorium an effective Federal-State management policy and plan be developed and implemented. This plan is perceived as defining and implementing coastal policy decisions in striped bass management where policy outcomes affect the productivity of the resource, as well as the subsequent well-being of commercial fishermen, sport fishermen, charter boat operators, and others in the various States where coastal fishing takes place.

Under this plan, the States would be allowed a limited amount of flexibility in management, but would be obliged to conform to the regionally developed policies and plans under Federal supervision. This coastal striped bass management policy is suggested as being formulated in a multiattribute utility analysis framework. That is a multiobjective policy framework. The value of the policy would be evident by quantifying the objectives of both the decisionmakers and by isolating major objectives and conflicts, the tradeoffs, and the needed empirical information.

Because the striped bass fishery generally consists of only occasional strong year classes, it seems terribly important to recognize this, and to suggest long-term management strategies that will not lead to rapid depletion of the stocks.

Thank you.

[Statement of Saul B. Saila follows:]

STATEMENT OF SAUL B. SAILA, GRADUATE SCHOOL OF OCEANOGRAPHY, UNIVERSITY OF RHODE ISLAND

It is my understanding that a report on the Emergency Striped Bass Study has recently been presented to Congress. For background, I will briefly summarize some

of the major findings from this study. With respect to production the following points were made: (1) Production indices for striped bass in Chesapeake Bay, the Delaware River and the Roanoke River are currently at extremely low levels; (2) Dominant year-classes of striped bass have not been produced in the Chesapeake since 1970 nor in the Roanoke River/Albermarle Sound region since the mid-1970's; (3) the Maryland spawning population currently lacks representation in the age groups that have historically contributed the majority of egg production. Contribution of the majority of females is still being made by the 1970 and older year classes. With respect to the status of the fisheries, the report concludes that: (1) Recreational and commercial landings of coastal striped bass have declined steadily in recent years, with the greatest declines south of New Jersey; (2) Several commercial fishing operations have ceased due to striped bass scarcity; (3) The number of year classes making a significant contribution of the fisheries has been reduced due to poor production and lack of dominant year classes. I believe the summary findings of the Emergency Striped Bass Study are factual and objective, and I conclude from these studies that the striped bass are undergoing a serious decline in abundance.

The first recommendation of the draft version of the Study report states: "Impose a substantial reduction in fishing mortality from the present level, not to exclude consideration of a total moratorium, until evidence indicates recovery of the coastal stock to an acceptable level of production."

Management of the striped bass on the Atlantic Coast is complicated by its migratory habit and division into distinct stocks. Differences between the Hudson River stock and the Chesapeake region are generally recognized. However, there may be some differences even within the Chesapeake Bay region as well, but these are less well understood.

The striped bass fishery has had periods of high and low abundances since at least the late 1800's. That is, the fishery has been characterized by the appearance of infrequent dominant year classes, which support the entire fishery for variable lengths of time, depending on relative year-class strength, fishing mortality, and the appearance of additional moderately strong year classes during the life of the dominant year class.

Is there a difference between the present period of low striped bass stock abundance and other periods of low abundance which makes this one of special concern? It is my judgement that our present concern should be greater than it has been in the past for reasons which follow. In addition to the possibility of additional chemical contaminant induced mortality and possible degradation of the spawning habitat, there may also be significant increases in fishing mortality induced by sport fishing, as well as some forms of commercial fishing. Beyond the continuing increase in the number of sport fishermen fishing for striped bass, I believe their catching efficiency has been enhanced by recent technological developments, such as better boats equipped with small depth sounders and navigational gear, in addition to gear improvements. Technological improvements in commercial gear (such as monofilament nylon gill nets) have also improved the efficiency of certain forms of commercial gear. Fishing effort (and relatively efficient effort) has remained high in spite of the poor recruitment in the fishery. In short, the striped bass is now believed to be subject to more fishing mortality than in any previous decline, as well as being subject to additional environmental contaminants.

The report of the Emergency Striped Bass Study indicates that recruitment overfishing is presently occurring in the Atlantic coastal striped bass fishery. Recruitment fishing occurs when the strength of a year class produced falls well below the recruitment occurring when the adult stocks are higher in abundance. Because a natural event or events causing recruitment failure establish the same symptoms, recruitment failure due to fishing is hard to establish. However, in some exploited fisheries which have collapsed (the Downs herring, Norwegian herring, Japanese sardine, Georges Bank haddock and Hokkaido herring are examples), exploitation was high enough before the collapse to cause substantial declines in the adult stocks.

It is my opinion that the Atlantic striped bass is in a more serious state of decline at present than it has been in the past for reasons stated above.

The Atlantic States Marine Fisheries Commission (ASMFC) has adopted an Interstate Fisheries Management Plan for striped bass in October, 1981. Presently, twelve states and two federal agencies are involved with attempting to manage the species. Because of lack of general compliance with this management plan and continuing poor recruitment, the Striped Bass Management Board of the ASMFC has recently recommended additional restrictions. These additional restrictions have not been completely implemented by the states involved.

In view of the lack of complete implementation of the management recommendations, it seems to me the most reasonable and effective course of action to maximize the probability of recovery of the coastal stocks is to declare a temporary coastal moratorium on the striped bass fishery. However, I do not believe that the moratorium alone will be effective in the long term. Any strong year class which may be produced will have a high probability of being rapidly depleted by growth overfishing of sub-adult fish in some areas and by rapid overexploitation of the larger fish in others under present management practices. I, therefore, strongly recommend that during the period of the proposed moratorium an effective Federal-State Management Policy and Plan be developed and implemented. This plan is perceived as defining and implementing coastal policy decisions in striped bass management where policy outcomes affect the productivity of the striped bass resource, as well as the subsequent well-being of commercial fishermen, sport fishermen, charter boat operators, and others in the various states where coastal fishing takes place. The states would be allowed only a limited amount of flexibility in management and would be obligated to conform to the regionally-developed policies and plans under federal supervision. The coastal striped bass management policy is suggested as being formulated in a multiattribute utility analysis framework. The value of the policy would be evident by quantifying the objectives of the decisionmakers, and by isolating major objectives and conflicts, trade-offs and needed empirical information.

Because the striped bass fishery generally consists of only occasional strong year classes, it seems important to recognize this, and to suggest management strategies that will not lead to rapid depletion of stock.

Mr. BREAUX. Thank you very much.

Next we will hear from Gil Radonski.

Let me ask, if I may, the witnesses please, to the extent that you can without detracting from your testimony, please try to summarize it, so that we can proceed to the questions.

Gil, welcome back to the committee.

STATEMENT OF GIL RADONSKI, PRESIDENT, SPORT FISHING INSTITUTE

Mr. RADONSKI. Thank you for this opportunity to appear before this subcommittee, Mr. Chairman.

I will briefly summarize my remarks.

Many of the points that were brought up today remind me of a fishery that was in the same condition as the striped bass is along the eastern seaboard. It was the Lake Erie walleye fishery. That fishery was declining because of overfishing, and a tremendous environmental perturbation of expansive pollution was facing the fishery. It was only through a Federal action stopping the sale of the fish, principally walleye, from Lake Erie that permitted that fishery to rebound, and, without further commercial exploitation, it now represents one of the greatest sport fisheries in the world.

Today we heard much about the regulations for striped bass and which would be the most effective. Last Saturday—March 17, 1984—Dr. Tory Brown of the State of Maryland told a Virginia sport fishermen's forum that the best regulation that could be imposed to protect the striped bass would be an 18-inch minimum size limit in inland waters and 24-inch size limit in ocean waters. Asked why this was not going to happen, it became obvious that if there was an 18-inch size limit in inland waters, namely, the Chesapeake Bay, that there would be no Maryland commercial fishery for striped bass. Why? Because when the fish reach 18 inches, they move out of the bay. An 18-inch minimum size would virtually stop the commercial striper fishery on Chesapeake Bay.

If there was an 18-inch size limit inland and 24-inch ocean imposed from North Carolina to Maine we would be asking Maryland

to bite the bullet hardest of all. The stocks would be replenished only at Maryland's expense, as opposed to a harvest moratorium which would spread the pain over a broader segment of society.

The present size limits that are talked about, 14 and 16 inches, will be ineffective. All they will do is delay the time when those same fish are harvested, a very short period of time. They are ineffective.

From testimony presented this afternoon, it sounded as though the States were marching toward the unified position. I think if you would have asked the gentleman from New York, you would have found that there has been legislation introduced in the New York Legislature to weaken their very strong position. A position which you lauded very highly, Mr. Chairman.

How are we going to arrive at getting the States to take a firm position? I don't have the answer to that. Mr. Studds tried a while back with the anadromous fish grants to the States, tying the grants to the States to complying with the Atlantic States Marine Fisheries Commission's striped bass plan. Unfortunately, Mr. Studd's effort got watered down and did not achieve the desired results. However, I think it was a very laudable effort in providing a carrot. I think that is what we are eventually going to have to do.

Probably the most compelling question that was brought up today was brought up by Mr. Breaux, and that is the one he repeatedly asked everybody: why should we have a Federal intervention in something that the States won't do, or I guess he was also saying, in essence, that the Feds don't have a right to do it.

I think the answer is in Michael Dean's book, "The Evolution of Wildlife Law," I would like to quote a passage from it. He says:

> It is clear that the Constitution—

He is talking about the United States Constitution—

> In its treaty, property, and commerce clauses contains ample support for the development of a comprehensive body of Federal wildlife law, and that, to the extent such law conflicts with State law, it takes precedence over the latter. That narrow conclusion, however, does not automatically divest the States of any role in the regulation of wildlife or imply any preference for a particular allocation of responsibility between the States and the Federal Government.

I think the Atlantic striped bass situation can benefit from the application of Mr. Dean's analysis. The Federal Government does have an obligation to participate in the conservation and management of migratory fish stocks, but not to the exclusion of the States. A sound fishery management plan for striped bass must be developed in consultation with the States. Until that plan is framed and implemented, there must be a moratorium on all harvest of the Atlantic coast striped bass.

Therefore, the Sport Fishing Institute supports an immediate federally legislated moratorium on the harvest of Atlantic coast striped bass. A moratorium such as embodied in H.R. 4884 would provide an essential safety net over a crucial period during which the appropratie management agencies can prepare and implement an effective conservation program for the Atlantic stocks of striped bass and the enormous interstate commercial which is supported by these species.

Thank you, Mr. Chairman.

[Statement of Gil Radonski follows:]

STATEMENT OF GILBERT C. RADONSKI, ON BEHALF OF THE SPORT FISHING INSTITUTE

Thank you, Mr. Chairman, on behalf of the Sport Fishing Institute (SFI) for the opportunity to appear before you and the other members of the Subcommittee considering H.R. 5074 to authorize appropriations to carry out Section 7 of the Anadromous Fish Conservation Act during fiscal year 1985, and H.R. 4884 to impose a moratorium on fishing for Atlantic striped bass. I am Gilbert C. Radonski, the Institute's President. The Institute is a nonprofit, tax-exempt, broadly-based conservation organization, staffed entirely by fisheries scientists, devoted to the protection, enhancement, and wise utilization of America's freshwater and marine aquatic resources. Our principal objective, by means of ecological research, conservation education and professional service, is to help develop and promote optimum opportunity for Americans to engage in healthful and rewarding recreational fishing. Our financial support comes from a broad range of manufacturers of fishing equipment and accessories and from many anglers and other concerned citizens.

Mr. Chairman, spawning stocks of striped bass in Chesapeake Bay and its tributaries historically have been the mainstay of valuable recreational and commercial fisheries in both Maryland and Virginia within the Chesapeake Bay as well as contributing substantially to fisheries along the Atlantic coast from North Carolina to Maine. The recently concluded three-year study on the economic value and impact of the recreational and commercial striped bass fisheries along the east coast from North Carolina to Maine documented total net economic benefits from reported 1980 striped bass landings of about $12 million, of which 75 percent was associated with recreational harvest and 25 percent from the commercial harvest. As the striped bass stocks migrate along the east coast states they help support a wide range of commercial enterprises established to provide the goods and services demanded by recreational striped bass fishermen. The 1980 commercial and recreational striped bass fisheries resulted in $90 million in direct expenditures. These direct expenditures generated a total direct and indirect contribution of $200 million in economic output and employment of over 5,600 people. Mr. Chairman, it is abundantly clear that the Atlantic coast stocks of striped bass have historically contributed to the welfare of interstate commerce along the Atlantic coast. The 1980 fishery was supported by declining striped bass stocks (less than half their former abundance) and since the 1980 survey, the striped bass fishery has continued its precipitous decline. It is imperative that for the welfare of interstate commerce this decline be reversed and the stocks restored.

There appears to be little question that striped bass reproduction and associated year class strength has been reduced in recent years. Surveys of striped bass spawning success in Chesapeake Bay tributaries conducted annually since 1954 by the Maryland Department of Natural Resources indicate that striped bass year class strength over the past ten years (1974-1983) has averaged less than half the average over the previous 20 years (1954-1973). Indices of striped bass year class strength [Juvenile Index (JI)] determined from these annual surveys averaged 5.2 over the past ten years as compared to 11.1 in the previous period.

Various reasons for the observed decline in Chesapeake Bay stocks have been suggested, including overharvest (both recreational and commercial), increased pollution loads within the Chesapeake Bay and major tributaries, and certain weather-associated environmental factors affecting striped bass spawning success and subsequent year class strength.

The possible role of contaminant related mortality on the population dynamics of striped bass remains a subject of great contention. There is groundswell of scientific and political support to address forthrightly the pollution problems of the Chesapeake Bay. However, a program to implement contaminant reduction will take a considerable length of time. It is crucially important that actions be taken immediately to protect the remnant brood stocks of striped bass during the period of continuing examination and correction of the Bay's pollution questions.

Individual states have been unable to develop appropriate management strategies for the protection and restoration of striped bass stocks due in no small measure to the highly migratory habits of striped bass and the lack of adequate harvest and fishery population information. The data gap can be addressed by the states only with adequate funding. Marine angling licensing would provide a dedicated, dependable source of funding that would allow the states to acquire information upon which to develop appropriate management strategies. In the continuing absence of such state programs, the Institute supports the continuation of the National Marine Fisheries Service's (NMFS) involvement in a (cooperative) systematic data collection

program of suficient detail and sophistication to enable responsible fisheries managers to develop flexible harvest quotas which will permit protection and restoration of the Chesapeake Bay, and Atlantic coast striped bass resource.

It is absolutely essential that the appropriate federal agencies continue their involvement in concert with affected state agencies to develop answers to the many questions necessary to achieve appropriate management strategies for the conservation of the Atlantic coast population of striped bass. For this reason, Section 7 of the Anadromous Fish Conservation Act should be funded for FY 1985 as outlined in H.R. 5074. Continuation of the emergency striped bass studies should focus on the dynamics of the striped bass populations with the objective of determining a realistic optimum sustained yield. Population dynamics, socioeconomic and catch and participation statistical data are absolutely essential in order to develop the appropriate management protocol which will allow the restoration of the striped bass stocks.

Without question, overharvest of striped bass stocks is a major causal agent for the observed population crash in the Chesapeake Bay. This overharvest is reflected in the average size of stripers taken. That is, the relative yield to the commercial fishery provided from a given striped bass year class appears to be far lower since 1970 than in previous years. For example, the pounds of fish harvested for each unit of the JI (assessment of relative year class strength) averaged 427,000 pounds in the initial 1954-1957 period. Similarly derived average yield values from year class strength assessments in subsequent four year periods amounted to an average of 342,000 pounds from 1962-1965, 350,000 pounds from 1966-1969, before dropping precipitously to 156,000 pounds in 1970-1973, and 172,000 pounds for the 1974-1977 year classes.

This declining yield pattern suggests that the current exploitation rate of striped bass stocks is far too high, particularly for younger age groups, to realize maximum and/or optimum yield from the resource regardless of year class strength. It seems evident that the total fishing mortality, both recreational and commercial, of the younger age groups has increased substantially over time. This, of course, has reduced the availability of older, larger fish which in turn has, and will continue, to depress total yields far below potential levels.

The current depressed condition of striped bass stocks in Chesapeake Bay clearly has been fostered by past *laissez-faire* management regimens. It appears obvious that the relatively innocuous harvest restrictions in force during past years have not been adequate to cope with the tremendous increase in effective fishing pressure generated by the use of sophisticated modern fishing gear by both recreational and commercial fishermen. Without a substantial reduction of the present rate of exploitation, supplemental stocking of fingerling striped bass, and/or fortuitous occurrence of another dominant striped bass year class, can be expected to provide only temporary, palliative relief.

Harvest regulations currently enforced by state jurisdictions north of Delaware Bay appear to be generally in harmony with or in some instances, more restrictive than the regulations recommended in the Fisheries Management Report No. 1 of the Atlantic States Marine Fisheries Commission (ASMFC)—Interstate Fisheries Management Plan for the Striped Bass. Deplorably, neither Delaware nor North Carolina has taken any recent action to adjust currently outmoded regulations to conform with the minimum recommendations contained in the Interstate Fisheries Management Plan as proposed by the Atlantic States Marine Fisheries Commission.

Although representing a marked improvement over previous statutes, regulations curently in force in the states of Maryland and Virginia fall far short of satisfying striped bass resource management needs. The 14 inch minimum length limit (total length) regulation recently adopted for both the Maryland and Virginia waters of Chesapeake Bay fails to offer the necessary degree of protection required to adequately rehabilitate the currently decimated striped bass population. Assuming continuation of current growth patterns, striped bass reach 12 inches late in their second year or early in their third year and attain 14 inches by the middle of their third year. Thus, at best, the 14 inch minimum size regulation will offer only a few months additional protection over the previously enforced 12 inch minimum size limit and can be expected to effect only a minor reduction in the total harvest. As a minimum measure to meet the current emergency situtaion, striped bass should be protected for *at least three* full years before being subjected to exploitation. A larger minimum length limit would, of course, be preferable; as would a temporary moratorium on all striped bass harvested.

The immediate enactment and vigorous enforcement of stringent harvest restrictions applicable to Chesapeake Bay and coastal waters along the Atlantic Ocean is critically important to assure the continued availability of this valuable resource for future generations. Therefore, the Sport Fishing Institute supports an immediate

federally legislated moratorium on the harvest of Atlantic coast striped bass. A moratorium such as embodied in H.R. 4884 would provide an essential safety net over crucial period during which the state management agencies, individually and collectively through the ASMFC, can prepare and implement an effective conservation program for the Atlantic stocks of striped bass and the enormous interstate commerce which is supported by the species. Mr. Chairman, time is running out for Atlantic coast striped bass. We urge your Subcommittee to favorably report H.R. 5074 and H.R. 4884 and stop the race for who will catch the last Atlantic coast striped bass.

Mr. BREAUX. Thank you, Mr. Radonski.

Next we have Mr. Richard Russell, president of Striped Bass Emergency Council.

Mr. Russell.

STATEMENT OF RICHARD RUSSELL, PRESIDENT, STRIPED BASS EMERGENCY COUNCIL

Mr. RUSSELL. Thank you, Mr. Chairman.

I am here today to tell you why I am convinced that a Federal moratorium is absolutely necessary for the survival of the striped bass.

In my testimony I summarize the history of the striped bass and what it has meant to our country. Not too long ago I formed the Striped Bass Emergency Council after several years of investigating the causes of the bass' rapid disappearance and what might be done about it, and I firmly believe that a Federal moratorium on possession of the bass is the one and only hope for this fish.

I would like to quote briefly from a man named Mr. Joe Boone, who is a leading biologist with the Maryland Tidewater Administration and has been conducting the annual young of the year surveys on the Chesapeake Bay for the past 30 years. Last month he wrote about State management:

> Unbelievably, the immensely valuable striped bass falls through a gaping rend in the wildlife management scheme. Though a highly migratory species, it is not under Federal jurisdiction. Though not the resource of a particular State, each State establishes harvest regulations within its boundaries. Consequently, each State warily eyes the catch elsewhere, intent on getting a "fair share" of the booty. Naturally, self-interest and politics permeate every phase of harvest deliberations. Management becomes cumbersome, chaotic, and exasperatingly slow, even in times of perceived emergency. What is every State's responsibility is no one's responsibility * * *

That is from Mr. Boone, a biologist for Maryland Tidewater.

I believe from my own personal experience over the past 3 years that the States' management record shows that there now exists an absolute necessity to break with precedent. It is time for Congress to take responsibility when the national interest is more important than traditional management.

Since the October 1981 call for State-by-State implementation of the striped bass management program, many commercial interests have opposed raising size limits on their catch. In turn, the majority of the Coastal States have been dragging their feet on putting in place voluntary regulations under this plan.

By January 1983, 1½ after this plan was called for, only three—only three—of the Coastal States had implemented the plan. This situation finally began changing last year as the emergency situation became more apparent and severe. But it came too late to pro-

tect the 1978 year class, the only near average hatch of striped bass over the past 10 years.

According to the scientists, these 1978 fish have been largely fished out because the States failed to implement this management plan in time.

Today North Carolina and Delaware still have not put the original management plan into effect. Now, as of this past December, each State must now reduce fishing effort by 55 percent above and beyond the minimum size limits of the original plan. How to achieve this reduction was, unfortunately, left to the individual States, with a scientific review scheduled for April.

But even if these new proposals are approved next month, there is no guarantee that the various State legislatures and fisheries councils will put them into effect. In fact, based on remarks made at this December meeting of the Atlantic States Marine Fisheries Commission, I think it is highly unlikely.

New York's fisheries manager said that, because of last year's battle in the State legislature there over the 24-inch limit, it is impossible to expect the passage of any additional restrictions in 1984.

North Carolina's management spokesman stated, "I can't promise anything. I've got political realities at home."

Does this sound promising to you?

Now Maryland officials have come up with a program which reduces fishing effort by only 20 percent in 1984, and even those small added restrictions were stopped by a court injunction 2 weeks ago.

Last fall, Maryland officials went on record saying that a Chesapeake Bay moratorium would probably be imposed if the 1983 reproductive survey was again at a critical level. It was, and yet no such moratorium was considered.

Rhode Island, with a 3-year moratorium currently in effect, may reverse this decision and go all the way back to an 18-inch minimum size limit.

Regulation at the State level, gentlemen, has proven to be unworkable. It is a case of too little too late, a hodge-podge of conflicting approaches which are a nightmare to administer.

The primary opponents, let's face it, of more stringent regulations are commercial fishermen. Many of them say that a moratorium on striped bass would put them out of business, but without a moratorium they will all soon be out of the bass business forever.

There remain many other species of fish available in far greater abundance than striped bass, but the truth of it is that the noble striped bass has become a money fish. There are fewer fish, the demand is greater, the price goes up, and so the fishing pressure increases. This has brought thousands of so-called sports fishermen into the marketplace. Over 80 percent of sports fishermen sell their catch. And for the consumer, the bass has become a luxury item.

The Maryland Department of Natural Resources reports that 800 tons of bass were landed there in 1981. Only two people—two people—accounted for at least 80 tons. Several of these net fishermen are grossing more than $100,000 in annual income from the depleted striped bass fishery.

But in the larger picture, if we look at the overall economy, in 1980 there were 7,000 lost jobs and $220 million in lost economic

activity because of the decline of striped bass since 1974. Most of this occurred because thousands of recreational fishermen are no longer going fishing for striped bass.

Sports fishermen who once caught five in a day are lucky to see five over the course of an entire summer. I know this is true. I fish with these men.

Recently, I have spoken to and received letters from dozens of them, and they all seek this Federal moratorium for the sake of the future.

I won't talk about hatcheries or the Hudson River situation. That is in my testimony. However, I would like to conclude by saying that this is an 11th hour situation. There is simply no time to lose.

The inconsistency of management, however well intentioned, at the State level cannot be allowed to continue. A moratorium tied to the annual reproductive index in the Chesapeake Bay is the only equitable answer. It should remain in place for a minimum of 3 to 5 years.

Last week I got a letter from a young man named Gary Mergl, who lives in New York and who is offering his help in seeking this moratorium. He wrote me:

> If people lose jobs or livelihoods, tough. My father is out of work for 3 years because of automation and progress, and no one feels sorry for him. It should be a privilege to be able to fish for striped bass and, if people weren't so greedy, we'd have fewer problems. I guess what I suggest is a bit idealistic, especially when politics and man's greed—for money or fish—enter the picture. But something positive must be able to be done to help the bass.

So, from this young man and from myself, this is a plea. It is a plea to the Congress to rise above considerations of sheer economics and traditional management. This is not an issue of States' rights, or even of the rights of man, because I believe that the striped bass is intrinsically linked to the spirit that created this country, and that it cannot be allowed to disappear.

I treasure my experiences in seeing, pursuing, catching, and holding striped bass. I want my children, and your children, to have the same opportunity. We need it, because this fish has a soul, and because to know the meaning of the striped bass is an experience of the soul, and in the mysterious exchange between fish and man that sheds light upon that universal place inside of us, we become more deeply connected to the meaning of life itself.

I would close by quoting the words of Mr. John Cole, author of this book, "Striper," which inspired the Federal emergency striped bass study in 1979. In a recent newspaper column, Mr. Cole wrote:

> I am shattered when I ponder the dark forces it has taken to smother the striper's fires, to end the survival of this most determined survivor. What is the message for me, for all of us, who know the creature's courage, its bravery, its strength? If this fish vanishes, how much time will be left to all of us who extol it?

Thank you.

[Statement of Richard Russell follows:]

STATEMENT OF RICHARD RUSSELL, PRESIDENT, STRIPED BASS EMERGENCY COUNCIL

Not long ago, a spokesman for the National Wildlife Federation referred to the striped bass as "the aquatic equivalent of the American bald eagle." Indeed, of all the inhabitants of the invisible world along our coast, the striped bass can best lay claim to the title of America's National Fish. Exploring the Atlantic coastline in

1614, Captain John Smith wrote in his journal: "The Basse is an excellent fish. . . . I myself at the turning of the tyde have seen such multitudes that it seemed to me that one might go over their backs drisho'd." The Indians of early colonial times, Roger Williams tells us, knew the bass as "Great Fish." It was they who informed the Pilgrims, and without the striped bass the founders of our country would probably not have survived those first difficult winters off Cape Cod. In 1639 New England colonists passed a law banning the use of striped bass for fertilizer—the first conservation statute enacted in this country. Later, funds from the sale of striped bass were used to build the nation's first public schools. In 1776, the legislatures of New York and Massachusetts took time out from raising armies for George Washington to enact a ban on wintertime commercial fishing for striped bass—our first fisheries management program. And shortly after the Civil War, the bass became our most prized sportsfish, eventually inspiring Presidents Theodore Roosevelt and William Howard Taft to spend vacations on the "bass stands" at the famed Cuttyhunk Striper Club.

To thousands of fishermen throughout our nearly 400-year history, there has always been a special aura about this particular fish. Unlike other prized species, such as the Atlantic Salmon and Bluefin Tuna, striped bass fishing has never been confined to the purview of the wealthy. It is truly the peoples' fish, a wise and crafty creature which may live as long as 30 years and often reach a size exceeding 50 pounds, difficult to capture and a delicate honor to enjoy at a dinner table. Today, however, the "multitudes" of which John Smith spoke no longer exist on this planet. I have witnessed firsthand the depletion of the once-abundant striped bass population, as a summer fisherman on the island of Martha's Vineyard for the past ten years. By trade I am a journalist, a former staff member with Sports Illustrated and TV Guide Magazines. Today I free-lance for a wide variety of national publications, specializing in environmental concerns and specifically the problems involved in managing our nation's vital fisheries resources. Over the past two years, I have written more than a dozen major articles about the decline of the striped bass.

It was my deep and abiding feeling for this unique and magnificent creature which inspired me two years ago to begin delving into the reasons for its rapid disappearance, and what might be done about it. I began by mounting a campaign, along with other concerned fishermen, for implementation of the State/Federal Striped Bass Management Plan in my home state of Massachusetts and in the neighboring state of Rhode Island. It was my hope that raising the minimum size limit allowed on striped bass, as specified in this plan, would be enough to remedy the situation. Unfortunately, this has not proven to be the case. It is now the unanimous opinion of fisheries scientists and coastal managers that we are facing an emergency situation. Last December I organized a conference about this in Washington, which brought together 75 citizens from all along the coast to discuss how we might work to avert impending disaster for the bass. Since that time, I have formed a Striped Bass Emergency Council under the umbrella of the National Coalition for Marine Conservation, to serve as a coastal coordinating group in this struggle to preserve the striped bass for future generations. The great majority of my time is now devoted to this effort, and I firmly believe that a Federal moratorium on the possession of striped bass is the only hope for this fish.

I am not a scientist, and I do not want to belabor the facts outlined today by the experts in marine biology. It is clear that the natural cycle of the striped bass, which historically produced at least one abundant hatch every six years, has not existed since 1970. Reproduction and coastal landings are at an all-time low, and the scientists now inform us that "the coastal migratory stock cannot continue to support the level of fishing mortality that currently exists." The striped bass is in danger of being lost as a useable resource, and scientific recommendations include "consideration of a total moratorium" until the fish population shows signs of recovery. Only very old and very young fish now comprise the majority of the coastal striped bass population. Clearly, habitat pollution and other environmental factors may have a substantial role in this tragic picture. But initiatives such as the Chesapeake Bay clean-up will take many years and many millions of dollars to achieve. In the meantime, the only immediate measure that can be taken is to restrict fishing effort to the utmost. Otherwise, there will be no natural population of striped bass to participate in a revitalized ecosystem. I would like to enter into the record of these proceedings a written statement along these lines by Mr. Joe Boone, a leading staff biologist with the Maryland Tidewater Administration for the past 30 years and the man who has been conducting the annual "young-of-the-year surveys" of reproductive success of fish in the Chesapeake Bay system since its inception in 1955. In his "1984 Tidewater Fishing Forecast and Homily," Mr. Boone writes:

"The remaining Chesapeake Bay striped bass population consists predominantly of two year old members of the fair 1982 hatch. Younger and older age groups, which would normally complete the healthy historical mixture of many ages and sizes, are extremely scarce due to poor reproduction and excessive fishing. The 1982 year class, whose members range in length from 10-15" (winter 83-84), represents the only abundant source of future broodstock. These fish are the seed on which replenishment of the sorely depleted migratory populations may depend. To foolishly exploit this strategic year class, knowing that it represents the only significant population of surviving Chesapeake stripers, and knowing that spawning success for 1984 and beyond is uncertain, and knowing that hatchery substitution of natural reproduction is delusory, would constitute a natural resource pillage reminiscent of an earlier unenlightened time.

"You say such a scenario could never unfold in this modern era of expensive, high-tech, scientific management? Unbelievably, the immensely valuable striped bass falls through a gaping rend in the wildlife management scheme. Though a highly migratory species (an individual could traverse the waters of a dozen states during a single year), it is not under federal jurisdiction. Though not the resource of a particular state, each state establishes harvest regulations within its boundaries. Consequently, each state warily eyes the catch elsewhere, intent on getting a 'fair share' of the booty. Naturally, self-interest and politics permeate every phase of harvest deliberations. Management becomes cumbersome, chaotic, and exasperatingly slow, even in times of perceived emergency. What is every state's responsibility is no one's responsibility, and those quarreling over allocation of the remaining fish may belatedly discover that their arguments have become academic."

Let us look deeper at the track record of the 12 states along the striped bass' migratory path, which inspired Mr. Boone's statements. I believe this record shows that there now exists an absolute necessity to break with precedent, to allow the Congress to exercise responsibility when the national interest transcends the traditional management opportunities of the states. In October of 1981, a new management plan for striped bass was recommended for immediate implementation by the Atlantic States Marine Fisheries Commission. Basically, it called for protection of the immature striped bass until these fish obtained at least one chance to spawn. Along the coast, this meant raising the minimum size limit allowed for fishermen from 16 to 24 inches. Because many commercial interests opposed a greater restriction on their catch, the majority of the coastal states dragged their feet on instituting the new regulation. Their lack of support prompted Rep. Gerry Studds to initiate an amendment to the Anadromous Fish Conservation Act that would cut off Federal funds to state fisheries agencies that failed to implement the striped bass plan. But by January of 1983, almost one-and-a-half years after the plan was called for, only *three* of the 12 coastal states had been willing to meet this requirement. This situation finally did begin to change during 1983, as the fish's emergency plight became even more acute. But it came too late to protect the 1978-year-class. It had been hoped that the higher size limits would allow the 1978 hatch, the only near-average hatch of striped bass over the past ten years with the exception of 1982, to reach spawning maturity. However, according to the scientists, these 1978 fish have now been largely fished out. Today, North Carolina (with an 11-inch minimum size limit) and Delaware (with a 12-inch minimum) still have yet to put into effect the original management plan.

Last December, just as the majority of states were finally coming on board with this plan, the Striped Bass Board of the Atlantic States Marine Fisheries Commission voted to recommend at least a 50% reduction in fishing effort by each state immediately, above-and-beyond the new minimum size limits. How to achieve this reduction was left to the individual states to determine, with a scientific review process scheduled for April 3rd of this year. But even if the new state proposals are deemed sufficient to reach the 50% figure, there is no guarantee that the various state legislatures and regulatory fisheries councils will in fact promulgate the regulations. Indeed, based on remarks made at the December meeting which I attended as an observer, this is highly unlikely. For example, New York's fisheries manager commented that, because of last year's divisive battle in the State Legislature to get the 24-inch limit in effect, it was impossible to expect passage of any additional restrictions in the near future. North Carolina's management spokesman stated: "I can't promise anything, I've got political realities at home." Maryland officials, at whose urging the emergency meeting was called in the first place, have come up with a program which reduces fishing effort by only 20 per cent in 1984 beyond the existing management plan. Even those minimal additional restrictions were circumvented by a court injunction two weeks ago, after several net fishermen brought suit against the state Department of Natural Resources.

Last fall, Maryland officials went on record stating that a Chesapeake Bay moratorium would probably be imposed if the 1983 reproductive index was again at a critical level. It was, and yet no such moratorium was considered. The state's leading newspaper, The *Baltimore Sun,* has published three editorials in the last three months urging an immediate moratorium. A poll taken by the Department of Natural Resources among its staff biologists found near-unanimous support for a moratorium. Yet, at the same time, in a memorandum the Department placed what amounted to a "gag order" on these same biologists, precluding them from expressing their views publicly. The very men who study the ongoing situation in the Chesapeake Bay system are simply not listened to by their superiors. In Rhode Island, despite a three-year moratorium being currently in effect, the division of Fish & Wildlife has recently recommended that its Marine Fisheries Council reverse this decision and go all the way back to an 18-inch minimum size limit. Regulating the migratory striped bass at the state level has simply proven to be an unworkable dilemma, devoid of uniformity and rampant with finger-pointing among commercial and recreational fishermen and between one region and another.

The primary opponents of more stringent regulations are commercial fishermen. Many maintain that a moratorium on striped bass would put them out of business. Based upon the catch data available and my conversation with fishermen all along the coast, I do not believe this would be the case. There remain many other species of fish available in far greater abundance than striped bass. Indeed, due to the bass' decline, many commercial operations have already ceased to pursue them. In the long run, it can only be in the best interest of commercial fishermen to do their utmost to ensure the return of the striped bass. But the truth is that, precisely because of their scarcity, the striped bass has become a "money fish." Annual commercial landings of striped bass have fallen from nearly 15 million pounds in 1973 to less than 5 million pounds in 1980 and under 2 million pounds in 1983. Yet, as the supply has dwindled, the market price has soared. In 1970, the value of the coastal commercial catch was $2,528,000. By 1980, this figure had risen to $4,902,000. So while landing sank by 300 per cent, the commercial value of what was left had doubled. Fifteen years ago, a fishermen might get as little as a few cents a pound for a striped bass. In 1981, the same fish could earn him as much as $3.65 a pound at dockside. Such a price increase also brought thousands of alleged "sports fishermen" into the marketplace. A recent Federal economic study estimates that over 80 per cent of "sportsfishermen" sell their catch of striped bass. For the consumer, the bass has become a luxury item—up from $1 a pound in supermarkts in the mid-1970s to $6 a pound and sometimes as much as $10 in New York fish markets.

In many areas, a relative handful of commercial fishermen have been the predominant recipients of this financial windfall on a diminishing resource. According to records of the Maryland Department of Natural Resources, 5 per cent of the state's commercial net fishermen accounted for more than half of the total Chesapeake Bay striped bass harvest in 1981; only *two* people accounted for a least 10 per cent of these 800 tons of landings. According to an article in *The Baltimore Sun,* several of these net fishermen are grossing $100,000 and more in annual income from the striped bass fishery. Can we allow this small number of individuals to dictate the future of this national treasure? If we look at the overall economic picture, the loss in revenue to the coastal states has been tremendous. The economic report of the Federal Emergency Striped Bass Study reveals that the decline in commercial and recreational fishing for bass since 1974 cost the Northeast region 7,500 lost jobs in 1980 and an annual $218 million in lost economic activity. The great majority of this loss of revenue has occurred because thousands of recreational fishermen have given up pursuing striped bass. When these people go fishing, they spend money on rods, and reels, gas, meals, motels, boats and bait. In 1979, they took more than two million trips and created nearly $90 million in first-round expenditures, seeking striped bass. But by last summer, most charterboat operators had stopped taking parties out after stripers. Sports fishermen who once caught five bass regularly in a single day were lucky to see five bass over the course of an entire summer. Recently I have spoken to, and received letters from, dozen of these fishermen, for whom a vital part of life with family and friends is dying out. They all support a coastal moratorium. The are willing to sacrifice whatever enjoyment they still occasionally derive from striped bass fishing, for the sake of the future.

Some people argue that the striped bass' rapid disappearance is simply part of a cyclic process, and that fish populations have mysteriously vanished and then reappeared in earlier times. It is true that a scarcity of striped bass occurred during the first third of this century. As far back as the 1870s, noted fisherman and conservationist Robert Roosevelt—Theodore Roosevelt's uncle—warned that the greed of

market fishermen was beginning to cut drastically into the striper population. Overfishing and the dams which curtailed the flow of water did reduce the bass' numbers to extremely low levels by the early 1900s. Only when the first management measures were enacted, in the form of minimum size limits, and the federal government enlarged the canal system to allow greater water flow in the Chesapeake Bay, did a striped bass "baby boom" take place in 1934. This abundance continued until the beginning of the 1970s. And it is foolish to assume that the bass population can ever again achieve such abundance, given what has happened to their environment and to thousands more people fishing with vastly more sophisticated equipment, unless the fish habitats are restored and without the most severe cutback in fishing effort.

It is also foolish to assume that the artificial raising of striped bass in hatcheries will be panacea. Biologists in Maryland have determined that an extraordinary financial commitment would be required to achieve the number of striped bass necessary to maintain a successful coastal fishery. Based on the survival rate of artificially-raised hybrids in the Patuxent River, you would need to hatch approximately 200 million striped bass fry. This would require the artificial stripping of two billion eggs, representing the production of 20,000 pounds of ripe female striped bass. Such a production effort would necessitate 1,200 acres of culture ponds. These ponds do not exist, the available spawning stock of striped bass does not exist. Even if these factors were there, the survival record of hatchery-raised striped bass in the natural environment is not good. As much as $50 million might be expended to obtain land, build hatcheries and put them into production—potentially all for naught. The scientists tell us that hatchery production can be utilized as a supplement to natural reproduction, but certainly not as a replacement for it. The basic problems of fishing pressure and a dying habitat cannot be glossed over by an artificial solution, which does not address the problems caused by man.

Another argument against a coastwide moratorium is the relatively stable population of striped bass in the Hudson River, as opposed to the Chesapeake Bay. In 1983, the annual survey of spawning success for newborn Hudson River striped bass did indeed reach its highest level in ten years. But commercial fishing for striped bass in the Hudson has been outlawed since 1976, when studies showed a level of PCB concentrations in the fish's tissues that was unsafe for human consumption. Since that time, with the exception of a single year, the reproductive index for Hudson stripers has been on the upswing. Scientists have little doubt that stopping commercial fishing in that river system has had a significant impact on the fish's comeback. As Dr. Phil Goodyear stated recently in Washington, "The Hudson striped bass show more deterioration in their backbones than the Chesapeake strain. So if contamination *is* a key reason for the decline, why haven't the Hudson fish declined? The fact that fishing mortality is less in the Hudson has allowed the fish to withstand the contamination, if indeed they are."

Historically, the Chesapeake Bay system has contributed up to 90 per cent of the coastal migratory stock of striped bass, the Hudson River 7 per cent. As the Chesapeake strain has declined and the Hudson species has increased, more Hudson River fish are now contributing to the coastal migration, especially in the New England states. Outside of the Hudson area, these fish, with their high concentrations of PCBs, are still being sold in the marketplace. This alone would seem to justify a circumspect look at the potential effect upon the health of consumers. But as far as the health of the bass population itself, it is absolutely impractical to try to manage the two species separately. Stock-identification techniques have recently been developed by scientists, but such testing is extremely time-consuming and there is no way for a fisherman to tell whether his striped bass originated in the Hudson or the Chesapeake. To exclude the Hudson River fish from a moratorium, especially when a commercial ban is already in effect there, only clouds the issue and does nothing to further the vital conservation of the coastal population of striped bass. Besides which, the entire Hudson River species may be in jeopardy if the proposed Westway landfill project is allowed to proceed in New York City. As much as half of the juvenile striped bass, born in the Hudson River, winter under the piers that would be torn down to begin the multi-million-dollar highway and land-development complex. Because of the potentially disastrous consequences to the striped bass, a Federal judge halted the project two years ago after the U.S. Army Corps of Engineers failed to provide a proper Environmental Impact Study. Yet efforts to over-ride Judge Thomas P. Griesa's decision are continuing, both by the Army Corps and in the U.S. Congress. As Robert H. Boyle, a noted writer for Sports Illustrated Magazine and President of the Hudson River Fisherman's Association, says: "Losing these piers would be the single biggest blow imaginable to the whole striped bass resource."

So, on many fronts, this most prized species of fish is facing an 11th-hour situation. There is simply no time to lose. The inconsistency of management however well-intentioned, at the state level cannot be allowed to continue. A moratorium, tied to the annual reproductive index in the Chesapeake Bay, is the only equitable answer. It should remain in place, as Mrs. Schneider's bill specifies, for a minimum of three to five years. After this time, the states could again be given the right to regulate the striped bass fishery, but subject to approval by a State/Federal Striped Bass Board of scientific experts. Should a state's regulations fail to meet whatever requirements are deemed necessary to assure the continued preservation of the species, a Federally-mandated moratorium should continue to exist in that particular region.

For centuries, man has considered the oceans an unlimited resource. While limitations on hunting grounds and seasons and on inland fisheries are commonly accepted as necessities, many an ocean fisherman has long objected to any regulation of his activities as a violation of his natural rights or an attack upon his family's tradition. But when a fish like the striped bass is threatened with oblivion as a resource, man's concept of his rights and responsibilities on the sea must be re-evaluated. Like all else on this planet, these creatures are not inexhaustible, particularly with the vast increase in population and sophisticated technology. The question is, can we change our ways of thinking and fishing in time to save this most magical of fish?

Last week I received a letter from a young man in New York named Gary Mergl, offering his help in seeking the Federal moratorium. He wrote, "If people lose jobs or livelihoods, tough, my father is out of work for 3 years because of automation and progress and no one feels sorry for him. It should be a privilege to be able to fish for striped bass and if people weren't so greedy we'd have fewer problems. I guess what I suggest is a bit idealistic, especially when politics and man's greed (for money or fish) enter the picture. But something positive must be able to be done to help the bass."

Yes, Gary, something must be able to be done. This is a plea. It is a plea to the Congress to rise above considerations of sheer economics and traditional management practices. This is not an issue of states' rights, or even of the time-honored rights of man. I believe that the striped bass is intrinsically linked to the spirit that created this country, and that it cannot be allowed to disappear. I treasure my experiences in seeing, pursuing, catching, holding and ultimately sharing a dinner of striped bass. I want my children, and your children, to have the same opportunity. We need it, because this fish has a soul, and because to know the meaning of the striped bass is an experience of the soul, and in the mysterious exchange between fish and man that sheds light upon that universal place inside of us, we become more deeply connected to the meaning of life itself.

I would close by quoting the words of Mr. John Cole, author of the book *Striper* which inspired the Federal Emergency Striped Bass Study in 1979. In a recent newspaper column, Mr. Cole wrote: "I am shattered when I ponder the dark forces it has taken to smother the striper's fires, to end the survival of this most determined survivor. What is the message for me, for all of us, who know the creature's courage, its bravery, its strength? If this fish vanishes, how much time will be left to all of us who extol it?"

Mr. BREAUX. Thank you very much, Mr. Russell.

Next we will hear testimony from Mr. John Bryson.

John, welcome back to the committee.

STATEMENT OF JOHN C. BRYSON, EXECUTIVE DIRECTOR, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Mr. BRYSON. Thank you, Mr. Chairman.

I will deviate from my paper and try to summarize, if I may.

First, I would like to comment that I do not speak for the Mid-Atlantic Fishery Management Council in this instance.

First, I will take up H.R. 4884. I think the most important aspect of this legislation is it recognizes a need for Congress to act in this particular fishery, and hopefully other fisheries in a similar trend. Measures in the bill—I have a lot of difficulty really believing they will be effective in achieving the goals outlined. Again, I stress the

important thing is that it is a recognition by Congress, and certainly the sponsor, that you need to move into this area and adopt something. I hope you can build from that.

Let me deviate a little bit from that now and to the general problem I see on interjurisdictional fisheries, and not just striped bass. Striped bass is simply symptomatic of a total problem we have.

Fisheries, being a natural resource, have the same problem of other natural resources in that they need continuity of management, whether it is water flowing down from one State to the other or fisheries that are trans-migratory and migrate from one State to the other. They require continuity of management if we are going to have any real effective management of stocks in the future.

I would suggest you need legislation from the Federal level to assure this continuity. To do that, a few things may be necessary:

One, to require the States to designate an agency responsible for the planning and implementation of fishery management plans; and that you be prepared to intervene to do the planning or implementation if the State does not carry out its duties. I certainly would think you would want to consider withholding funds from those States who don't carry out their function.

The Atlantic States Marine Fisheries Commission has been an very effective planning agency. My criticism is not in its planning ability, but it is in the ability to implement whatever they accomplish on the planning process.

I think, given a timeframe that you could specify for developing plans, this group could very easily meet the planning requirements and would be an excellent group to assure the continuity I am talking about throughout the phase. Then it is simply a matter of requiring the States to implement it, or the Federal Government intervening and implementing it. I see this as being necessary if you want to carry out your intent on striped bass.

Probably the next one you might very well face could be a weak fish. At a time or two in the past couple years we weren't sure that it would not be fluke. We have had some problems that need to be addressed. Striped Bass are just one of the fisheries.

I would urge you to look at the total package and try to address a bill that will span the fisheries and take care of the total problem.

Now back to striped bass for a moment, if you did go with such legislation, it might be as simple as giving the States a definite time to adopt the plan already in place by ASMFC or intervene. I think it would be a much more effective measure.

There was something mentioned today on a moratorium if the States didn't act. I would hate to see punitive action taken against fishermen for lack of the bureaucracy to act properly. I would hope, rather than declaring a moratorium on those States, that you would simply move in and manage fishery in those States.

[Statement of John C. Bryson follows:]

STATEMENT OF JOHN C. BRYSON, EXECUTIVE DIRECTOR OF THE MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Thank you for the opportunity to appear and present my views on the Striped Bass and inter-jurisdictional problem.

My name is John C. Bryson. I reside in Dover, Delaware and have been involved in resource management for over 20 years and in fishery management for over 10 years.

My comments are split between H.R. 4884 and the general problem of inter-jurisdiction fisheries management.

H.R. 4884—The three (3) year moratorium and the two (2) year extension provided for in this Bill, in all probability, will not achieve the objectives listed in Section 4(a). To be assured of bringing the reproductive index back to 80% of the average 1954 to 1974 level, it may be necessary to have a total moratorium in place for as long as six (6) to eight (8) years.

The allowance of bycatch by commercial fishermen could render the partial moratorium provided by the proposed legislation ineffective. H.R. 488 does not define bycatch as any percentage of total catch on board at the completion of a trip. The bycatch could be as low as 1% or as high as the fishermen choose to make it and with a landed value of $2 to $6 a pound, one must assume they will make it high. A bycatch of 1.2% of total food fishery landings would allow approximately 100% of present catch of striped bass.

Considering the questionable impact this legislation could have, perhaps other measures should be considered. It is possible a different measure such as a 24" minimum and a 40" maximum size would achieve the desired results with less adverse economic impact. Scientists are currentl· reviewing the recovery rate under these and other conditions.

Inter-jurisdictional Problem—The problems presently occurring with striped bass are serious and deserve your attention. The problems to striped bass and other fisheries, however, cannot be effectively solved one species at a time through emergency action of Congress but should be managed by timely planning at the lowest effective level.

Perhaps a review of other fisheries problems will indicate the approach or approaches necessary.

Many people thought the Magnuson Fishery Conservation and Management Act would provide for the necessary management. While this Act has resulted in effective management for many species and a vastly improved economic position for the fishermen, it did not provide for management of those species predominately taken in territorial and inland waters. This was not due to oversight but based on the belief that the States could and would provide proper conservation for those species under their jurisdiction.

The States' collective efforts for planning through the State-Federal program and through the ASMFC are commendable but the time frame utilized to reach a suggested plan and its subsequent implementation varies from barely adequate to pathetic. A quick summary of some of these efforts are:

Surf Clams—State and industry efforts for over 5 years failed to produce a plan.

Striped Bass—This plan was under consideration for approximately 5 years. During this time, the stocks became seriously depleted and rather drastic measures are called for. The extremes of response vary from deviation from the recommended 24 inch minimum size retention, by a total ban by one State, to two States still allowing a 12 inch size retention.

Fluke—The plan has been approved by ASMFC and presented to the Council, yet at least three States are reluctant to or refuse to implement their Commission's recommendations. This refusal has led to the necessity for further plan work by the Council before it could be adopted.

Menhaden—Plan adopted by ASMFC members unanimously yet one State completely ignored the findings of the plan and politically decided to ban menhaden fishing from that State's territorial seas. Another State is considering such a ban.

Herring—The FCZ plan for herring was totally ineffective and was withdrawn due to a lack of similar controls in State waters. This occurred in spite of the fact that the responsible State fishery authority assisted in the planning and adoption of the Council plan.

Weakfish—This fishery may very well be the one of greatest concern within two years.

Many of these and other species will require joint management by the States and the fishery management councils when the species are normally taken in both the State and FCZ control areas.

The above statements give us some insight as to the real problem. When, collectively, the State fishery personnel assist in the adoption of a Council or Commission plan but fail to attain implementation in their own States, the need for clearcut responsibility for fishery management, including rulemaking authority, assigned to regional or national authority is clear. In my opinion, it will also be necessary to

mandate, by Federal law, that fishery management plans be prepared for those species that migrate across State boundaries. It will be necessary for the State to authorize and name an agency of the State as the planning and rulemaking and enforcement authority for these fisheries. Without this mandate, successful political pressure will continue to be exerted on the Directors by Legislators or on the Legislators by their constituents.

The legislation I would suggest could take many forms so long as minimum standards and a clear mandate is established for the timely planning and enforcement. The basic planning duties could be assigned to the States, the Commissions (Regional Marine Fisheries Commissions) or a federal agency. The implementation and enforcement is probably best carried out at the State level with federal intervention if a State or States fail to act.

Similar problems were faced by Congress in another resource—water (pollution)—in the 1950s and 1960s. The carrot approach was ineffectively used. Then, in 1970, the stick was added to the carrot approach and the same State agencies, staffed by the same people, were able to institute effective management measures.

Does our fishery resource deserve any less than water resources?

Mr. BREAUX. Thank you, Mr. Bryson.

Mr. Coates?

STATEMENT OF PHILIP G. COATES, CHAIRMAN, STRIPED BASS BOARD, ATLANTIC STATES MARINE FISHERIES COMMISSION; ACCOMPANIED BY RALPH W. ABELE, CHAIRMAN, ATLANTIC STATES MARINE FISHERIES COMMISSION

Mr. COATES. Thank you, Mr. Chairman.

I appreciate the opportunity to testify before you and the committee on these two pieces of legislation.

Concerning the reauthorization of the Emergency Striped Bass Study, the Commission is deeply concerned about the status of the anadromous striped bass resource, and for this reason we feel that reauthorization of section 7 of the Anadromous Fish Act should be implemented at a level of $2 million for fiscal 1985, these funds to be equally divided between the two Federal fishery services.

Concerning the Atlantic Striped Bass Restoration Act of 1984, H.R. 4884, as you are aware, the Atlantic States Marine Fisheries Commission has been involved in management of the Atlantic Striped Bass Fishery for over 40 years.

In October 1982 the Commission approved an interstate management plan following some 2 years of development prior to that time. As of this date, this plan has been largely implemented.

Contrary to the opinions of some of the previous folks, in our viewpoint, I think this is an unprecedented example of cooperation among the States in terms of management planning. There is no stick in back of the authority of the Atlantic States Marine Fisheries Commission. They have no regulatory authority. Yet, virtually all the States are on line, or will be on line very shortly.

Unfortunately, however, despite the actions of the Commission in implementing this plan, the resource has not exhibited good year class strength, particularly in 1983, and the resource has continued to decline.

In view of this, we convened the Scientific Committee in November and the Striped Bass Management Board, of which I am chairman, in December. We agreed to implement a 55 percent reduction in catch as soon as possible.

The scenario under which this will be achieved is basically, even now, some of the States, such as Maryland, as you heard earlier,

and other States—I believe Virginia—are taking action to go beyond the current plan to the 55 percent level.

We have a meeting in Massachusetts tonight to formulate our strategy. These plans, if you would, will be taken to the Striped Bass Scientific Committee in early April and at a workshop will be evaluated very vigorously by not only the Scientific Committee, but also by State and Federal scientists. Their recommendations on the viability of these plans will be made available to the board. By May 23, we should have a very strong direction as to what we should do with regard to striped bass.

As I indicated at an earlier briefing—I think it was about a month ago—before this committee, we feel that this May meeting, or shortly thereafter, should be an adequate test of time to determine the States' commitment to manage striped bass. I, for one, representing Massachusetts at this point, am prepared to say that if there isn't a meaningful commitment made by the States in terms of management planning, taking this plan beyond the current level to this 55 percent reduction level, then we would consider supporting a national initiative, even something like a moratorium. We view this as a last resort right at this present time.

We recognize Congresswoman Schneider's concern about striped bass and your committee members' concerns, but we feel that the moratorium has some present problems, or the proposed moratorium.

The work that is being done by the States at this point we feel is adequate. We are concerned that a moratorium would establish Federal precedent in an area where the States have been trying very hard to manage. We are also concerned about enforcement of a moratorium because it would put a tremendous burden on the already burdened Federal regulatory agencies, and in view of what might not be a total State support of a moratorium, it might cause some real enforcement problems.

You have a situation where some of the States are developing enhancement programs for striped bass. I believe Mr. Abele, the chairman of the Atlantic States Marine Fisheries Commission, has a striped bass program in some of his reservoirs. Yet, according to this legislation, possession of these freshwater striped bass would be prohibited, as I understand it, because there would be a possession limit.

In view of some of those problems, we feel that the moratorium at this point is premature. I think you ought to give a chance for the States to exhibit their capability of managing on a meaningful level.

I would like to also add that the Gulf States Marine Fisheries Commission and the Pacific States Marine Fisheries Commission support our posture at the present time concerning this legislation.

In closing, Mr. Chairman, the Commission and its member States are working hard to address this problem of concern to all of us. We hope that our comments here today will be useful in helping your committee make its final decisions pertaining to the Atlantic striped bass resource.

I would like to thank you very much for this opportunity to testify.

[Prepared statement follows:]

PREPARED STATEMENTS OF RALPH W. ABELE, CHAIRMAN, ATLANTIC STATES MARINE FISHERIES COMMISSION AND PHILIP G. COATES, CHAIRMAN, STRIPED BASS BOARD, ASMFC

Mr. Chairman, Members of the Committee, we appreciate the opportunity to appear before you today to present the views of the Atlantic States Marine Fisheries Commission on H.R. 5074 and H.R. 4884.

The Atlantic States Marine Fisheries Commission was established by a compact entered into by the various Atlantic Coastal States beginning in 1941. The consent of Congress to the Interstate Compact was signed by the President in 1942.

The participating States are Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. Each is represented on the Commission by a member of the administrative agency in charge of marine fisheries, a legislative member appointed by its Committee or the Commission on Interstate Cooperation, and a person appointed by the Governor. The Commission is supported by appropriations from the member States based on the value of their respective landings.

Although the States determine all policy in their respective jurisdictions, the Commission provides a forum for discussion and resolution of common problems and assists the States in developing joint programs. In addition, the Commission administers the Interstate Fisheries Management Program, with the goal of regional management and conservation of the Nation's fisheries resources and viable commercial and recreational fishing industries.

REAUTHORIZATION OF THE EMERGENCY STRIPED BASS STUDY (SECTION 7, P.L 89-304—ANADROMOUS FISH CONSERVATION ACT) (H.R. 5074)

The Commission is deeply concerned about the status of the anadromous striped bass resource. A very significant aspect of the understanding and eventual solution of the striped bass problem is the Emergency Striped Bass Study, which is currently authorized only through Fiscal 1984. We *strongly* urge that Section 7 of the Act be reauthorized for FY85 at a level of $2,000,000, to be divided between the National Marine Fisheries Service and the Fish and Wildlife Service.

Although the Study is authorized at a level of $1 million, only $400,000 was appropriated in FY84 to assess the status of striped bass stocks, to explore the causes of the precipitous, persistent decline in abundance of this popular species, and to evaluate the economic impact that this decline might have on coastal communities. As part of the Study, many institutions have coordinated their studies with those of other state and federal agencies to attempt to provide the information base necessary to understand the species and develop appropriate approaches to management. The Atlantic States Marine Fisheries Commission has also developed a management plan for the conservation of the striped bass resource with provisions for coordinating with and incorporating significant findings of the Study.

Because of the complexity of the problem, the study of which has been impeded by appropriations levels which have been substantially lower than the original planning and authorization levels in recent years, the Atlantic states program has not been completed within the time frame originally anticipated.

Research to date has not been able to conclusively demonstrate a particular cause or set of causes for the decline of striped bass but it has revealed the inadequacy of present knowledge of the species, and more importantly, has pointed out new directions from which many of the participants believe answers will be forthcoming. Several major areas of investigation that should not be abandoned at the current levels of completion are (1) continuing to monitor juvenile abundance, fishing mortality, and characteristics of the spawning populations that comprise the coastal stock and (2) continuing to investigate several promising potential causes for the decline in production of the coastal stock.

In short, a good beginning has been made. Reauthorization of Section 7 of the Act, and continued funding of the Emergency Striped Bass Program at an authorized level of $2 million to be distributed equally between the National Marine Fisheries Service and the U.S. Fish and Wildlife Service is essential to permit completion of this work and to implement parallel efforts on the Gulf Coast. We are firm in the belief that this cooperative effort should not abruptly terminate now that success is in sight.

ATLANTIC STRIPED BASS RESTORATION ACT OF 1984 (H.R. 4884)

The Atlantic States Marine Fisheries Commission has been involved with preserving our Atlantic striped bass fishery for over 40 years. In 1981 we developed our Interstate Striped Bass Fishery Management Plan which most of our member states have implemented.

When the Commission heard the recommendations of the Emergency Striped Bass Study Report in late 1983, we immediately put to work our Striped Bass Scientific Committee and Management Board to come up with measures to save the fishery. Their solution was to recommend to our states from Maine to North Carolina that they reduce their current fishing efforts on striped bass 55% more than what our 1981 plan called for.

This measure was developed through consultations with the National Marine Fisheries Service, the United States Fish and Wildlife Service and the state biologists and managers who work closest to the fishery. The 55% reduction is based on sound scientific data and is what is needed to allow the stocks to recover.

All our member states from Maine to North Carolina are presently attempting to institute the recommended measures. A brief summary of what is happening in the states, above what our 1981 plan calls for, is as follows:

Maine last week introduced legislation imposing no sale of striped bass and a four fish creel limit.

Rhode Island has imposed a three-year moratorium.

New Jersey in January of this year imposed a 10 fish possession limit which severely restricts their commercial fishery.

New York has imposed a number of regulations that exceed the 1981 plan's called for size limits and area closures.

Connecticut has declared the striped bass a game fish and is considering imposing a 4 fish bag limit.

New Hampshire and *Massachusetts* are considering imposing much reduced fishing seasons.

North Carolina is holding hearings on proposed regulations that would severely reduce the fishery.

Virginia on March 1 instituted a number of area closures and a 5 fish sport fishing creel limit that will severely reduce their fishery.

Maryland has a proposed a number of conservation measures for 1984 and 1985. A court case has temporarily held up implementation but further strong efforts to impose a full moratorium until our recommendations are implemented are now taking place in this state.

Delaware because of political problems has not yet been able to fully implement our recommended size limit on striped bass but will attempt to institute our called for measures in 1985.

All these measures and more will be evaluated by our striped bass Scientific Committee the first week of April and a clearer picture of what the states are coming up with will be more evident then.

As for our position on H.R. 4884, we feel there is a definite need to develop some mechanism that requires the few states who are unable to implement strong conservation measures in this matter to come on line.

We agree with Representative Schneider that action is definitely needed to prevent a collapse of this important fishery. However, a complete federally imposed moratorium is not the right way to address the problem at this time. Our states are very aware of a crisis in the fishery. The Emergency Striped Bass Study brought to the states' attention the need for additional management measures only a few months ago, and we believe the majority of our states are reacting responsibly to strengthen management of this species within their jurisdictions. Secondly, the bill ignores the fact that the Hudson River stocks of striped bass, which can range widely along our coastline, are apparently healthy and in no trouble. Thirdly, the 55% reduction in fishing effort recommended by the commission is based on the best estimate of the biologists and managers who work most closely with the fishery.

In the coming months we will be working closely with the states involved to develop and implement adequate conservation measures to save this fishery.

The help of the federal government is also sorely needed if we are to be successful. In recent years, through our Interstate Fisheries Management Program, the level and effectiveness of state-federal cooperation has dramatically increased. We need to insure that the federal government continues its role in shared activities such as research into the causes of the decline of the striped bass fishery. A federal role of leadership in the initiative to clean up the Chesapeake Bay, and a continuing

federal partnership in developing our interstate fishery management plans, is essential in developing effective fisheries management along the entire East Coast.

In closing, Mr. Chairman, the Commission and its member states are working hard to address this problem of concern to *all* of us. We hope that our comments here today will be useful in helping your Committee make its vital decisions pertaining to the Atlantic striped bass resource. Thank you very much for this opportunity to present our views on this matter.

Mr. BREAUX. Thank you very much for your presentation.

Next will be our last witness on the panel, Dr. Rudolph Rosen, representing the National Wildlife Federation and also, I understand, the National Audubon Society.

Dr. Rosen.

STATEMENT OF RUDOLPH A. ROSEN, FISHERIES SPECIALIST, FISHERIES AND WILDLIFE DIVISION, NATIONAL WILDLIFE FEDERATION, ALSO REPRESENTING THE NATIONAL AUDUBON SOCIETY

Dr. ROSEN. Thank you, Mr. Chairman.

My name is Rudolph Rosen, and I am a fisheries specialist for the National Wildlife Federation.

Thank you for the opportunity to express the extreme concern of the National Wildlife Federation and the National Audubon Society over the status of Atlantic Coast migratory stocks of striped bass.

I would like to request that my full written statement be included in the record, as I am going to abbreviate.

The decline of striped bass on the east coast is symptomatic of a larger problem our Nation faces today as a result of coastal and inland habitat degradation and an inability to effectively manage coastal migratory fish.

We recommend a comprehensive approach to addressing the problem of interjurisdictional management of coastal migratory fish as opposed to disjointed treatments for single species.

In drawing an analogy with recent leadership by this committee on issues such as protected species, the committee consistently has favored a comprehensive approach over species-specific legislation.

In the Chesapeake Bay, where the status of striped bass is most critical, the important American shad and river herring fishery already has collapsed. The population declines of these species far eclipse the present condition of striped bass, but we are not underplaying the importance of striped bass or the gravity of their decline. Instead, we are emphasizing the value to the Nation of the complex of coastal migratory fish.

Our recommendation for a comprehensive approach to managing striped bass and other coastal migratory fish is going to follow our comments on reauthorization of section 7 and suggestions for the striped bass fishing moratorium bill.

We urge that section 7 of the Anadromous Fish Conservation Act be reauthorized and that $2 million be recommended for even distribution between the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for fiscal year 1985.

Next we would like to commend Representative Schneider for her efforts to address the looming crisis in striped bass management. We, too, share a sincere concern and sense of urgency which

warrants immediate action on behalf of the Atlantic Coast striped bass.

We support imposing a harvest moratorium on a species where biological, physical, or economic factors indicate prohibition of harvest is necessary to protect the species.

For striped bass, the time rapidly is approaching when a Federal moratorium, coastwide on harvest to protect the economic viability of the fishery may be necessary if State management authorities are unable to implement needed fishery regulations.

Although striped bass are experiencing a serious population decline, we do not believe they are on the verge of biological extinction at this time. Nonetheless, striped bass reproduction in Chesapeake Bay and several other locations is poor, and all data indicate the fishery is declining.

Action by the States to address the decline through scientific management has been proceeding under the auspices of the Atlantic States Marine Fisheries Commission's Striped Bass Management Board. You have heard today about the October 1981 plan's provisions to regulate harvest. For all practical purposes, that plan is in place and is working.

In early December 1983, scientists advising the management board recommended additional stronger measures. We have heard about those measures today, too. We also know that very soon scientists will be meeting to evaluate the efficacy of those measures, and we also have heard today that the States are in the process of trying to implement those measures, but in some States, because of the legislative process that these regulations are going to have to go through, the process may be drawn out, perhaps taking at minimum a year.

We believe it is inappropriate to impose a Federal moratorium coastwide at this time because the States are in this process of conscientiously attempting to implement the management provisions.

However, the most important factor against a Federal moratorium at this time is that scientists responsible for management of the striped bass have determined that a complete coastwide moratorium is unnecessary for recovering the stocks. Although some States may elect to implement a State moratorium, we are supportive of such efforts.

Biological information on the species indicates a moratorium may be no more successful in protecting stocks than simply preventing overfishing and subjecting the fishery to good, strong fishery management practices.

The Atlantic States Marine Fisheries Commission's plan is consistent with recommendations of the scientists.

Because effective fishery management is a complex balance of biological, economic, social, and political factors, we suggest a three-point plan for immediate action.

First, because of the urgent need to control overharvest of striped bass, we suggest providing immediate Federal assistance to the States by temporary Federal enforcement of the interim regulations as approved by the scientists and all provisions of the 1981 interstate plan not already under State enforcement.

Second, Federal enforcement of the interim regulations and interstate plan should continue for a period not to exceed 1 year.

At any time during that year, if a State should begin enforcement of the regulations, then the Federal Government should lift their enforcement in that State.

Third, in those States, and only in those States, that do not implement and begin enforcement of the regulations and all provisions of the interstate plan, then the Federal administrator of the act should impose a moratorium on harvest and possession of striped bass.

Although we don't recommend immediate imposition of a moratorium, we do recognize that such action might be necessary in the near future. Our three-point plan for immediate action outlined previously for a Federal moratorium would be in lieu of appropriate State action—a last resort.

Therefore, to insure that any Federal moratorium is as effective as possible, we have listed a series of critical strengthening recommendations for H.R. 4884. Details are in our written statement but they include things like closing loopholes, giving greater flexibility to the professional fishery managers, and recognizing the role of the Department of the Interior in addition to that of the Department of Commerce in administrating an act such as this on striped bass.

Finally, we would like to address comprehensive management planning as an alternate approach. Problems implementing interjurisdictional fishery management have existed for decades. The State marine fisheries commissions and other interstate compacts lack mechanisms to implement coordinated fishery management, especially where fishery regulations are promulgated through State legislatures.

We recommend a comprehensive approach and, in doing so, provide a solution that would address the striped bass problem. For striped bass, we suggest incorporating H.R. 4884 with provisions as we suggested as an emergency provision into a larger bill that would have as its purpose assisting States in managing coastal migratory fish.

The envisioned legislation would provide maximum control by the States over their own fisheries. Fishery management planning and liaison between the State and Federal governments should be maintained by the existent State marine fisheries commissions.

Federal incentive and assistance in developing interstate plans should be provided in the form of increased aid through established grants programs. The Federal administrator of the act would be responsible for insuring that interstate plans incorporate a set of minimum standards and, once plans are developed and approved by the States, the administrator should have authority to assist the States in enforcement. For States that will not or cannot meet the standards necessary to manage the fishery, according to the interstate plan, the administrator should have authority to federally enforce the State's plans or perhaps impose a moratorium.

Also we suggest a set of minimum standards. They are listed for your reference in our written statement and include basing fishery management planning on the best scientific information available and allocating the resources fairly between States. As a critical minimum standard, we believe that any plans addressing intercoastal fish management should specify specific and general actions to

be implemented to restore or enhance habitat necessary for production of the coastal migratory species under management and for maintenance of the species' food base.

For any scheme of Federal administration of coastal fishery management, we feel responsibility should be shared between the Department of the Interior's U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Mr. Chairman, we hope the above comments have been useful to you. We would be pleased to work with you more closely to elucidate our ideas on comprehensive fishery management planning that addresses the national concern of managing coastal migratory fish, including improved management of striped bass. We think it is the best way to proceed.

Thank you for the opportunity to appear before you.

[Statement of Rudolph A. Rosen follows:]

STATEMENT OF RUDOLPH A. ROSEN, PH.D., FISHERIES SPECIALIST, FISHERIES AND WILDLIFE DIVISION, NATIONAL WILDLIFE FEDERATION

Mr. Chairman, my name is Rudolph Rosen and I am a fisheries specialist for the National Wildlife Federation's (NWF) Fisheries and Wildlife Division. Thank you for the opportunity to express the NWF's and National Audubon Society's (NAS) extreme concern over the status of Atlantic Coast migratory stocks of striped bass.

The NWF is the nation's largest, not-for-profit conservation-education organization with over 4 million members and supporters throughout the U.S. and in 51 affiliated state- and territory-wide organizations. Angler and commercial fishing groups are included among our affiliated organizations. The NWF consistently has expressed concern over management of striped bass, by calling for uniform management of the species and increased scientific study, continued funding of Section 7 of the Anadromous Fish Conservation Act, commonly known as the Emergency Striped Bass study, and implementation of an interstate management plan for striped bass (see attached NWF Resolutions). In addition, NWF has participated in numerous state and regional meetings concerning implementation of the Atlantic States Marine Fisheries Commission's striped bass management plan and nearly all meetings of the Emegency Striped Bass Study's coordinating committee.

This testimony also is presented on behalf of the NAS, which has 500 chapters and 500,000 members nationwide. The Soviety's Chairmen of Board Donal C. O'Brien is a longstanding supporter of striped bass conservation. John N. Cole, former NAS Board member and author of "Striper," is an authority on striped bass and consistently has expressed on behalf of NAS his concern for improved management of the species.

The decline of coastal migratory striped bass on the East Coast is symptomatic of a larger problem we face today as a result of coastal and inland habitat degradation and an inability to effectively manage coastal (near-shore) migratory fish. We recommend a comprehensive approach to addressing the problem of interjurisdictional management of coastal migratory fish as opposed to disjointed treatments for single species. And, drawing an analogy with recent Committee leadership on endangered species issues, the Committee consistently has favored a comprehensive approval over species-specific legislation.

In the Chesapeake Bay, where the status of striped bass is most critical, the important American shad and river herring fishery already has collapsed. The population declines of these species in the Bay far eclipse the present condition of striped bass stocks. However, we are not underplaying the importance of striped bass to the nation or the gravity of the decline in their stocks. Instead we are emphasizing the value to the Nation of the complex of coastal migratory species such as striped bass, weakfish, Atlantic and Pacific salmon, American shad, menhaden (our nation's largest fishery), bluefish, and red drum (redfish), all of which provide important near-shore fisheries. Presently, the crisis is over striped bass, the next crisis could arise over weakfish or menhaden.

Our recommendation for a comprehensive approach to addressing the problems of striped bass and other coastal migratory species follows our discussion and specific comments on reauthorization of Section 7 of the Anadromous Fish Conservation Act and the Striped Bass Fishing Moratorium Bill, H.R. 4884.

SECTION 7 REAUTHORIZATION

We urge that Section 7 of the Anadromous Fish Conservation Act be reauthorized and that $2 million be recommended for equal distribution between the National Marine Fisheries Service and U.S. Fish and Wildlife Service for Fiscal Year 1985 (FY 85).

The timing and level of funding for Section 7 has hampered efforts to maintain an intensive and coordinated program of research investigating the causes of the striped bass decline even though the study when authorized was characterized as an "emergency." Of the $6.75 million authorized for Section 7 from FY 80 through FY 84, only $3.325 million actually has been appropriated; only in FY 80 were authorized funding levels actually appropriated and from FY 82 through FY 84 only $775,000 of $4 million was provided through the normal appropriations process. Fortunately, some money has been transferred from other accounts to allow studies to proceed. However, the uncertain nature of funding and timing of annual appropriations (or transfers) have made it nearly impossible to assure needed continuity in research efforts.

The low level of funding has resulted in an "emergency" study proceeding at a slow pace and without necessary flexibility that would allow immediate follow-up of promising research leads. For example, the recent discovery that a virus may be affecting young striped bass in Chesapeake Bay probably will not be addressed by Section 7 studies this year even though the discovery represents a potentially important new lead; instead, ongoing studies and planned but unfunded studies will be given first priority for available funds.

To date, the study has not revealed the specific causes of decline. More work is needed, especially on interactions between striped bass, their eggs and young, and habitat variables. However, the lack of an established cause and effect relationship for the species decline has not prevented scientists of the Emergency Striped Bass Study from recommending interim action such as reducing harvest levels of striped bass. Interim measures must be accompanied by continued research and implementation of programs to address factors discovered to affect striped bass survival, such as toxic contamination.

Overall, given the cost of scientific research and time necessary to conduct adequate sampling and analysis of data, the record of the Emergency Striped Bass Study team is excellent. The researchers themselves understand the emergency nature of the situation and are acting accordingly.

We urge Congress to provide the Emergency Striped Bass Study the funding and support needed to allow continued monitoring of the status of stocks as well as rapid and thorough investigation of the causes of striped bass decline. If funds had been allocated in accordance with an "emergency" and citizen involvement had been as intense as we see today, perhaps there would be less need to consider the drastic actions that are part of today's proceedings.

ATLANTIC STRIPED BASS RESTORATION ACT OF 1984 (H.R. 4884)

We commend Rep. Schneider for her efforts to address the looming crisis in striped bass management. We too share a sincere concern and sense of urgency which warrents immediate action on behalf of the Atlantic Coast striped bass resource.

We support imposing a harvest moratorium on a species where biological, physical, or economic factors indicate prohibition of harvest is necessary to protect the species or protect one or more other species dependent on the resource provided primary protection. For striped bass, the time rapidly is approaching when a federal harvest moratorium to protect the economic viability of the fishery may be necessary because of the inability of state management authorities to implement needed fishery regulations.

Although striped bass are experiencing a serious population decline, Atlantic Coast stocks are far from being on the verge of biological extinction. Reproduction is occurring (even in the uppper Chesapeake Bay in 1982 the index of juvenile production was "average" for the 30-year period of record keeping) and, at least 1.5 million pounds of striped bass were harvested along the Atlantic Coast and in inland waters in 1983. Excellent reproduction of the species in the Hudson River has been reported recently.

Nonetheless, striped bass reproduction in Chesapeake Bay and several other locations is poor and all data indicate the fishery is declining. Ups and downs in the yearly catch of striped bass have been common throughout the period of record keeping. Today, commercial catches are about as low as those recorded during the early 1930's. The fishery usually is sustained by the appearance of so-called "domi-

nant" year classes where large numbers of striped bass hatch and survive to enter the fishery. The last dominant year class in the upper Chesapeake Bay was in 1970 when the index scientists use to measure abundance of young fish was the highest since 1954, the year record keeping began. Since 1970, production of young striped bass in Chesapeake Bay has been well below "average" in 7 years, and, in 3 of the last 4 years production has been extremely poor. Perhaps most alarming is the lack of young (5 to 10 year old) fish in the spawning population.

Action to address the decline through scientific management of the Atlantic Coast stock has been proceeding under the auspices of the Atlantic States Marine Fisheries Commission's (ASMFC) Striped Bass Management Board (SBMB).

The ASMFC is composed of 3 representatives from each of the Atlantic Coast states while the SBMB is made up of representatives from each of the states in the striped bass management area (North Carolina to Maine). In October 1981, the SBMB adopted the "Interstate Fisheries Management Plan for Striped Bass" to regulate harvest. Because of institutional constraints in each state, public pressure, and other impediments, implementation of the Interstate Plan has been slow. However, for all practical purposes, the Interstate Plan presently is in place and working (Delaware and North Carolina have yet to implement all of the Plan's provisions.)

In early December 1983, scientists advising the SBMB concluded that stronger management measures would be necessary to reverse the decline of striped bass under present conditions. The scientists provided a set of recommendations to the SBMB that would achieve a long-term objective of maintaining spawning stock and minimizing the possibility of recruitment failure, and a short-term objective of restoring Chesapeake Bay spawning stocks to a point where the number of eggs deposited in spawning grounds would increase by six times the current level (this level of increase is thought to be capable of providing for a juvenile striped bass production index of 8 averaged over 3 years in the upper Chesapeake Bay).

By mid-December, the SBMB adopted the recommendations of scientists and each state agreed to develop and implement a set of "Interim Restoration Measures for Chesapeake Bay Striped Bass Stocks." The Interim Regulations, as we will refer to them herein, would reduce fishing on Chesapeake Bay stocks in each state's waters by 55% in addition to harvest reductions achieved by the Interstate Plan adopted in 1981. The SBMB provided states flexibility to propose any means appropriate to regulate their own fisheries, however all proposed Interim Regulations must undergo evaluation by a panel of scientists for effectiveness in addressing the goal of 55% reduction in fishing. Scientific evaluation of proposed Interim Regulations will occur in early April 1984 with full approval by the SBMB to follow in one month.

Some state fisheries agencies will be able to begin enforcement of Interim Regulations almost immediately. However, in other states, due to the requirement that fishery regulations be promulgated through state legislatures, a delay of as much as one year could be incurred before the Interim Regulations are in place.

It is inappropriate to impose a *Federal* moratorium that preempts state management authority for striped bass at this time because the states are in the process of conscientiously attempting to implement strong management provisions. For example in January, New Jersey implemented a new ten fish per day limit for all users. However, the most important factor against a federal moratorium at this time is that scientists responsible for management of striped bass have determined that a complete coastwide moratorium is unnecessary for recovery of stocks (however, some states may elect to establish a *state* moratorium on striped bass harvest). In addition, biological information on the species indicates a moratorium may be no more successful in protecting stocks than simply preventing overfishing and subjecting the fishery to good fishery management practices. This conclusion is supported by the fact that no relationship has been detected between the number of striped bass parents spawning and the number of young produced, which means a large number of adults may produce very few young (as has happened several times in Chesapeake Bay since records have been kept) or relatively few adults may produce a large number of young. Evidence indicates that availability of food organisms at exactly the right time for larval striped bass may be critical for production of a dominant year class. Food availability largely is controlled by environmental factors such as weather (especially temperature and rainfall), and of course by factors such as pollution and water turbidity from soil erosion.

OVERALL RECOMMENDATIONS FOR H.R. 4884

The Atlantic States Marine Fishery Commission's plan to reduce harvest by well over 50% is consistent with recommendations of scientific managers of the striped bass resource that a level of harvest can be sustained by the population yet provide

for the species recovery. Because effective fishery management is a complex balance of biological, economic, social, and political factors, we suggest an alternate approach for H.R. 4884 that would *assist* the states in implementing effective and scientifically based management measures. We suggest the following be incorporated in the proposed legislation:

(1) Because of the urgent need to control overharvest of striped bass we suggest providing *immediate* federal assistance to the states by *temporarily* enforcing the Interim Regulations (as approved by the SBMB and their scientists) and all provisions of the 1981 Interstate Plan not already under state enforcement. Federal enforcement of the Interim Regulations and Interstate Plan could be accomplished through the "Penalties and Enforcement" provisions of H.R. 4884 (Sections 5 and 6). All Interim Regulations proposed for the striped bass fishery of which we are aware are typical of those normally used to manage fisheries and could be enforced under provisions of H.R. 4884 as easily as enforcement of a total moratorium.

(2) Federal enforcement of the Interim Regulations and Interstate Plan in states would continue for a period not to exceed 1 year from the effective date of H.R. 4884. However, at any time before the 1-year period ends, Federal enforcement may be terminated in any state immediately upon state enforcement of all Interim Regulations and provisions of the Interstate Plan.

(3) In those states, and only those states, that do not implement and begin enforcement of the Interim Regulations and all provisions of the Interstate Plan by the end of the 1-year period referred to in (2), the Federal Administrator of the Act would impose a moratorium on harvest and possession of striped bass.

Although we are not recommending immediate imposition of a federal moratorium on striped bass harvest at this time we do recognize that such action might be necessary in the near future. Our three point plan for immediate action outlined above provides for a federal moratorium on harvest and possession in lieu of appropriate state action. Therefore to provide for the best possible moratorium we have listed below a series of suggestions to strengthen the effectiveness of the moratorium proposed in H.R. 4884.

SPECIFIC RECOMMENDATIONS FOR STRENGTHENING THE EFFECTIVENESS OF THE MORATORIUM PROPOSED BY H.R. 4884

Section 2(3)(i)

Scientific research activity that requires taking protected species of fish or taking fish in quantities or by means outside those permitted under typical recreational or commerical licensing procedures, generally is provided for by a scientific collecting permit. Such permits often specify by species what may or may not be taken by the permit holder. Because of the "emergency" protective status provided striped bass by the bill, we recommend that the Administrator be responsible for issuance of scientific collecting permits for taking the species under procedures such as those established under the Endangered Species Act.

Section 2(3)(ii)

According to the bill, the "taking or harvesting of Atlantic striped bass that occurs incidentally in the course of commerical fishing operations for other species" would be excluded from provisions of the moratorium. The terms "taking" or "harvesting" imply that the fish would be removed from the water and, if dead, would be excluded from provisions of the moratorium and could be sold or kept for personal use. (Section 3(a)(4) addresses only failure to return *live* striped bass caught incidental to commerical fishing operations for other species.) The provisions of Section 2(3)(i), provide a loophole of potentially major significance. Although there is no easy solution to the problem of incidental catch of striped bass, it would be difficult to close fisheries where there is a possibility of incidential catch. The only fair option is to totally prohibit *possession* of striped bass in the management area. Therefore, *all* fish regardless of physical condition (i.e., dead or alive) caught by any means would be returned to the water. This would result in some instances of "wasting" striped bass that have been killed incidentally as a result of recreational or commercial fishing for other species. However, the alternatives, allowing possession and use of sale of striped bass killed during capture, would result in significant enforcement problems. Our suggestion would alter the purpose of the bill from "to impose a moratorium on fishing for Atlantic striped bass" to imposing a moratorium on "possession of Atlantic striped bass."

Section 4(a)

Several comments are listed below:

(a) *page 3, lines 24-25.* Because of the unclear relationship between stock and recruitment (i.e., number of parents not related in a detectable manner to number of offspring), it is unclear that "a level" of striped bass can be a quantifiable criteria for establishing the potential for successful reproduction. For example, even when the 1970 year class was spawning at peak levels, production indexes for juveniles in the Upper Chesapeake By fell *below,* as well as above, the criteria proposed by H.R. 4884 (i.e., "80 per centum of the average index") as indicating a level of juvenile production sufficient to end the moratorium.

(b) *page 3, lines 25-26, and page 4, line 1.* "80 per centum of the average index" in any given year would be an insufficient cut-off point to establish the restoration of the striped bass fishery. Although the juvenile production index referred to is the best quantitative information available to assess reproductive success of striped bass, it is not a "magic" number. The index reflects production only in a general manner for those stocks spawning in the upper Chesapeake Bay. Section 4(a) would require the Administrator to use this singular index to draw conclusions for all "stocks of Atlantic striped bass spawning in and inhabiting the waters described in Section 3(a)(1)," which encompasses an area from North Carolina to Maine, inshore as well as offshore. The Administrator needs greater flexibility in making determinations on the recovery of striped bass than that provided in Section 4(a).

In addition, if this legislation had been in effect in 1982, when the index of juvenile production referred to was indeed above the "80 per centum of average" level, the moratorium would have been terminated. Obviously a mistake would have been made.

(c) *Recommended Revision for Section 4(a).* For the purpose of terminating the moratorium the Administrator should be provided more flexibility to monitor and assess all available data regarding the reproductive success of striped bass stocks that make up the coastal migratory fishery. Criteria other than the Upper Chesapeake Bay, juvenile production index may be more valuable to the Administrator in continuing or terminating the moratorium. In addition, through the efforts of researchers a better means to assess the status of striped bass stocks may become available in the next few years. Therefore we suggest deleting reference in H.R. 4884 to specific criteria for terminating the moratorium. However, the index for the upper Chesapeake Bay could be emphasized in advising the Administrator on the various factors Congress considers appropriate to evaluate in determining the status of striped bass. Our advice to the Administrator is using the index for such purpose would be more conservative as regards the striped bass resource than proposed in H.R. 4884. We recommend considering the index as a major factor in termination of the moratorium when striped bass spawning in the upper Chesapeake Bay have produced 1) a production index for juveniles equal to, or greater than, 20 during a single calendar year, or 2) a three-year running average production index (defined as the simple arithmetic average of the index in three consecutive calendar years) equal to or greater than 10.

Section 4(b)

Notwithstanding the condition of striped bass stocks, Section 4(b) appears to automatically provide for termination of the moratorium at the end of 5 years. If all environmental conditions remain equal it is unlikely that even a moratorium will result in rapid restoration of stocks to high levels. For example, the first year class of fish provided protection under the moratorium will not even mature for 3 to 5 years. Again, we recommend the Administrator be given the flexibility to terminate the moratorium when stock recovery is evident.

General comments on section 4

Provision for providing the Administrator authority to ensure protection of fish after the moratorium should be incorporated into the Act, especially if the moratorium were to be terminated by appearance of a dominant year class. For example, protection could be provided members of a dominant year class as its members grow and mature by prohibiting or limiting take of fish within certain sizes, the upper and lower boundaries of which would encompass fish in that year class.

Because the Departments of Commerce (National Marine Fisheries Service, NMFS) and Interior (U.S. Fish and Wildlife Service, USFWS) share responsibility for Federal striped bass conservation activities, both agencies should share responsibility for Administering the moratorium. We suggest the NMFS be given lead responsibility with actions to be taken in consultation with USFWS.

COMPREHENSIVE MANAGEMENT PLANNING: AN ALTERNATE APPROACH

Problems implementing interjurisdictional fishery management have existed for decades. Creation of the Atlantic, Gulf, and Pacific States Marine Fisheries Commissions was an attempt to address interstate coordination of fishery management. However, the Commissions do not have regulatory power (states of the Atlantic and Gulf Commissions can cede regulatory power to the Commissions if they so desire for specific fisheries).

Declines in some coastal migratory stocks may be in part a result of the states inability to act quickly to regulate fishing in a coordinated manner. Impediments to action are not solely due to a lack of concern or inefficiency on the part of the state fishery management agencies in planning for the management of fisheries or even on agreeing on management plans. Commission and other interstate compacts lack a mechanism to force states to enact regulations to implement coordinated fishery management plans, especially where fishery regulations are promulgated through state legislatures. Impediments to interjurisdictional fishery management will continue to plague efforts by resource managers to address critical fishery resource needs such as presently exist for striped bass, American shad, and river herring in the Chesapeake Bay, and to prevent fishery problems which are looming on the horizon for species such as menhaden and weakfish.

We recommend a comprehensive approach to deal with the problem of managing coastal migratory fish species and in doing so provide a solution that would address the striped bass problem. For stripped bass, we suggest incorporating H.R. 4884 (with revision as suggested previously) as an emergency provision for striped bass into a larger bill that would have as its purpose assisting states in providing for interstate management of coastal migratory fish species. The legislation would provide maximum control by the states over their own fisheries. Coordination of fishery management planning and liaison between the state and federal governments would be maintained by the State Marine Fisheries Commissions. Incentive and assistance in developing fishery management plans would be provided the Commissions and states by the federal government in the form of increased grants in aid through the established matching grants programs of the Anadromous Fish Conservation Act (P.L. 89-304) and Commercial Fisheries Research and Development Act (P.L. 88-309), or through a new grants program established to provide for interstate management planning. The Federal Administrator of the Act would be responsble for ensuring that interstate fishery management plans incorporate minimum standards. Once plans are developed and approved by the states, the Administrator would have authority to assist states in enforcement of plans. And, in states that will not or cannot meet the standards necessary to manage the fishery according to the interstate plans the Administrator would have authority to federally enforce the states' plan. Additional details are included below.

Because we recommend use of federal funds to assist states in management planning, some overview of plan development must be provided the Administrator. However, plan development and approval should remain primarily in the hands of the states. We suggest the Administrator be responsible for insuring that a set of *minimum* standards, as specified in the legislation, be met in any interstate fishery management plan. Such standards should provide for the following: maximum flexibility to states in managing their own fisheries; fair allocation of fishery resources between states; coordinated management of a fishery throughout the species/stocks range (not necessarily uniform regulation throughout a fishery); continued stock monitoring and monitoring of the food base and/or essential habitat; annual review of the best biological information; plan revision/update when needed; use of the best scientific information available (and in the absence of such information the plan should specify additional data needs and allocate resources to address those needs) and; specific and general actions to be implemented to restore or enhance habitat, inshore or in coastal waters, that is necessary for production of the coastal migratory species under management and for maintenance of the species' food base.

The last minimum standard is of extreme importance. All too often fishery management plans appear conceived in a vacuum, allocating fish between users but not addressing vital interrelationships between the fish species and other components of the marine ecosystem or the species habitat. Lack of attention to habitat and ecological relationships in federal fishery management plans is a major oversight in the Fishery Conservation and Management Act. But since coastal migratory species are even more closely tied to coastal riverine habitat, estuaries, and other near-shore areas than many species inhabiting offshore federal waters, attention to habitat in coastal fishery management planning will be extremely critical.

For any scheme of federal administration of fishery management planning for coastal migratory species, responsibility should be shared between the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The agencies presently have dual responsibility for many of the coastal migratory species and the habitat primarily occupied by those species.

In addition to providing federal assistance to states in developing management plans, a federal forcing mechanism must be available to the Administrator to insure plan development proceeds at a reasonable pace, minimum standards are met in the plan, and each state implements and enforces provisions of the state adopted plan. For example, a reasonable period of time should be provided the states to implement and begin enforcing their fishery management plan. If at the end of that period a state is unable to conform to the plan it would be the Administrators responsibility to impose federal enforcement of the fishery regulations of the plan or measures more stringent than those included in plan, not to exclude closing the fishery, in the recalcitrant states' waters.

Mr. Chairman, we hope the above comments have been useful to you in your consideration of the federal government's role in the present emergency situation on Atlantic Coast striped bass. We would be pleased to work with you more closely to elucidate our ideas on comprehensive fishery management planning that addresses the national concern of managing coastal migratory species including improved management of striped bass. Thank you for the opportunity to express our views.

RESOLUTION NO. 28—UNIFIED STRIPED BASS MANAGEMENT PROGRAM

Whereas, in order to survive, the striped bass or rock fish populations must have a dominant hatch every six years, and results from the 1976 hatch show it is insufficient; and

Whereas, man continues to pollute and poison spawning grounds of striped bass with a bewildering variety of chemicals such as PCB's and Kepone; and

Whereas, harvesting techniques of commercial fishermen permit the taking of big brood fish; and

Whereas, existing laws and regulations do not adequately protect the species, and state statutes are inconsistent; Now, therefore, be it

Resolved, That the National Wildlife Federation, in annual meeting assembled March 24-27, 1977, in Washington, D.C., hereby calls upon the federal and state agencies responsible to develop a unified striped bass management program which stresses fisheries conservation practices protecting immature fish and requires uniform regulations on the harvest, in both inland waters and within the 200-mile U.S. fisheries zone; and be it further

Resolved, That this organization urges the appropriate agencies to initiate and complete any scientific studies which may be necessary to ensure the sound management of striped bass throughout its ranges; and be it further

Resolved, That the National Wildlife Federation calls upon sport and commercial fishermen alike to lend their vigorous support to those governmental agencies which are endeavoring to curb and eliminate chemical pollution.

RESOLUTION NO. 14—STRONGER MANAGEMENT EFFORTS FOR MARINE STRIPED BASS POPULATIONS

Whereas, pressures on this limited resource are strong and increasing due to the high market value of marine striped bass and growth of recreational and commercial fishing industry, despite a decline in population levels;

Whereas, the major Chesapeake Bay spawning areas have not produced a dominant year class of the species since 1970; and

Whereas, the species and its fishery occur predominantly within three (3) miles of the coast from Maine to North Carolina, management jurisdiction for marine striped bass resides with the states rather than the Federal Government; and

Whereas, this coastal migratory stock is subject to varying laws and regulations of twelve (12) states and two (2) interstate commissions with a lack of coordination or cooperation; and

Whereas, many attempts have been made to manage this fishery in the past, but these attempts thus far have been unsuccessful. The present magnitude and efficiency of both commercial and recreational fisheries may deplete the resource levels from which recovery is slow or impossible; and

Whereas, funding for research is too limited and uncoordinated; now, therefore, be it

Resolved, That the National Wildlife Federation, in annual meeting assembled March 18-21, 1982, in Milwaukee, Wisconsin, hereby recognizes that the migratory marine striped bass which ranges from Maine to North Carolina is a species in need of stronger management efforts, including greater cooperation among the states and commissions responsible for its welfare; and be it further

Resolved, That this organization stresses the vital and urgent need for continued funding under present legislation to satisfactorily conclude the mandate encompassed in the Chafee amendment to Public Law 89-304.

Mr. BREAUX. We thank the members of the panel for their testimony.

Dr. Rosen, I hear what you say, but I am also at the same time hearing, at least in my mind, what appear to be some real conflicts in your position. Let me ask you: I note that on page 8 you start off with regard to the striped bass situation and say that, "It is inappropriate to impose a Federal moratorium that preempts State management authority for striped bass at this time because," you say, "the States are in the process of conscientiously attempting to implement strong management provisions."

However, you proceed to say that, although you don't want to impose a Federal moratorium, you do not have any problems, from the Federal standpoint, requiring the States to accept the provisions of the plan that has been adopted by the Commission; and that if they don't implement the plan, their own plan, within 1 year, then we hit them with the hammer of the moratorium.

What I am saying is that you find it inappropriate, I guess philosophically, to establish a Federal moratorium, but you don't mind requiring, from the Federal standpoint, adoption of the plan that the Commission has devised. Isn't that inconsistent?

Dr. ROSEN. The States themselves are the Commission. The imposition of a moratorium at the end of a period sufficient to allow the States to implement the provisions of the plan that they agreed upon simply provides a Federal forcing mechanism to assist the full complement of States in ensuring that it is, in fact, a coastwide fishery management plan as opposed to what was——

Mr. BREAUX. Isn't it incorrect to say that the States have agreed to the plan? They really haven't. Different States have different versions of how it should be implemented in the individual States.

Dr. ROSEN. That is the flexibility provided to the States in developing regulations by the Striped Bass Management Board of the Atlantic States Marine Fisheries Commission. We don't necessarily need uniform regulations up and down the coast. We do need reduction, severe reduction, of harvest on the stocks.

Mr. BREAUX. In Mr. Coates' and Mr. Abele's statement together, they outline the progress that the States have made. Frankly, my initial impression, before the hearing started, was that the States had done very little to implement any of the recommendations, but you point out in your testimony on page 4 that actually they have done quite a bit. Rhode Island has a 3-year moratorium. New Jersey has a possession limit. New York has imposed regulations. Connecticut has described it a game fish and is considering a bag limit. New Hampshire and Massachusetts are considering imposing much reduced fishing seasons. North Carolina is in the process of having hearings. Virginia has a closure program instituted and a five-fish sport limit. Maryland has done some things. They have given them a chunk of money, at least in the President's budget, to

improve the bay. Delaware really is the only State that I see you listing that really apparently hasn't got their act together to the point of really moving in the direction in which we would like them to move.

For those of you who support the moratorium, is that the kind of record that exists that really necessitates Federal preemption in what previously has been a State-managed species? They are making progress, according to the report from these gentlemen.

Mr. RUSSELL. It depends on what you consider progress, what timeframe, Mr. Chairman.

Mr. BREAUX. Well, the plan has only been completed as of when, Mr. Coates?

Mr. COATES. October of 1981, Mr. Chairman.

Mr. BREAUX. The new recommendations, I don't think—I haven't even seen them, have we, in 1983 or last year?

Mr. COATES. No. The actions that the States are attempting to initiate to get to this 55-percent reduction are right now being developed.

Mr. BREAUX. How can we penalize the States? I haven't seen the recommendations that are coming from the Commission composed of all the States, and yet you are recommending that we move in now, even before they have had a chance to probably get the material to say you are not doing enough.

Mr. RADONSKI. Mr. Chairman, I think the progress that is being made is not enough.

Mr. BREAUX. Assuming it is not enough, is it so derelict that it necessitates a Federal preemption? That is a very serious thing that we have never done anywhere before.

Mr. RADONSKI. Yes, I still think it is serious enough that it should be done. The plan, after it was created, was modified. They went for a further reduction of harvest. How do States such as Maryland go about reducing that harvest? By putting on unrealistic size limits and saying, "We're going to reduce pressure by 50 percent." They don't even know what pressure was before this went into effect. We have very poor fishery statistics.

What I am saying is that we need the moratorium in order to set up the mechanism to get the data we need to manage the striped bass fishery.

I agree with Rudy Rosen that we do need to put this in the hands of the professional fishing manager, but, for the most part, to make sound decisions, right now we do not have a sufficient data base to come to a sound conclusion. That is one of the reasons that we are saying, "Give us the time we need to set up these programs, to allow the States to collect the data that is needed to come to a wise decision."

Mr. BREAUX. Mr. Coates, what about that?

Mr. COATES. I think that the money that is being provided right now to the States by the emergency funding, through I believe the National Marine Fisheries Service portion of the budget, has set up monitoring programs in each of the States. They are collecting striped bass statistical information of a quality that we have never been able to achieve before. We had previously collected this information, but since 1981 we have been getting very accurate statistics on the commercial fishery. The recreational fishery, admitted-

ly, does have some weaknesses in the mechanism by which the data is collected, and it generally lags the commercial fishery data by 1 year or so.

However, in terms of getting information and getting data, I don't think there is any problem. In terms of measuring the performance of the States, as I indicated, this workshop in April is going to be held under the auspices of the two Federal services, as well as the scientific committee of the striped bass board. They have already got their marching orders. They prepared their computers for input, inputting this data. The scientists in each of the States are preparing the correct format for this data, so that these proposals will be evaluated very objectively and very accurately, as far as I am concerned.

Mr. BREAUX. Mr. Saila, you had a comment?

Mr. ABELE. Mr. Chairman, Ralph Abele. I'm the——

Mr. BREAUX. I believe Mr. Saila had indicated a comment, and I will get to you Mr. Abele.

Mr. SAILA. Thank you, Mr. Chairman.

I do have some—I believe that there has been progress by the States in attempting to implement some changes in management regulation. However, first, I think we should recognize that this 50- or 55-percent reduction in fishing mortality is the best professional judgment of scientists who are working with data which is not terribly precise. That estimate could be higher. I think no one would deny that.

Secondly, the various States have very diverse ways in which they propose to effect this 55-percent reduction in fishing mortality. How are the Atlantic States Marine Fisheries Commission and the Striped Bass Management Board going to objectively evaluate whether a given State has met these requirements?

Mr. BREAUX. OK. Mr. Abele?

Mr. ABELE. Ralph Abele.

Following the workshop in Woods Hole, which is going to be a very comprehensive thing, and I think we are going to be comparing apples to apples and somehow put these in a matrix that we can understand.

The executive committee of the Atlantic States Marine Fisheries Commission, which by and large is the State director of each of the 15 Atlantic Coast States, will meet on May 23. We are almost prepared to promise that we will be able to determine some direction at that meeting. I don't think we're going to have unanimity because some States have to go back and answer to constituencies that others don't. But I think we will be prepared to make a recommendation at that time. It may require some help from the Federal establishment.

Mr. BREAUX. Mrs. Schneider?

Mrs. SCHNEIDER. I think your point just now, Mr. Abele, is rather interesting—that the States are going to have to go back to respond to their constituencies, and the fact that you pointed out that the members of that executive committee are representative of State governments certainly leads us back to the testimony that Mr. Winegrad, Senator Winegrad, had left us with. That is that we are talking politics here, rather than conservation.

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Mr. ABELE. With all due respect, I don't have to ask anyone in Pennsylvania.

Mrs. SCHNEIDER. Well, but you just said a moment ago that you doubt that you will have total unanimity because each of those States is going to have to go back and answer to their constituencies. Now this is the problem that has been exemplified time and time again today. It also has been exemplified in my own State of Rhode Island. But the question is, who has more political clout and will we reach a unanimous conclusion based on which lobbying interest is the strongest, whether it be commercial or sport, or whatever?

Mr. ABELE. After our May 23 meeting, I guarantee you will get a pure answer to that. How many of those States will be able to implement it is another question. If it is a majority that agrees with that, I would suggest that we ask for some Federal help. If it is a minority, then maybe your answer is the best one. But until we find that out in Woods Hole, I think we ought to be given a chance.

Some States have been much more successful than others. Some are hopeless.

Mrs. SCHNEIDER. I think when we are talking about success, we are not talking about success in the reduction of the fish catch; we are talking about success in terms of the group of primarily men sitting around at a table and saying, "I agree to this plan."

Now you mentioned the word "implementation" a moment ago, and I think that is where we really have to focus. If a number of people come together on May 23 and say, "Yes, we agree to this plan," what guarantee do we have that we are not going to wait through the summer, through the fall, throughout the continuation of the fishing season as it goes up the coast, that this stock is not going to be depleted yet further? Are we not dragging our heels?

Mr. ABELE. Some of the States the fishery is over. It is over in North Carolina. Maryland is in the throes of it right now with no regulations in place except the minimum size. It will progress up the coast.

But, no, in 1981 all the 15 States, even though three of them have no viable interest in the striped bass, they all agreed to this plan. They are in varying stages of implementation. So there are some things in effect.

Mrs. SCHNEIDER. Let me ask a question here. As I look across the testimony of Mr. Bryson and Mr. Rosen and Mr. Coates, the words "continuity," "comprehensive approach" were constantly repeated.

I want to go from the point of accepting a plan to the point of enforcement of a plan and discuss continuity. If each State has a different plan, as they currently are evolving or developing, that does not translate, in my terms of understanding, to continuity.

For example, if some States permit 14-inch catch and other States permit 24-inch catch, some States are closing spawning areas, the State of Rhode Island is a full moratorium, some say that you can catch 4 fish a day, others say 10 fish a day—what is to stop the Rhode Island fishermen from going across that imaginary line into Massachusetts or into Connecticut and picking up some fish there?

There is no continuity in terms of how the fishermen are concerned in their fishing and, No. 2, in terms of enforcement. How

are you going to enforce such a patchwork quilt of management plans?

Mr. COATES. If I may, the issue of continuity is an interesting one. Regarding the differential size limits we see in the plan, that is part of the logic of the plan, which provided, when it was implemented, continued fishing by both those States that harbor and nurture the resource as well as those States that are a recipient of the migratory fish. But each State has a division of marine fisheries or a management agency, and in that management agency or affiliated with it is a law enforcement entity. This is no different than any of the other many, many, many State regulations that are in place now. They are enforced very effectively by each State.

If you, as a nonresident or any Rhode Island fishermen, sneak over the Breighton Point-West Port boundaries, you well know—I get many calls in my office saying, "The gill netters from Rhode Island are at it again." Netting is prohibited in Massachusetts, and there is generally very quick action in that, as there was this past fall.

Each State, because of the fact that they have different fisheries, different gear types, and everything, cannot accommodate a set of regulations that are consistent as far as wording and scope of the regulations.

Mrs. SCHNEIDER. However——

Mr. COATES. If I may——

Mrs. SCHNEIDER. Yes.

Mr. COATES. Each State can, by saying, "This is what I'm going to do to achieve my 55-percent reduction in catch over last year"—and we are talking about 1983 landings—then by virtue of their particular regulations, tailored to their particular fisheries, they can achieve that and enforce it very easily. In fact, in many States there are reciprocal arrangements with the respective Federal Fish and Wildlife Service and National Marine Fisheries Services agents, who will also enforce those regulations.

Mrs. SCHNEIDER. Well, let's talk a little bit further about the enforcement of this 55-percent reduction. Now, say, for example, Rhode Island did not have a—well, let's take Delaware. They do not have a plan. How are they going to enforce a plan that calls for a 55-percent reduction? Who will determine whether the commercial fishermen will be permitted to catch 25 or 40 percent of that 55 percent? Who will determine whether the sports fishermen are getting what percentage? I mean, how are you going to enforce that 55 percent requirement?

Mr. COATES. Well, those will all be part of the regulations that each State will propose for implementation to achieve that 55 percent.

I don't know what Delaware is proposing at this time. I know they do have significant problems, but John might have some more specific knowledge of that.

Again, it is just a case of each State enforcing whatever regulations the management agency or, in some cases, hopefully, the legislature has agreed to implement. I don't understand the problem, quite frankly.

Mrs. SCHNEIDER. Well, my problem is a political one. If you are saying that the States will decide in each individual State who will

get how much of the piece of the pie, it is quite obvious that it has taken us this many years to even come up with a plan, because of the internal statewide special interest groups that have all been trying to get the biggest piece of the pie, and so I am concerned in terms of enforcement of the 55 percent if the States are going to say who gets what. I think we can guarantee that the strongest political lobby will be the determining factor, rather than good, scientific data.

Mr. COATES. If, in fact, a State promulgates a set of regulations to achieve a 55-percent reduction and those regulations are extremely prejudicial to one or another user group, I am afraid that that is that State's problem. As long as they enforce that reduction, from my standpoint, the objective of the plan is being carried out. They are reducing their catch 55 percent over last year. If somebody gets hurt politically, but yet they implement those regulations, I say that is the fortune of politics.

Dr. ROSEN. Mrs. Schneider, if I might add, it really doesn't matter to the fishery who is taking which fish. Our members might not agree with a plan that would allocate 90 percent of the harvest to the commercial fishermen, because we are predominantly recreational fishermen. However, in the context of putting together an effective fishery management plan to maintain the stocks, it may make little difference.

Varied regulations, even varied regulations along a fairly short segment of stream for example, are really quite standard fare for the professional fishery manager who deal with them on a regular basis. Some of the fishery management plans in existence are very complex with regard to catch regulations, time periods available for fishing, and zones in the middle of the ocean open to fishing. It is standard operating procedure for professional fisheries enforcers and managers to work under those conditions.

Mr. BRYSON. If I may, I don't think it is important, viewed nationally, who gets what share in the State. It is important to you that that State complies with its duties to meet the overall plan. I think that is the important thing.

Mrs. SCHNEIDER. Exactly, but I am concerned that, even if each State says, "We will have a 55 percent reduction, even though there are not lines drawn across the State waters," that we run into a problem of enforcement that I think is far more challenging than the enforcement of a complete moratorium that would provide for the opportunity of time, as Mr. Russell had earlier stated, to develop a more comprehensive, to use you gentlemen's words, "a more comprehensive" coastal plan.

Mr. BRYSON. I think unless you do mandate, in terms I was suggesting earlier, that you have this continuity and you have the planning, and you have an agency designated by that State to be responsible for submitting that plan and/or they could certainly work through the ASMFC with a joint effort. I think that is an ideal tool to work through, to have that compatibility. Maybe that is a better word than "continuity." That certainly implies you could have differences as long as you all meet the basic criteria.

I think you have to have that. Rather than depend on each State being able to convince their legislatures, in this case, or the pressures on the directors of the States where they have some boards

and still have some real pressures, that this fishery is not in the point of detriment, we have to do that drastic action you are taking. I think that is where you need some basic Federal standards, and you need to mandate the actions to be done and then leave it up to the States to do as much as they can of it.

Mrs. SCHNEIDER. Mr. Russell, you wanted to comment on that?

Mr. RUSSELL. Yes.

Most of the State managers—certainly Mr. Coates and Mr. Abele—are very well intentioned people. I have no quarrel with that.

Perhaps we could ask Mr. Coates or one of these gentlemen—if the States take as long to implement this next 55-percent reduction as they did, most of them, to put the original management plan into place, what is going to be the effect on the fish? Time is running out. If this were any other time, or this was a less important fish economically, spiritually, whatever way you want to look at it, that would be one thing. But this is an emergency. This is a 10 on the scale which Mr. Kutkuhn talked about this morning.

If the States wait too long, we are going to lose the Chesapeake bass as a resource. To me, that is clear beyond a shadow of a doubt.

I have been to these fisheries meetings at the State level now for 2 years—Rhode Island, Massachusetts, New York, Maryland—and all I see from one State to another is fingerpointing. Commercial fishermen point at sports fishermen. Rhode Island points at Maryland. It just goes on and on endlessly, at the expense of the fish, because people's and States' self-interests are involved here. We are just at a point where we cannot afford to have that situation any longer.

Mrs. SCHNEIDER. Thank you, Mr. Russell, for highlighting the urgency of the situation.

Dr. Saila, I just want to make sure that I have your testimony accurate. You said that our concern about the survival of the striped bass ought to be greater for two reasons, both chemical contaminants—in other words, pollution—and, second, increased fishing. With the fishing, there are more fishermen; and, second, the technological developments have enhanced the efficiency of catching fish.

You feel that the moratorium alone is just the first step, as I understand, in adequate management of this resource, anticipating that the second step would be time for the Federal and State management groups to, No. 1, develop a plan and, No. 2, to implement it?

Mr. SAILA. That is essentially correct.

Mrs. SCHNEIDER. Is that the drift of your recommendations?

Mr. SAILA. Yes.

Mrs. SCHNEIDER. I think that this is essentially what we have been envisioning in the study of the problem, and seeing the internal State politics causing the time element to go on and on and on; that a moratorium would give us the opportunity to sit down and come up with a comprehensive, complete coastal program. That is why I am enthusiastic about this approach.

Mr. Chairman, I would like to thank you very much for your indulgence in allowing me the opportunity to have this hearing today to discuss my bill.

I certainly appreciate the input of the various witnesses that we have had here. In particular—I hope the rest of you gentlemen won't mind—but I would like to acknowledge the testimony of Dr. Saila from my own home State. I am very proud that he was able to join us today, because I will tell you that the number of documents that he has written and the testimony that he has provided throughout the world, and many of the different papers he has written, weigh more than his testimony did today. I could not bring it all into the hearing room. But certainly his expertise and his recognition as a well-respected, world-renown scientist in this area are appreciated, as well as that we could have the benefit of his knowledge.

Thank you.

I thank you all.

Mr. Chairman, I particularly thank you.

Mr. BREAUX. I thank the gentlewoman from Rhode Island for her persistence in working on the legislation.

I think that all the panels that have testified today have certainly brought more information to the subcommittee with regard to the condition of the striped bass and the progress, or rather lack of progress, depending on one's perspective, that is being made by the various State agencies toward doing something that will take care of the problem that everyone can agree on. I think it is very clear that there is a very serious problem. I think it is very clear that something should be done. The question that we must decide is as to whether this is a situation that justifies Federal involvement and Federal action as opposed to State action with regard to the striped bass. It is a decision we must make. I think we now at least have the facts before us.

I think the hearing went very well. I was very, very pleased with the testimony that we received. The committee will now take that testimony and try to work with the members of the subcommittee to come up with something that can be a possible resolution to the problem that we all face.

We are all in agreement that something needs to be done. It is a question of what the proper solution is.

With that, this panel will be excused. Thank you very much for your testimony.

That concludes all of the witnesses for today. With that, the committee will stand adjourned until further call of the Chair.

[Whereupon, at 5:44 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[The following was submitted for the record:]

STATEMENT OF THE COUSTEAU SOCIETY

We of the Cousteau Society are deeply concerned about safeguarding the quality of life for all living things. It is our intention to protect and wisely manage natural resources which sustain our global ecosystems. Wise management of a resource must include as a first priority the long-term perpetuation of that ecosystem, species, or population.

When that resource is threatened or endangered with extinction by unrestrained, ineffective human activities, short-term economic interests must be superceded by a long-term ecologic perspective if society as a whole is to benefit.

The Atlantic Striped Bass, *Morone saxatilis*, deserves and has received recognition for its importance. The Striper saved the first colonist to this New World when Indians taught them how to use the fish as food and fertilizer. It has been called "an

offspring of the Ice Age," referring to the migration of *saxatilis* from inland waterways to estuarine and coastal shallow areas because of glacial ice advancements; and "the aquatic equivalent of the bald eagle" because of its uniqueness to our shores. It has received praise since the 17th Century when Captain John Smith in 1614 claimed that "the Basse is an excellent fish." For over 300 years the bass has been taken for its good flavor and ubiquity.

The decline of the Striped Bass has clearly been shown by studies conducted by academic institutions, the National Marine Fisheries Service, and the US Fish and Wildlife Service. This resource, one which supports an annual recreational and commercial fishery worth $200 million, is now on the verge of recreational and commercial extinction. Two main activities threatens the Striper; first, haphazard and non-uniform regulations enacted by the 11 involved States are inconsistent and have led to ineffective management for the past 10 years. Second, chemical contamination and habitat modification endanger breeding and migrational grounds. These are being addressed by federal statutes.

Solutions to problems of overexploitation can be addressed at this time, and significant benefits are almost certain to result from the implementation of available remedial action measures. There are historical precedence which prove that humans can bring about a return of previously overexploited or endangered populations and species (i.e., California Gray Whale, elephant seal, and sea otter). Fishing restrictions on size and effort and moratoria can save species; thus for Striped Bass, these remedial measures or a combination of such strategies should be considered. Then a resource-specific management plan should be formulated, implemented, and enforced swiftly to save and facilitate the rapid return of populations in the Chesapeake, Mid-Atlantic, and New England regions.

In developing protection/management strategies, State, and federal governments must integrate into the process user and interest groups, and academia. The information and resources are available to create the necessary solution. Now we must implement regulations to protect the Bass from further decline and to stimulate another comeback like the one earlier this Century.

The Cousteau Society believes that there are sufficient data to show that the Bass population is in danger and we are also convinced that the population can survive if all interested parties coordinate their efforts to reach agreement on uniform, efficacious environmental measures and ensure their execution, management, and enforcement. Without this goal, the Striped Bass may be lost and with this species there will go a valuable recreational and commercial industry. Thousands of jobs depend on this fish; millions of dollars exchange hands within the fish's domain. Thus, there is considerable economic gain from a viable, well-administered Bass resource.

Consequently, the Cousteau Society expresses its grave concern over the dramatic decline of the Bass and the threat to its existence. The Cousteau Society and its over 200,000 members hope that people will realize the value of protecting this and any living resource from economic and species extinction. The Cousteau Society emphasizes the need for a long-range perspective, encompassing a balanced and efficient resource management scheme. Only through sound ecological and environmental planning can we as humans safeguard our natural resources and protect the quality of all life for future generations.

SOUTHEASTERN FISHERIES ASSOCIATION, INC.,
Tallahassee, FL, March 12, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, Longworth House Office Building, Washington, DC.

Re: FPA section 7, fisheries loan fund reauthorization

DEAR CONGRESSMAN BREAUX: I understand that the Subcommittee on Fisheries and Wildlife Conservation and the Environment will be considering on March 20 bills to reauthorize Section 7 of the Fishermen's Protective Act, as amended, 22 U.S.C. S1977, and the Fisheries Loan Fund ("FLF") established under Section 4(c) of the Fish and Wildlife Act of 1956, as amended, 16 U.S.C. S742c. Both the Section 7 and FLF programs expire at the end of this fiscal year. On behalf of Southeastern Fisheries Association, Inc., I urge the Subcommittee to take positive action to reauthorize these programs, which are of substantial importance to the commerical fisheries industry in the Southeastern United States.

The Section 7 program, as you know, is largely an industry-funded, self-insurance program designed to protect U.S. distant water fishermen against foreign seizures. It has been of real benefit to those members of Southeastern who continue to fish off the coasts of Central and South America. Indeed, in the past year alone, there have been several seizures which have generated claims under this program. While payment has not always been as expeditious as we would have liked, the program does work, and, because it operates at little or no cost to the Treasury, there is every reason to reauthorize it.

The FLF program likewise is important for the industry, particularly in the long term. While it may be that no actual FLF monies will have to be appropriated for loans in FY 1985, nonetheless it is sensible to have stand-by authority to provide counter cyclical financial assistance to the industry and protect the existing obligation guarantee program portfolio.

Even more critically, there is a need to ensure that the monies in the FLF itself are preserved to be used to assist and promote the development of the U.S. fishing industry. We understand that the Administration wishes to use existing FLF funds to offset operating appropriations for NOAA and the Coast Guard. We are firmly opposed to this concept. The foreign fishing fees which make up the bulk of the FLF should be directed toward achieving the full utilization objectives of the Magnuson Fishery Conservation and Management Act. Any effort to eliminate the FLF or deplete its capital for general purpose spending should thus be rejected.

Thank you for your consideration of our views.

Sincerely yours,

ROBERT P. JONES,
Executive Director.

LAW OFFICES OF BOGLE & GATES,
Washington, DC, March 9, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Office Building, Annex II, Washington, DC.

DEAR JOHN: I am writing on behalf of the American Shrimpboat Association to support the permanent reauthorization of Section 7 of the Fishermen's Protective Act (22 U.S.C. 1971-1980). The current authorization expires on September 30, 1984.

The American Shrimpboat Association is composed of two companies—Sahlman Seafoods, Inc., and the Versaggi Shrimp Corporation—located in Tampa, Florida. These companies operate approximately 150 American-flag shrimp boats in the waters off French Guiana and Guyana under legal arrangements authorizing shrimp fishing. The shrimp are marketed through the two companies in Tampa, adding significantly to the United States domestic supply of shrimp. Since shrimp imports from other countries are claiming an increasing market share in the United States, this United States-flag fishery is an important supply of product to the American market.

When operating in that area, some of the boats occasionally enter Brazilian waters, or claimed Brazilian waters, and are arrested by Brazilian authorities for fishing without a Brazilian license. The vessels are seized and detained in Brazilian ports, sometimes for many months. Prior to release, fines are levied and equipment confiscated along with any fish catch on board. Since Brazilian permits are not available to United States vessels, except under extremely limited joint venture arrangements, these seizures are unavoidable when fishing off the northeast coast of Latin America. In addition, one vessel was seized last year off the coast of Cuba while in transit from Tampa to French Guiana.

Section 7 of the Fishermen's Protective Act provides a system for reimbursement to the vessel owners for losses incurred because of the seizures. The reimbursement covers all actual costs, such as the replacement of confiscated equipment, the market value of fish on board which are seized or spoiled, and 50% of the income lost because of lost fishing time while the vessel is under arrest. The vessel owners annually enter into contracts with the Secretary of Commerce and pay substantial fees to the Secretary which are used to fund the program. Under current practice, the industry fees cover the claims and the Government's administrative costs with little or no expense to the Federal Treasury. Reimbursement for monetary fines is made by the Department of State under Section 3 of the Act.

This fishery and the other distant-water fisheries exploited by United States-flag vessels are important sources of supply of fish products to the United States market. The risks and difficulties of operating off foreign countries are considerably greater

than operating off the United States for these companies. Consequently, the support of the United States Government through the Fishermen's Protective Act is an important factor in their continuing activities.

We recommend reauthorization of the Section 7 program and would be happy to provide any other information that you require.

Sincerely,

TERRY L. LEITZELL,
Washington Representative of the American Shrimpboat Association.

TEXAS SHRIMP ASSOCIATION,
Austin, TX, March 22, 1984.

Hon. JOHN BREAUX,
Chairman, House Subcommittee on Fisheries, Wildlife, Conservation and the Environment, House Annex No. 2, Washington, DC.

DEAR CHAIRMAN BREAUX: The Texas Shrimp Association supports the reauthorization of the Fisheries Loan Fund and the Subcommittee's request for an appropriation of $15 million to the fund.

The loan fund was originally created in 1956 to make loans for financing or refinancing the cost of purchasing, constructing, equipping, maintaining, repairing or operating new or used commercial fishing vessels or gear. The fund was to provide reasonable financial assistance not otherwise available to commercial fishermen to enable them to maintain, operate, or upgrade commercial fishing vessels and gear.

In 1980, a priority system was established for the fund with the passage of the American Fisheries Promotion Act. This made the Fisheries Loan Fund more broadly available to the fishing industry. These priorities are (1) to obligors to avoid default on obligations under the Fishing Vessel Obligation Guarantee Fund; (2) to obligors to avoid default on obligations under conventional financing and (3) to cover operating losses.

Recently, in 1981, there was $5.7 million appropriated to the Fisheries Loan Fund. Of that total, $4.6 million was distributed in the Southeast Region and $1 million wa distributed to the other regions. The remainder of the total was used to administer the fund.

In 1983, there was $10 million appropriated but only $1.9 million of the fund was distributed. Of 142 applications received by the National Marine Fisheries Service (NMFS), only 30 were approved. We do not believe that the limited number of applications is reflective of a lack of need for the funds. According to a NMFS representative, the economic recovery has dispelled the need of the industry for this money. That is totally incorrect! The industry's need for the use of those funds is greater than ever.

The problem with the 1983 loan fund distribution was the criteria established by NMFS. The criteria required that the loan be able to bring the accounts current and that only owner/operators with five years experience could apply. One of the biggest problems was the fact that the Fisheries Loan Fund cannot be used to finance the mortgage of a used vessel unless that used vessel is eligible under the Title XI, Fishing Vessel Obligation Guarantee Program. Most used vessels cannot qualify under that Program. Title XI financing for the transfer of used vessels is highly restrictive and, therefore, the Fisheries Loan Fund which must follow Title XI is also restrictive for financing transfers.

The 1983 Fisheries Loan Fund appropriation was further plagued by the fact the money was not multi-year money so it reverted back to the General Treasury on October 1, 1983.

In 1984, there has been another $3 million appropriated to the Fisheries Loan Fund. The open season for applications for these funds ends on 31 March. Although the criteria for those funds were loosened slightly since 1983, the major eligibility problems still exist.

The industry lacks adequate capitalization. There is a need for the ability to refinance existing industry debt (both vessels and facilities) through some type of "wrap around" financial service that would consolidate existing debt and allow longer amortization periods for that debt. There is a need for financing for vessel and facility reconditioning or conversion. Moreover, there is a need for financing for the purchase of new or *used* vessels and facilities.

We oppose the efforts by the Office of Management and Budget to appropriate the approximately $89 million, accrued from foreign fishing fees, to the general budgets of the Coast Guard and the National Oceanic and Atmospheric Administration. We

urge the reauthorization of the Fisheries Loan Fund and the appropriation of $15 million to that fund; the Subcommittee's request. We urge that the Subcommittee work with NMFS in efforts to establish different regulatory requirements to enable the much needed funds to be used by the industry.

If it is determined that the Fisheries Loan Fund cannot be revitalized to meet the needs of the industry, then we would urge that the $15 million appropriated be used as the base funding for the establishment of a Fisheries Development Corporation—whose programs would be better designed to meet the industry's needs.

Thank you for the opportunity to comment on H.R. 5050, the reauthorization of the Fisheries Loan Fund. If you need further information, please contact Kristin Vehrs or myself.

Sincerely,

RALPH RAYBURN,
Executive Director.

DAVIS, WRIGHT, TODD, RIESE & JONES,
Washington, DC, March 27, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House Office Building, Annex II, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of the American Tunaboat Association in support of H.R. 5051, a bill to give permanent effect to provisions of the Fisherman's Protective Act of 1967 relating to the reimbursement of U.S. commercial fisherman for certain losses incurred incident to seizure of their vessels by foreign nations. The American Tunaboat Association (ATA) is a non-profit fishery cooperative made up of nearly all U.S. flag long distance tuna fishing vessels and is based in San Diego, California.

The Fisherman's Protective Act was requested by the Executive Branch and enacted by the Congress and in order to preserve the U.S. position with regard to ocean jursidictional claims, specifically U.S. non-recognition of claims by other countries to jurisdiction over tuna located beyond 12 miles from shore. Under Section 7 of that Act, a program was created to ensure that preserving our claim i.e. freely fishing beyond 12 miles, does not impose individual hardship on vessel owners. Under Section 7, a fisherman enters into cooperative agreement with the Secretary of Commerce to be reimbursed for any seizure-related loss of fish, vessel, or other equipment and 50% of lost income.

For the last two years, the program has been funded only by the fees paid by vessel owners who participate in the program. We support continuing the program and extending permanently the authorization for Section 7, which will expire on September 30, 1984 unless extended.

Sincerely yours,

JAMES P. WALSH,
Washington Counsel for the American Tunaboat Association.

SAVE OUR STRIPERS, INC.,
Massapequa Park, NY, March 18, 1984.

Representative JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife, House Annex 2, House of Representatives, Washington, DC.

Re: H.R. 4884.

DEAR REP. BREAUX: We wish the following to be entered into the Congressional Record:

This letter confirms that SAVE OUR STRIPERS, INC., backed by a combined membership of some 15,000 individuals in 13 states, fully supports and desires passage of bill H.R. 4884, introduced by Rep. Claudine Schneider of Rhode Island. This measure calls for a 3-year moratorium on the taking and possession of Atlantic striped bass.

Our organization backs this important legislation because it has now become obvious that we are in terrible danger of entirely losing the valuable Atlantic striped bass resource. Unfortunately, the recommendations of the State/Federal striped bass management plan, recently implemented by all but two of the coastal states,

falls short of the reduction in mortality levels that is actually needed to bring the important Chesapeake Bay striper fishery back to viable production.

Latest population estimates reveal that the striped bass resource has declined a disastrous 90% in just ten years. And a recently completed Federally-financed 5-year study indicates that while pollution in the spawning rivers and inland waters of Chesapeake Bay may be responsible for the extremely low production levels of striped bass, it is the largely uncontrolled harvesting of the species that is delivering the coup de grace to the fishery. In its concluding remarks, the draft of the study results recommends, "Impose a substantial reduction in fishing mortality from the present level, not to exclude consideration of a total moratorium, until evidence indicates recovery of the coastal stock to an acceptable level of production."

Nothing short of a complete moratorium on the taking of Atlantic striped bass is going to save this endangered fish. It is extremely urgent that this bill be reported out of Committee this session.

Very truly yours,

ROBERT H. BUSS, *President.*

ESTABLISHING THE MARINE RESOURCES DEVELOPMENT BANK

THURSDAY, MAY 24, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in room 1334, Longworth House Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Representatives Breaux, Pritchard, Young, Shumway, Bateman, and McKernan.

Staff present: G. Wayne Smith, Timothy Smith, William MacKenzie, George Mannina, and John Dentler.

Mr. BREAUX. The subcommittee will please be in order.

OPENING STATEMENT OF HON. JOHN B. BREAUX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. BREAUX. This morning we are meeting to receive testimony on H.R. 5549, the Marine Resources Development Bank Act.

This legislation was introduced on May 1 by myself, Mr. Young, and Mr. Biaggi with the hope of furthering the dialog that eventually might lead to the establishment of a new framework for fisheries development programs.

Over the course of the last three decades, the Congress has established, refined, fine-tuned, and otherwise legislated a number of programs in an attempt to provide our fishing industry with the management tools and capital it needs to become a world leader in fisheries production.

Since the early 1970's, we have tended to concentrate our efforts on the construction of a comprehensive management framework that has allowed our fishing industry and managers to address serious problems associated with overfishing by foreign nations and resource cycles that depleted the valuable, renewable fishery resources within 200 miles of our shores.

The enactment of the Fishery Conservation and Management Act of 1976, the American Fisheries Promotion Act of 1980, the Fishery Conservation and Management Improvement Act of 1982, as well as the Presidential Proclamation of March 10, 1983, establishing an exclusive economic zone for the United States, have largely fulfilled this goal.

Nonetheless, we still find our fishing industry largely bereft of the financing necessary to transform it from a cottage industry into the world leader it should be.

This is not to say that we have not tried to create solutions to this problem.

The fisheries loan fund and the title XI Obligation Guaranty Program are testimony to this fact. These programs are also, I believe, testimony to our failure to enact, in one institution, the comprehensive and responsive financial assistance framework that so many who have studied this problem believe is essential.

Last year the late Congressman Ed Forsythe initiated our efforts to reform the financial services delivery system for the U.S. fishing industry through the introduction of H.R. 3806. That bill was the subject of 2 full days of hearings in our subcommittee. The bill currently before the subcommittee is the result of those hearings and the extensive discussion that ensued.

Under this bill there would be established a Marine Resources Development Bank with its headquarters located within the metropolitan area of the District of Columbia and with such branch offices throughout the United States as the Board considers necessary or appropriate.

The bank would be a Government corporation under the terms of the Government Corporation Control Act.

It would have its powers vested in a Board of Directors consisting of nine voting Directors appointed by the President, with the advice and consent of the Senate, and four nonvoting observers, or their respective designees, as follows: First, the Secretary of Agriculture; second, the Secretary of Commerce; third, the Secretary of the Treasury; and fourth, the U.S. Trade Representative.

The Board would be required to establish and appoint knowledgeable individuals to serve on three private sector advisory committees which would advise the bank regarding its policies and operations in the harvesting, processing, and marketing sectors of the domestic fishing industry.

The Board of Directors would establish the offices of the bank, including a chief executive officer, who would be responsible for the management of the bank on a full-time basis.

The bank would have the capability to select, employ, and set the salaries of officers and employees as the Board deems necessary, and to organize the bank as it sees fit to fix responsibility and promote efficiency.

Upon request of the Board, the head of any Federal agency would be given the authority to detail to the bank on a reimbursable basis any of the personnel of that agency to assist the bank in the performance of its functions.

Subject to specified terms and conditions, the bank would have the authority to make loans to citizens of the United States for purposes of assisting them to:

One, finance the cost of purchasing or constructing new U.S. fishing vessels or new fisheries shoreside facilities;

Two, finance the cost of purchasing, reconstructing, or reconditioning used U.S. fishing vessels or used fishery shoreside facilities;

Three, finance the purchase of fishing gear for new or used U.S. fishing vessels;

Four, provide working capital necessary to successfully operate a fishing vessel or fisheries shoreside facility for which a loan is made under the above provisions; and

Five, to refinance any existing obligation for any activity described above.

The bank would also have the authority to facilitate export transactions involving U.S. fish and fish products, including countertrade, which, in the judgment of the Board, offers sufficient likelihood of repayment to justify the Board's support.

Such financial assistance would include loans and insurance to foreign importers of U.S. fish and fish products to improve the capability of importing nations to purchase and use such products and loans to exporters of U.S. fish and fish products to assist such exporters in meeting sales competition from other nations or to make additional export sales.

The bank would also be able, if determined feasible, to make credit financing available for the establishment of facilities in importing nations to handle U.S. fish and fish products, to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies, and to provide, subject to reasonable charges, technical support to exporters and importers of U.S. fish and fish products.

In carrying out its export responsibilities, the Bank would utilize the services of the U.S. Agricultural Trade Officers, which would be required to carry out these functions to the same extent and in the same manner with respect to fish and fish products as they are now carried out with respect to agricultural commodities.

Primary funding for the bank would come from the issuance of its own obligations in the private credit market, with the full faith and credit of the United States pledged to the payment of all obligations including both principal and interest. The bank would be limited, at any one time, to having no more than $1,500 million in outstanding obligations.

As required by current market conditions, the Secretary of the Treasury would be required to purchase obligations of the bank and use as a public debt transaction the proceeds from the sale of any securities issued.

Initial capital for the bank would come from: First, all appropriated yet unobligated moneys of the fisheries loan fund that are held by the Secretary of Commerce as of October 1, 1984; second, unappropriated funds on deposit in the fisheries loan fund on that date, which are expected to approximate $89.7 million; and third, subsequent foreign fishing fee receipts.

Upon creation of the new bank, NMFS would cease to administer the current fisheries loan fund.

In addition, the Secretary of Commerce would not be able to guarantee any obligation under title XI of the Merchant Marine Act of 1936, which aids in the financing or refinancing or the construction, reconstruction, reconditioning, or purchase of a fishing vessel or fishery facility.

Intead, the bank would provide the necessary funds and services to replace these programs.

There is no question that the United States fishing industry is a diverse industry with a broad variety of perspectives. That does not

mean, however, that it cannot work together toward common goals. The Marine Resources Development Bank legislation, in that it is a direct result of close consultation with all affected sectors of the domestic fishing industry, could provide a means for reaching the common goal of maximizing economic benefits from the ocean resources under the jurisdiction of the United States.

I would close this very lengthy opening statement by saying we look forward to working with the witnesses and other members of the committee to try and come up with an approach that we can view as being one that will work.

This is certainly in no way an effort to create any kind of a boondoggle program or bailout for the fishing industry.

I think there is a very clear feeling that we do not need, in many fisheries, to encourage more entry through financial incentives. However, we do need to do a better job of taking care of those bona fide fisherman who are already there.

[A copy of the bill follows:]

I

98TH CONGRESS
2D SESSION

H. R. 5549

To establish the Marine Resources Development Bank, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1984

Mr. BREAUX (for himself, Mr. YOUNG of Alaska, and Mr. BIAGGI) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To establish the Marine Resources Development Bank, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act shall be cited as the "Marine Resources Devel-
4 opment Bank Act".

5 **SEC. 2. FINDINGS, PURPOSES, AND POLICY.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) The fishery resources over which the United
8 States asserts sovereign rights constitute a valuable
9 national resource which should be utilized for the bene-
10 fit of the Nation.

39-325 O—84——10

1 (2) Foreign fishermen currently harvest approxi-
2 mately 50 per centum of the total harvest of fishery
3 resources over which the United States asserts sover-
4 eign rights.

5 (3) National fishery policy, as reflected in the Act
6 of 1976 and the proclamation by the President dated
7 March 10, 1983, which established the Exclusive Eco-
8 nomic Zone of the United States, is to maximize eco-
9 nomic benefits from the fishery resources of that zone
10 for the United States fishing industry.

11 (4) The fisheries of the United States provide em-
12 ployment to nearly three hundred thousand Americans
13 and contribute over $7,000,000,000 to the American
14 economy.

15 (5) To satisfy the domestic market for fisheries
16 products, the United States imports more than 50 per
17 centum of its fish and shellfish, and this dependence on
18 imports adversely affects the national balance of pay-
19 ments.

20 (6) Numerous obstacles exist to the achievement
21 of optimum utilization of United States fishery re-
22 sources by the United States fishing industry.

23 (7) The current Federal institutions and programs
24 designed to assist the United States fishing industry
25 are inadequate to meet current and future needs.

1 (8) Other nations with substantial fishery interests
2 have established institutions and provided government
3 support to promotc the development of their fishing in-
4 dustries.
5 (b) PURPOSE.—It is the purpose of ths Act to promote
6 fisheries development in the United States by—
7 (1) establishing a Marine Resources Development
8 Bank to assist the various sectors of, and the partici-
9 pants in, the United States fishing industry to realize
10 their full potential;
11 (2) maximizing the benefits to the United States
12 from the vast and valuable fishery resources under its
13 sovereign authority;
14 (3) strengthening the competitive position of the
15 United States fishing industry in international trade;
16 (4) encouraging investment in modern and effi-
17 cient fishery-related vessels, gear, and shoreside
18 facilities;
19 (5) providing a coordinated approach for effec-
20 tively administering financial assistance programs relat-
21 ing to fisheries development, including the development
22 of export markets for United States fish products; and
23 (6) providing a means for the United States fish-
24 ing industry to coordinate its views on financial assist-
25 ance issues of importance to the industry.

1 (c) POLICY.—The Congress declares that a Marine Re-
2 sources Development Bank has the potential for augmenting
3 Federal, State, local, and industry fisheries-related programs,
4 thereby enabling the industry to reach its full potential,
5 aiding the United States in meeting its future food needs and
6 contributing to the growth of the United States economy. It
7 is, therefore, in the national interest, and it is the national
8 policy, to encourage the development of domestic fisheries in
9 the United States through the establishment of such a Bank.
10 SEC. 3. DEFINITIONS.
11 For purposes of this Act—
12 (1) The term "Act of 1976" means the Act enti-
13 tled "An Act to provide for the Conservation and Man-
14 agement of the Fisheries, and for other purposes," ap-
15 proved April 13, 1976 (16 U.S.C. 1801 et seq.)
16 (2) The term "Bank" means the Marine Re-
17 sources Development Bank established under section 4.
18 (3) The term "Board" means the Board of Direc-
19 tors of the Bank.
20 (4) The term "United States citizen" means—
21 (A) any individual who is a citizen or nation-
22 al of the United States or a citizen of the North-
23 ern Mariana Islands;
24 (B) any corporation, if at least 75 per
25 centum of it is owned by citizens of the Northern

1 Mariana Islands, or by citizens or nationals of the
2 United States of America within the meaning of
3 the provisions of section 2 of the Shipping Act,
4 1916 (46 U.S.C. 802); or
5 (C) any partnership or association, if all the
6 general partners, and at least 75 per centum of
7 all partners, are citizens or nationals of the
8 United States or citizens of the Northern Mariana
9 Islands.
10 For purposes of this paragraph a "citizen of the North-
11 ern Mariana Islands" means—
12 (i) any individual who is a citizen of the
13 Northern Mariana Islands (and qualifies as such
14 under section 8 of the Schedule on Transitional
15 Matters attached to the Constitution of the North-
16 ern Mariana Islands);
17 (ii) any corporation formed under the laws of
18 the Northern Mariana Islands, if at least 75 per
19 centum of it is owned by individuals specified in
20 clause (i), or other citizens or nationals of the
21 United States; or
22 (iii) any partnership or other form of associa-
23 tion, if all the general partners, and at least 75
24 per centum of all partners, are individuals speci-

1 fied in clause (i) or other citizens or nationals of
2 the United States.
3 (5) The term "fish" means all forms of aquatic
4 animal and plant life, other than marine mammals and
5 birds.
6 (6) The term "fisheries shoreside facility" means
7 any land, or structure or equipment on land, within the
8 United States that is used for unloading, receiving,
9 holding, processing, or distributing fish of any kind
10 (including fish caught as a result of commercial
11 passenger-carrying fishing operations). The term does
12 not include—
13 (A) office furniture, equipment, or supplies;
14 (B) any rolling equipment which will be used
15 outside the primary production site;
16 (C) any other nonfixed equipment which
17 should be financed either from working capital or
18 by the proceeds of short-term financing from other
19 sources; or
20 (D) any facility where more than 49 per
21 centum of the gross income is projected to be
22 from the retail selling of fish or fisheries products
23 or from anything else other than the unloading,
24 receiving, holding, processing, or distribution of
25 fish.

1 (7) The term "fishing" has the same meaning as
2 is given such term in section 3(11) of the Act of 1976
3 (16 U.S.C. 1802(11)).
4 (8) The term "reconstruction or reconditioning"
5 means any improvements of used fishing vessels or
6 used fisheries shoreside facilities if—
7 (A) at least 75 per centum of the expendi-
8 tures for improvement are capital, rather than ex-
9 pense, items;
10 (B) the improved vessel or facility will have
11 an economically useful life of at least ten years (or
12 longer if the term of the proposed financing for
13 which a guarantee is sought is longer), but
14 specific equipment involved in a reconstruction or
15 reconditioning may individually have economically
16 useful lives of less than ten years;
17 (C) the improved vessel or facility will be fit
18 and sufficient for its intended operation; and
19 (D) the improvement project involves more
20 than routine repair or maintenance.
21 (9) The term "State" means any of the several
22 States, the District of Columbia, the Commonwealth of
23 Puerto Rico, American Samoa, the Virgin Islands of
24 the United States, Guam, the Northern Mariana Is-
25 lands, any other commonwealth, territory, or posses-

1 sion of the United States of America, or any political
2 subdivision of any of the above.
3 (10) The term "United States fishing vessel"
4 means any vessel, boat, ship, or other craft which is
5 documented under the laws of the United States and is
6 primarily designed for, used for, equipped to be used
7 for, or of a type which is normally used for, commer-
8 cial fishing (including commercial passenger-carrying
9 fishing vessels) or aiding or assisting one or more ves-
10 sels at sea in the performance of any activity relating
11 to fishing (including, but not limited to, preparation,
12 supply, storage, refrigeration, transportation, or
13 processing).
14 (11) The term "United States fish products"
15 means fish, wherever landed, harvested by United
16 States fishing vessels, and any product derived from
17 those fish.
18 **SEC. 4. ESTABLISHMENT OF BANK.**
19 (a) IN GENERAL.—There is established the Marine Re-
20 sources Development Bank. The principal office of the Bank
21 shall be located within the metropolitan area of the District
22 of Columbia. The Bank shall establish such branch offices
23 throughout the United States as the Board considers neces-
24 sary or appropriate.

1 (b) BANK A GOVERNMENT CORPORATION.—The Bank
2 is a Government corporation for purposes of chapter 91 of
3 title 31, United States Code.

4 (c) BANK PROPERTY.—(1) Except as provided in para-
5 graph (2), the Bank, its franchise, capital, reserves, surplus,
6 income, and tangible and intangible property shall be exempt
7 from all taxation now or hereafter imposed by the United
8 States or by any State.

9 (2) Any real property owned in fee by the Bank shall be
10 subject to State taxation to the same extent, according to its
11 value, as other similarly situated and used real property,
12 without discrimination in the value, classification, or assess-
13 ment thereof.

14 **SEC. 5. BOARD OF DIRECTORS OF THE BANK.**

15 (a) IN GENERAL.—The powers of the Bank are vested
16 in the Board.

17 (b) COMPOSITION.—The Board of Directors of the
18 Bank shall consist of nine voting Directors appointed under
19 subsection (c), of which not more than five may be of the
20 same political party. In addition, the Board shall have four
21 nonvoting observers, or their respective designees, as follows:

22 (1) The Secretary of the Treasury.

23 (2) The Secretary of Commerce.

24 (3) The Secretary of Agriculture.

25 (4) The United States Trade Representative.

1 (c) APPOINTMENT OF DIRECTORS.—(1) The President
2 shall appoint, by and with the advice and consent of the
3 Senate, the following as Directors:
4 (A) The Chairman of the Board, who shall be an
5 individual knowledgeable and experienced in banking
6 operations and finance.
7 (B) Eight individuals who are knowledgeable and
8 experienced regarding financing within the fishing in-
9 dustry in the United States.
10 (2) No individual is eligible for appointment under this
11 subsection unless the individual is a citizen or national of the
12 United States or a citizen of the Northern Mariana Islands
13 and no individual may be an officer or employee of the United
14 States while serving as a Director.
15 (3) The Board shall have a Vice Chairman who shall be
16 elected by the Directors from among their number by a ma-
17 jority vote of all Directors.
18 (d) TERMS OF OFFICE, VACANCIES, AND REMOVAL OF
19 DIRECTORS.—(1) The term of office of a Director is three
20 years; except that of the Directors initially appointed to the
21 Board under subsection (c)(1), three shall be appointed for a
22 term of one year, three shall be appointed for a term of two
23 years, and three shall be appointed for a term of three years,
24 as designated by the President at the time of appointment.

1 (2) A vacancy on the Board shall be filled in the same
2 manner in which the original appointment was made.
3 (3) Any member appointed to fill a vacancy occurring
4 before the expiration of the term for which such member's
5 predecessor was appointed may be appointed only for the re-
6 mainder of such term.
7 (4) Upon the expiration of a term, the individual may
8 continue to serve as a Director until a successor has been
9 appointed.
10 (5) An individual is eligible for reappointment as a Di-
11 rector for any number of terms.
12 (6) Subject to subsection (g), a Director may be removed
13 from the Board by the President only for neglect of duty or
14 malfeasance in office.
15 (e) MEETINGS, QUORUMS, AND PROCEDURES OF THE
16 BOARD.—(1) The Board shall meet at any time under call of
17 the Chairman and as may be provided by the bylaws of the
18 Bank, but not less than quarterly.
19 (2) A majority of the Directors shall constitute a quorum
20 of the Board and any action by the Board must be effected by
21 a majority vote of all Directors.
22 (3) Section 552b of title 5, United States Code, shall
23 apply to the Bank in the same manner, and to the same
24 extent, as if the Bank were an agency within the meaning of
25 subsection (a)(1) of such section.

1 (f) COMPENSATION AND TRAVEL EXPENSES FOR DI-
2 RECTORS.—(1) Directors are entitled to receive the daily
3 equivalent of the annual rate of basic pay in effect for grade
4 GS-18 of the General Schedule for each day (including
5 traveltime) during which they are engaged in the actual per-
6 formance of duties vested in the Bank; except that no Direc-
7 tor may receive more than $15,000 in any fiscal year under
8 this paragraph.

9 (2) While away from their homes or regular places of
10 business in the performance of services for the Bank, Direc-
11 tors are entitled to travel expenses, including per diem in lieu
12 of subsistence, in the same manner as persons employed
13 intermittently in the Government service are allowed ex-
14 penses under section 5703(b) of title 5 of the United States
15 Code.

16 (g) CONFLICTS OF INTEREST.—(1) Except as permitted
17 by paragraph (2), no Director shall vote on any matter re-
18 specting any application, loan, contract, claim, or other par-
19 ticular matter pending before the Bank, in which, to his or
20 her knowledge, the Director, the Director's spouse, or minor
21 child, partner, or an organization (other than the Bank) in
22 which the Director is serving as an officer, director, trustee,
23 partner, or employee, or any person or organization with
24 whom the Director is negotiating or has any arrangement

1 concerning prospective employment or has a financial
2 interest.
3 (2) Any action by a Director that conflicts with para-
4 graph (1) shall be cause for removal of the Director from
5 office by the President, but shall not impair or otherwise
6 affect the validity of any otherwise lawful action by the Bank
7 in which the Director or officer participated.
8 (3) The prohibition in paragraph (1) shall not apply if
9 the Director first advises the Board of the nature of the par-
10 ticular matter in which the Director proposes to participate
11 and makes full disclosure of such financial interest, and the
12 Board determines by a majority vote that the financial inter-
13 est is too remote or too inconsequential to affect the integrity
14 of such Director's services for the Bank in that matter. The
15 Director involved may not participate in such determination.
16 **SEC. 6. PRIVATE SECTOR ADVISORY COMMITTEES.**
17 (a) ESTABLISHMENT AND PURPOSE.—The Board shall
18 establish, and appoint knowledgeable individuals to serve on,
19 three sector advisory committees that shall advise the Bank
20 regarding its policies and operations in—
21 (1) the harvesting sector, that consists of United
22 States fishing vessels engaged in fishing on a commer-
23 cial basis;
24 (2) the processing sector, that consists of United
25 States fishing vessels and fisheries shoreside facilities

1 engaged in the processing of fish for commercial use or
2 consumption; and
3 (3) the marketing sector, that consists of enter-
4 prises engaged in the promotion, distribution, or sale,
5 in either domestic or foreign markets, or both, of the
6 products of the harvesting and processing sectors.
7 (b) TRAVEL EXPENSES OF MEMBERS.—While away
8 from their homes or regular places of business in the perform-
9 ance of services for the Bank, members of any sector adviso-
10 ry committee are entitled to travel expenses, including per
11 diem in lieu of subsistence, in the same manner as persons
12 employed intermittently in the Government service are al-
13 lowed expenses under section 5703(b) of title 5, United
14 States Code.
15 **SEC. 7. OFFICERS AND EMPLOYEES OF THE BANK.**
16 (a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—
17 (1) The Board shall—
18 (A) establish the offices of the Bank (including a
19 chief executive officer who shall be responsible for the
20 management of the Bank and shall hold that office on
21 a full-time basis, but shall not hold any other salaried
22 position while holding that office) and define the func-
23 tions of such offices;
24 (B) subject to paragraph (2), select, employ, and
25 fix the compensation of such officers and employees of

1 the Bank as the Board deems necessary for the func-
2 tioning of the Bank, and in fixing compensation, shall
3 take into consideration the rates of compensation in
4 effect under the Executive Schedule and the General
5 Schedule prescribed by subchapters II and III of chap-
6 ter 53 of title 5, for comparable positions or categories;
7 and
8 (C) provide a system of organization to fix respon-
9 sibility and promote efficiency.
10 (2) If the Board determines that it is necessary to fix the
11 compensation of any officer at a rate in excess of that pre-
12 scribed for level II of the Executive Schedule under section
13 5312 of title 5, United States Code, the Board may transmit
14 to the President its recommendations with respect to the
15 rates of compensation it deems advisable for such position.
16 Such recommendations shall become effective at the begin-
17 ning of the first pay period which begins after the thirtieth
18 day following the transmittal of such recommendations unless
19 the President disapproves that recommendation and notifies
20 the Board to that effect.
21 (b) UTILIZATION OF FEDERAL PERSONNEL.—Upon re-
22 quest of the Board, the head of any Federal agency may
23 detail to the Bank, on a reimbursable basis, any of the per-
24 sonnel of such agency to assist the Bank in the performance
25 of its functions.

1 (c) APPLICABILITY OF CERTAIN FEDERAL LAWS.—
2 Except as specifically provided in this Act, the Directors,
3 officers, and employees of the Bank shall not be subject to
4 any law of the United States relating to governmental
5 employment.

6 (d) NO POLITICAL QUALIFICATION IN SELECTION OF
7 PERSONNEL.—No political test or political qualification shall
8 be used in selecting, appointing, promoting, or taking any
9 other personnel section with respect to any officer, agency, or
10 employee of the Bank, or of any recipient of financial assist-
11 ance under this Act.

12 **SEC. 8. POWERS OF THE BANK.**

13 (a) IN GENERAL.—In carrying out this Act, the Bank
14 shall have the power, subject to this Act—

15 (1) subject to subsection (b), to adopt, amend, and
16 rescind bylaws;

17 (2) to adopt and alter a corporate seal, which
18 shall be judicially noticed;

19 (3) to make agreements and contracts with indi-
20 viduals and private or governmental entities;

21 (4) to lease, purchase, accept gifts or donations of,
22 or otherwise to acquire, and to own, hold, improve, use
23 or otherwise deal in or with, and to sell, convey, mort-
24 gage, pledge, lease, exchange, or otherwise dispose of,

1 any property, real, personal, or mixed, or any interest
2 therein;
3 (5) to sue and be sued in its corporate name and
4 to complain and to defend in any court of competent
5 jurisdiction;
6 (6) to represent itself, or to contract for represen-
7 tation, in all judicial, legal, and other proceedings,
8 except actions cognizable under the Federal Tort
9 Claims Act (28 U.S.C. 2671 et seq.), in which actions
10 it will be represented by the Attorney General;
11 (7) to indemnify Directors and officers of the
12 Bank, as the Board may deem necessary or desirable;
13 (8) with the approval of the agency concerned, to
14 make use of services, facilities, and property of any
15 agency, department, board, commission, or independent
16 establishment of the United States in carrying out the
17 provisions of this Act and to pay for such use, such
18 payments to be credited to the applicable appropriation
19 that incurred the expense;
20 (9) to determine and prescribe the manner in
21 which obligations of the Bank shall be incurred and its
22 expenses allowed and paid;
23 (10) to obtain the services and fix the compensa-
24 tion of experts;

1 (11) to use the United States mails on the same
2 terms and conditions as the executive departments of
3 the United States Government; and
4 (12) to exercise all other lawful powers necessari-
5 ly or reasonably related to the establishment of the
6 Bank, to carry out the provisions of this Act and the
7 exercise of its powers, purposes, functions, duties, and
8 authorized activities.
9 (b) BYLAWS.—The Board shall cause to be published in
10 the Federal Register in a timely manner all actions taken
11 under subsection (a)(1). The Board shall adopt initial bylaws
12 relating to the conduct of business by the Bank within one
13 hundred and eighty days after the Directors are first
14 appointed.
15 SEC. 9. FISHING INDUSTRY FINANCIAL ASSISTANCE.
16 (a) IN GENERAL.—The Bank shall provide financial as-
17 sistance under this section after taking into account how that
18 assistance, to the extent practicable, will complement or sup-
19 plement the financial assistance that may be available to the
20 United States fishing industry under other Federal agency
21 programs and under State or private programs.
22 (b) DIRECT LOANS FOR FISHING VESSELS, SHORE-
23 SIDE FACILITIES, AND RELATED PURPOSES.—(1) The
24 Bank may make loans, and may make committments to make

1 loans, to citizens of the United States for purposes of assist-
2 ing them to—
3 (A) finance the cost of purchasing or constructing
4 new United States fishing vessels or new fisheries
5 shoreside facilities;
6 (B) finance the cost of purchasing, reconstructing,
7 or reconditioning used United States fishing vessels or
8 used fisheries shoreside facilities;
9 (C) finance the purchase of fishing gear for new or
10 used United States fishing vessels;
11 (D) provide working capital necessary to operate
12 successfully a fishing vessel or fisheries shoreside facili-
13 ty for which a loan is made or refinanced under this
14 section; and
15 (E) refinance any existing obligation for any activ-
16 ity described in subparagraphs (A) through (D).
17 (2) Each loan made under this subsection shall be sub-
18 ject to such terms and conditions as the Board considers ap-
19 propriate, including, but not limited to, the following:
20 (A) The fishing vessel, fisheries shoreside facility,
21 or fishing gear for which the loan is made will be uti-
22 lized within the fishing industry of the United States.
23 (B) The term of maturity for the loan may not
24 exceed thirty years.

1 (C) Not less than 10 per centum of the total costs
2 of the project for which the loan is made will be fi-
3 nanced through other sources.
4 (D) If the borrower is a closely held corporation
5 or entity, all principals must personally guarantee the
6 loan.
7 (E) If the borrower is a subsidiary or affiliate of a
8 parent corporation, the parent must guarantee the
9 loan.
10 (F) The borrower must furnish such collateral as
11 may be necessary to protect adequately the interest of
12 the Bank.
13 (G) The borrower must possess such demonstrated
14 fish harvesting, fish processing, or fish marketing expe-
15 rience, general business experience, resources, and rep-
16 utation, and the purposes for which the loan is sought
17 must evidence such economic soundness, as may be
18 necessary to protect the Bank from undue risk.
19 (3) Each loan made under this subsection shall bear in-
20 terest at such rate as the Bank shall establish taking into
21 account the income needed to restore Bank debt, absorb loan
22 losses, and maintain adequate reserves.
23 (c) DIRECT LOANS TO EXPAND EXPORT MARKETS
24 FOR UNITED STATES FISH PRODUCTS.—(1) The Bank may
25 make loans and make commitments to make loans—

1 (A) to assist exporters of United States fish prod-
2 ucts to increase export sales and to meet international
3 competition from other fish exporting nations;
4 (B) to assist foreign nations and foreign importers
5 to finance, in whole or part, the purchase of United
6 States fish products; and
7 (C) to finance the development of appropriate fa-
8 cilities in foreign nations for the handling, marketing,
9 processing, storage, or distribution of United States
10 fish products imported into those nations.
11 (2) Each loan made under this subsection shall be sub-
12 ject to such terms and conditions as the Board considers ap-
13 propriate, including all of the conditions specified in subsec-
14 tion (b)(2), except subparagraph (A). No loan may be made
15 under this subsection for purposes of debt rescheduling.
16 (d) LOAN GUARANTEES.—(1) The Bank may guarantee
17 the payment of principal and interest on any loan entered
18 into to finance any purpose for which a loan may be made
19 under subsection (c) if the loan was made to—
20 (A) an export trading company within the mean-
21 ing of section 4(c)(14)(F)(i) of the Bank Holding Act of
22 1956 (12 U.S.C. 1841); or
23 (B) any other exporter of United States fish
24 products;
25 if—

1 (i) the loan is secured by export accounts receiva-
2 ble or inventories of United States fish products for
3 export, and
4 (ii) in the judgment of the Board, the guarantee
5 will facilitate an expansion of export markets for
6 United States fish products that would not otherwise
7 occur.
8 (2) The full faith and credit of the United States is
9 pledged to the payment of all guarantees made under this
10 subsection.
11 (3) The Bank shall prescribe and collect an annual fee in
12 connection with each loan guarantee made under this subsec-
13 tion. The fee shall reflect the administrative expenses in-
14 curred in making the guarantee and the risk assumed by the
15 Bank, and shall not be less than an amount which, when
16 added to the amount of interest payable to the lender of the
17 loan, produces a total charge appropriate for loan guarantee
18 agreements of comparable risk and maturity if supplied by
19 normal capital markets. Moneys accruing to the Bank from
20 loan guarantee fees charged under this subsection shall be
21 used solely to meet obligations arising from defaults on loans
22 guaranteed under this subsection.
23 (4) No loan used to reschedule debt may be guaranteed
24 under this subsection.

1 (5) The maximum aggregate contingent liability of the
2 Bank outstanding at any one time with respect to guarantees
3 made under this subsection may not exceed $500,000,000.
4 (e) BANK POLICY IN EXTENDING EXPORT ASSIST-
5 ANCE.—The Bank shall ensure that moneys available for
6 export assistance under subsections (c) and (d) are applied in
7 such a manner as to achieve equitable use of the moneys by
8 the greatest number of eligible persons to increase sales of
9 the United States fish products to the greatest feasible
10 number of countries, consistent with maximizing market op-
11 portunities. In carrying out this objective, the Bank shall es-
12 tablish procedures to ensure that the amount of export assist-
13 ance under subsections (c) and (d) with respect to any one
14 export project, either directly or indirectly, or to any one
15 person, including affiliates and subsidiaries thereof, either di-
16 rectly or indirectly, may not at any one time exceed 5 per
17 centum of the outstanding export assistance of the Bank.
18 SEC. 10. ADDITIONAL BANK SERVICES TO THE FISHING
19 INDUSTRY.
20 (a) INFORMATION SERVICES.—The Bank, in coopera-
21 tion with other Federal agencies as well as with appropriate
22 State agencies, shall establish and maintain an information
23 service listing export opportunities for United States fish
24 products and the Federal, State, and private financial assist-

1 ance programs that are available to assist persons to avail
2 themselves of those opportunities.
3 (b) SUPPORT SERVICES.—The Bank may provide, on a
4 request basis and subject to reasonable charge, technical sup-
5 port services to exporters and importers of United States fish
6 products. These services may include, but are not limited to,
7 reviews of the feasibility of the export proposals, the ade-
8 quacy of sources of supply, compliance with trade regulations
9 of the United States and the importing country, and such
10 other information or guidance as may be needed to expand
11 and expedite the export of United States fish products by
12 private trading interests.

13 **SEC. 11. ISSUANCE OF OBLIGATIONS; AUTHORIZED INDEBTED-**
14 **NESS.**

15 (a) OBLIGATIONS OF BANK.—(1) Subject to section
16 9108 of title 31, United States Code, the Bank shall have the
17 power—
18 (A) to issue obligations, from time to time, which
19 shall be in such principal amounts as the Bank shall
20 determine to be necessary, within the limits of its au-
21 thorized indebtedness as prescribed in this section, to
22 provide sufficient funds for the carrying out of its oper-
23 ations; and
24 (B) to issue, from time to time, obligations to
25 renew, refund, or pay other obligations of the Bank,

1 regardless of class or designation, including interest
2 thereon, in whole or in part, whether or not the obliga-
3 tions to be renewed, refunded, or paid have matured.
4 The full faith and credit of the United States is pledged to the
5 payment of all obligations issued under this section, with re-
6 spect to both principal and interest.
7 (2) Obligations which are issued to renew, refund, or
8 pay other obligations may be exchanged for the obligations to
9 be renewed, refunded, or paid, or may be sold and the pro-
10 ceeds thereof applied to the purchase, redemption, or pay-
11 ment of such obligations to be renewed, refunded, or paid.
12 (b) LIMITATIONS.—(1) The Bank shall not at any time
13 permit the Bank's obligations to be outstanding in an aggre-
14 gate principal amount exceeding $1,500,000,000.
15 (2) Subject to subsection (a), the Bank may issue new
16 obligations after the repayment of previously issued obliga-
17 tions, if the Bank's total outstanding obligations do not
18 exceed the limitation in paragraph (1).
19 (c) PERSONAL LIABILITY.—Neither the Directors nor
20 any other person executing obligations shall be subject to any
21 personal liability or accountability by reason of the issuance
22 the obligations.
23 (d) PURCHASE OF OBLIGATIONS BY THE TREASURY.—
24 Taking into account the market conditions for the Bank's ob-
25 ligations, the Secretary of the Treasury shall purchase obli-

1 gations of the Bank and, for such purpose, may use as a
2 public debt transaction the proceeds from the sale of any se-
3 curities issued under chapter 31 of title 31, United States
4 Code; and the purposes for which securities may be issued
5 under that chapter are extended to include the purchase of
6 such obligations. Payment under this subsection of the pur-
7 chase price of the obligations of the Bank and repayments
8 thereof by the Bank shall be treated as a debt transaction of
9 an agency of the United States.

10 (e) NEGOTIABLE INSTRUMENTS.—All obligations of the
11 Bank are negotiable instruments, subject only to any provi-
12 sions for registration of ownership of obligations.

13 (f) EXEMPTION FROM STATE TAXATION.—Obligations
14 of the Bank shall be exempt as to both principal and interest
15 from all taxation (except estate, inheritance, and gift taxes)
16 now or hereafter imposed by any State.

17 **SEC. 12. POWER TO ENTER INTO AGREEMENTS RESPECTING**
18 **OBLIGATIONS OF THE BANK.**

19 In connection with the issuance of the Bank's obliga-
20 tions, the Bank may enter into appropriate agreements to—

21 (1) pledge all or any part of the assets or reve-
22 nues or receipts of the Bank to secure the payment of
23 principal of, and interest on, such obligations;

24 (2) set aside and regulate reserve or sinking funds;

25 (3) limit the issuance of additional obligations;

1 (4) provide for any rights of subrogation of the
2 United States to the rights of holders of obligations;
3 (5) transfer to, or vest in, a trustee or trustees
4 such property, rights, powers, and duties in trust as
5 the Bank may determine;
6 (6) specify the acts or omissions to act which shall
7 constitute a default in the obligations and duties of the
8 Bank and provide for the rights and remedies of the
9 holders of obligations in the event of such default, in-
10 cluding the right to appoint a receiver; and
11 (7) provide for any other matters which may
12 affect the security or protection of the holders of
13 obligations.

14 **SEC. 13. MONEYS OF THE BANK.**

15 (a) IN GENERAL.—(1) All moneys of the Bank from
16 whatever source derived shall be paid to the chief financial
17 officer of the Bank, or to such other person as the Bank may
18 direct, and be deposited forthwith in a bank or banks in the
19 District of Columbia or such other place in the United States
20 as the Bank may designate.
21 (2) All deposits of such moneys, as well as moneys held
22 in trust or otherwise for the payment or security of obliga-
23 tions, may, if required by the Bank, be secured in the manner
24 and amount required by the Bank, and all banks and trust

1 companies organized under the laws of the United States are
2 authorized to give such security for deposits.

3 (b) INVESTMENT.—Subject to the provisions of this sec-
4 tion, any moneys of the Bank, including the proceeds of the
5 sale of obligations, not required for immediate use by the
6 Bank, shall be invested in obligations of the United States or
7 obligations the principal of and interest on which are guaran-
8 teed by the United States, or in secured time deposit or other
9 interest-bearing accounts secured by such obligations.

10 (c) CONTRACTS.—The Bank shall have power to con-
11 tract with the United States or the holders of any obligations
12 regarding the custody, collection, securing, investment, and
13 payment of any moneys of the Bank, and of any moneys held
14 in trust or otherwise for the payment of obligations, and to
15 carry out such contract.

16 SEC. 14. INSPECTION OF DOCUMENTS.

17 At any time a request for financial assistance under this
18 Act is pending or financial assistance under this Act is out-
19 standing, the Board may inspect and copy all accounts,
20 books, records, memoranda, correspondence, and other docu-
21 ments of the applicant relating to such applicant's financial
22 affairs and shall have access to all facilities and properties of
23 the applicant.

1 **SEC. 15. ANNUAL REPORT.**

2 The Bank shall submit to the President and the Con-
3 gress, within three months after the end of each of the
4 Bank's fiscal years, a complete and detailed report with re-
5 spect to such fiscal year, setting forth—

6 (1) a summary of the Bank's operations for such
7 fiscal year;

8 (2) the Bank's revenues and expenditures for such
9 fiscal year and the Bank's balance sheet as of the end
10 of such fiscal year, each in accordance with the catego-
11 ries and classifications established by the Bank; and

12 (3) a schedule of the Bank's obligations and cap-
13 ital securities outstanding at the end of such fiscal
14 year, with a statement of the amounts issued and re-
15 deemed or paid during such fiscal year.

16 **SEC. 16. EXPORT PROMOTION.**

17 Section 609 of the Act of August 28, 1954 (7 U.S.C.
18 1769) is amended by striking out the period at the end there-
19 of and inserting in lieu thereof the following: ", and for pur-
20 poses of sections 605A through 605G, inclusive, includes
21 fish, wherever landed, harvested by United States fishing
22 vessels and products derived from those fish. In carrying out
23 those sections regarding United States fish and fish products,
24 the Secretary shall consult with the Marine Resources Devel-
25 opment Bank established under the Marine Resources Devel-
26 opment Bank Act.".

1 SEC. 17. MISCELLANEOUS AND CONFORMING AMENDMENTS.

2 (a) INITIAL CAPITAL OF BANK.—(1) On such day as
3 the Board shall decide, but not earlier than October 1, 1984,
4 there shall be transferred to the chief financial officer of the
5 Bank—

6 (A) all unobligated moneys that on that day are in
7 the fisheries loan fund established by section 4c of the
8 Fish and Wildlife Act of 1956 (16 U.S.C. 742c); and

9 (B) all moneys on deposit in that fund on that
10 day.

11 (2) The moneys transferred to the Bank under para-
12 graph (1) are the initial capital of the Bank.

13 (b) REPEALS.—(1) On the day on which the Secretary
14 of Commerce makes the transfer of moneys referred to in
15 subsection (a)—

16 (A) section 4 of the Fish and Wildlife Act of 1956
17 (42 U.S.C. 742c), is repealed; and

18 (B) section 221 of the American Fisheries Promo-
19 tion Act (16 U.S.C. 7420) is repealed.

20 (2) No loan may be made or committed to be made
21 under such section 4 after September 30, 1984.

22 (3) EFFECT ON EXISTING LOANS.—The Secretary of
23 Commerce shall continue to collect payments of principal or
24 interest on, and to service, loans made by him before October
25 1, 1984, under such sections 4 and 221. The Secretary of
26 Commerce shall transfer such payments to the Bank.

1 (c) TERMINATION OF AUTHORITY TO MAKE CERTAIN
2 LOANS AND GUARANTEES UNDER TITLE XI OF THE MER-
3 CHANT MARINE ACT, 1936.—After September 30, 1984,
4 the Secretary of Commerce may not guarantee, or make a
5 commitment to guarantee, any obligation under title XI of
6 the Merchant Marine Act, 1936 which aids in the financing
7 or refinancing of the construction, reconstruction, recondi-
8 tioning, or purchase of any fishing vessel or fishery facility.
9 (d) FOREIGN FISHING FEES.—The last sentence of sec-
10 tion 204(b)(10) of the Act of 1976 (16 U.S.C. 1824(b)(10)) is
11 amended to read as follows: "The amount collected by the
12 Secretary under this paragraph shall be transferred to the
13 Marine Resources Development Bank.".

Mr. BREAUX. So with that, we will be looking forward to the witnesses' testimony.

Are there any comments from any of the members?

The gentleman from California.

OPENING STATEMENT OF HON. NORMAN D. SHUMWAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SHUMWAY. Thank you, Mr. Chairman. I appreciate your observations about boondoggles and bailouts, and I appreciate your effort to structure this bill in a way that it doesn't fall in either one of those categories.

Maybe as I read the bill, preparing for this hearing, my views have been colored somewhat by my years of service on the Banking Committee, but it just seems to me that we perhaps are moving in the wrong direction with this kind of legislative approach.

It does seem to me that this bill will provide an excellent vehicle for attracting some popularity or votes from the fishing industry and I notice all of the witnesses today represent that industry and therefore stand to benefit from this kind of bank and no doubt will join in a chorus of praising it, but I would expect from the authors of the bill, as well as this committee, as it is considered here, some more justification than has surfaced thus far.

I don't see any real demonstration of need, and I know, and I am sure other members of this subcommittee know that there are many, many existing programs that are designed to handle various aspects of the needs of the fishing industry.

We are working toward export trading companies. We have an Ex-Im Bank. We have a Small Business Administration. The gentleman has referred to the Fisheries Loan Fund.

There are regional development banks, perhaps countless others, and I, for one member, would simply like to know wherein do all of those agencies fall short, and, second, wherein do the private sources of financing fall short?

It would seem to me that there has to be a clear showing that there is some shortcoming in both of those areas to justify this kind of legislative approach, and I would simply like to point out that there is only so much capital available in the United States for loans and for guarantees and other uses such as envisioned by this bill.

It seems to me that too much of that capital has already been usurped by the Federal Government and setting up this kind of a corporation, this kind of a bank, is simply going to extend the hand of the Federal Government further in that connection.

In the final result, I don't see it enhancing the availability of capital at all to those in the fishing industry who obviously have the need that this bill seeks to address.

This approach, Mr. Chairman, really reminds me of the Synfuels Corp., which the House created a few years ago. We gave them the right to set their own salaries, to organize as they saw fit, and now I don't need to remind the Members that that is one of the most beleaguered and criticized agencies in Washington.

We have seen billions of dollars go down into a dark hole and really no achievements at all to boast about. It seems to me that

we could well be setting up the same kind of corporation, repeating the same mistake with this approach. I think indeed there may be some need for reform to bring all of those agencies together, and put them under a commonhat, but I think that if we perceive that to be a need, we are perhaps missing the chance that we have now to reform by moving in the wrong direction.

Thank you, Mr. Chairman.

Mr. BREAUX. I thank the gentleman for his rousing words of support.

With that we would like to welcome the Administration to hear their rousing words of support. We welcome up Mr. Carmen Blondin, Deputy Assistant Administrator for Fisheries Resource Management with the National Marine Fisheries Service of the Department of Commerce. Any colleagues that you would like to have up with you, Carmen, we will be pleased to have them. We welcome your testimony.

STATEMENT OF CARMEN BLONDIN, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES RESOURCE MANAGEMENT, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY ROBERT HAYES, DIRECTOR, OFFICE OF INDUSTRY SERVICES, AND MICHAEL GRABLE, CHIEF, DIVISION OF FINANCIAL ASSISTANCE

Mr. BLONDIN. Thank you, Mr. Chairman.

Mr. Chairman, first allow me to introduce Mr. Robert Hayes to my left, who is the Director of the Office of Industry Services, and to my right, Mr. Michael Grable, who is the Chief of the Division of Financial Assistance.

Mr. Chairman, I will just summarize the testimony that has been prepared for the administration and certainly thank you very much for allowing us to testify on H.R. 5549, which, as you have indicated, would replace some existing Federal financial assistance programs, and in general carry out fishery development programs.

The primary funding, as we note, for the bank's operation would come from foreign fishing fees, and from borrowings from the Treasury.

The bill also would propose new forms of financial assistance to stimulate increased exports of United States fishery products for which there may not be total programs in existence at this point.

In response to the request of the subcommittee that the administration focus its testimony on the adequacy of existing financial assistance programs, and the feasibility of the Marine Resource Development Bank concept, I offer the following comments:

First, Mr. Chairman, we believe that industry the fishing industry has sufficient access to sources of short- and long-term financing. We believe that the additional forms of financial subsidies to the fishing industry included in H.R. 5549 are unnecessary, and would contribute to increases in the Federal deficit, and put further pressure on private credit markets through Treasury borrowings.

With respect to export assistance, the Export Trading Company Act of 1982 provides a mechanism for U.S. companies to compete

more effectively in the world marketplace as well as strengthening opportunities for private sector financing.

This act is particularly important for small- to medium-size companies, such as those found in the fishing industry.

The source of financing stems from the ability of banks to take equity positions in export trading companies certified by the Department of Commerce.

From an experience standpoint, to date one export trading company has been established, solely for fishery products. This export trading company, which is for trade in catfish, was the first one to be certified by the Department of Commerce.

However, we believe that many other sectors of the fishing industry will consider formation of these export trading companies under this act, when they fully examine the legal and financial benefits offered by this form of organization.

This act, which provides the legal foundation for the formation of private entities equipped to compete in the world marketplace, without relying on public financing, appropriately assigns Federal and private sector responsibility in stimulating increased exports by U.S. businessmen.

We also note that the bank will require an initial capital infusion of receipts from the foreign fishing fees totaling $90 million, and unobligated collections held in the Fisheries Loan Fund as of October 1984.

In addition, subsequent receipts from the foreign fishing fees would be made available to the bank.

These fees are needed to finance existing fisheries management costs of NOAA and the Coast Guard as called for in the President's 1985 budget.

Consequently the Administration opposes the use of these sources as capital for the bank.

Mr. Chairman, I think in essence that outlines the concerns of the Administration and summarizes the statement.

[The statement of Mr. Blondin follows:]

PREPARED STATEMENT OF CARMEN J. BLONDIN

Mr. Chairman, thank you for inviting me to testify today on H.R. 5549, a bill to establish the Marine Resources Development Bank. The bill would create the Marine Resources Development Bank under the terms of the Government Corporation Control Act for the purpose of providing financial and other forms of assistance to U.S. commercial fishermen, including commercial passengers carrying fishing vessels, and processors. The Bank's basic functions would be to augment and, in some instances, replace existing Federal financial assistance programs and, in general, to carry out fishery development programs. Primary funding for the Bank's operations would come from foreign fishing fees, and borrowing from the Treasury.

The Bank would direct loans for the purchase, repair and modernization of new and/or used fishing vessels, shoreside facilities, and fishing gear. Having provided a loan or refinancing for a vessel or shoreside facility, the Bank could also provide working capital. The Bank could also refinance existing obligations. These programs would replace the fisheries Loan Fund and the Fisheries Obligation Guarantee Program administered by the Department of Commerce.

The bill also proposes new forms of financial assistance to stimulate increased exports of U.S. fishery products. Direct loans would be made to exporters and to foreign importers of U.S. fish products. Financing could be provided for the development of facilities in foreign nations for the handling, marketing, processing, storage and distribution of U.S. fish products. The Bank could also guarantee loans to export trading companies and to other U.S. seafood exporters. In addition, the Bank

would provide the industry, on a fee basis, information and technical services related to the export of fishery products.

In response to your request that we focus our testimony on the adequacy of existing financial assistance programs available to the fishing industry, the feasibility of the Marine Resources Development Bank concept and adequacy of its programs, I offer the following comments.

We believe that the fishing industry has sufficient access to sources of short-and long-term financing. We further believe that the additional forms of financial subsidies to the fishing industry included in H.R. 5549 are unwarranted and would contribute to increases in the Federal deficit and put further pressure on private credit markets through Treasury borrowing.

With respect to export assistance, the Export Trading Company Act of 1982, provides a new mechanism for U.S. companies to compete more effectively in the world marketplace as well as strengthening opportunities for private sector financing. This Act is particularly important for small to medium sized companies such as those found in the fishing industry. The source of financing stems from the ability of banks to take equity positions in export trading companies certified by the Department of Commerce. To date, one export trading company (ETC) has been established solely for fishery products. This ETC, which is for trade in catfish, was the first one to be certified by the Department of Commerce. However, I believe many other sectors of the fishing industry will consider formation of ETC's under this Act when they fully examine the legal and financial benefits offered by this form of organization. The Act which provides the legal foundation for the formation of private entities equipped to compete in the world marketplace without relying on public financing, appropriately assigns Federal and private sector responsibilities in stimulating increased exports by U.S. businesses.

We also note that the Bank will require an initial capital infusion of receipts from foreign fishing fees totaling $90 million and unobligated collections held in the Fisheries Loan Fund, as of October 1, 1984. In addition, subsequent receipts from foreign fishing fees would be made available to the Bank. These fees are needed to finance existing fisheries management costs of the National Oceanic and Atmospheric Administration and the Coast Guard, as called for in the President's FY 1985 budget. We oppose their use as a source of capital for the Bank.

In our view, the Marine Resources Development Bank represents a level of Federal subsidy for the fishing industry that is inconsistent with this Administration's efforts to reduce the levels of Federal expenditures and interference in the private credit markets.

Mr. Chairman, this concludes my prepared statement. I would be glad to answer any questions you may have.

Mr. BREAUX. Thank you.

We will catch the vote and I will return as soon as the vote is finished.

[Recess.]

Mr. BREAUX. The committee will please come to order.

When we recessed for the vote, we had just completed the testimony from Carmen Blondin on the legislation on behalf of the Administration.

I am sorry that the congressman from California is not here, because he raised some questions about the need for any legislation, since we had existing programs, and was not convinced that there was a need for the legislation.

Of course, one of the purpose's of the hearing is to show whether there is a need or whether there is not a need for the legislation, so perhaps he will have an opportunity to read the transcripts.

One point that I think needs to be made for the record in these hearings is simply that some of the programs that we have on the books now, in the opinion of this member at least, have not functioned as they were intended to function.

For instance, one of the programs that we have for the fishing industry, I would ask the gentleman, Mr. Blondin, is the title XI

program that this committee and the Congress indeed expanded to include shoreside processing facilities.

That authority, I think, was given to the Commerce Department and to NMFS in 1980. I would ask Mr. Blondin when did we get the regulations finally issued to implement the title IX financial assistance program for shoreside facilities? How does 1982 or 1983 sound?

Mr. BLONDIN. Mr. Chairman, I am not sure exactly of the date. It was either the end of 1981, December 1981, or January 1982, in that timeframe.

Mr. BREAUX. Are you sure about that?

Supply it for the record because my information is that it is much later than that.

[The following was submitted:]

Final regulations extending the availability of guaranteed financing under the Title XI Fisheries Obligation Guarantee Program to fisheries shoreside facilities were published in the December 23, 1982 Federal Register.

Mr. BREAUX. There was a real need that I think the record showed for an assistance program for shoreside facilities. Congress passed the bill in 1980. I think it took at least 2 years to even get the regulations out in order to have the program available.

Let me ask you another question about it. Can you give us an idea how many loans have been closed to provide title XI financial assistance to shoreside processing facilities?

Mr. BLONDIN. Perhaps I might ask, Mr. Grable, who is the Chief of the Financial Assistance Division, to answer that.

Mr. BREAUX. Mr. Grable.

Mr. GRABLE. Yes, we closed two for $10.6 million. We approved another one for $400,000. We have four pending for $4.2 million, and we expect another application shortly for $6.5 million.

Mr. BREAUX. So since we have authorized it, we have had two approved?

Mr. GRABLE. That is correct, sir.

Mr. BREAUX. You have some others pending. The Administration's request under this program for this coming fiscal year is how much?

Mr. GRABLE. The request for the program, sir?

Mr. BREAUX. The request for appropriations for this particular program, title XI, for 1985 is how much?

Mr. GRABLE. I believe the administration's position is zero for this program.

Mr. BREAUX. Zero funding, the administration is trying to zero it out, correct?

Mr. GRABLE. I think one would have to draw that conclusion, yes, sir.

Mr. BREAUX. Let's talk about for the record of another financial program that we have that negates the need for the consideration of additional programming under a development bank concept, and that is the Fishermen's Loan Fund.

We have been through this in other committee hearings, but the Fishermen's Loan Fund in fiscal year 1983 had $10 million available, $10 million that this committee and this member of this com-

mittee individually worked very hard to have appropriated and to have available for the fishing industry.

Can you tell us, for the record, how much was obligated, how much actually went out to the fishing industry out of the Fishermen's Loan Fund, and how much had been requested?

Mr. BLONDIN. Again, Mr. Chairman, on this data I will ask Mr. Grable to answer that since he runs the program.

Mr. GRABLE. In fiscal year 1983, about $2 million of the $10 million was approved.

Mr. BREAUX. And do you have a general figure as to how much had been requested, how many applications amounting to how much had been received by the Administration for Fishermen Loan Funds in fiscal year 1983?

Mr. GRABLE. Yes. In 1983 there were approximately 100 applications for close to $10 million.

Mr. BREAUX. As a result of economic circumstances, and the inability to use the $10 million that had been appropriated, it is my understanding that our Government had to go out into the private sector and borrow a certain amount of money in order to pay back loans on fishing vessels that had already been guaranteed, but were not able to keep up their payments.

How much did we have to go out and borrow in order to cover those particular defaults?

Mr. GRABLE. We have borrowed about $18.5 million from the Treasury in order to finance the liquidation of some receivables in default.

Mr. BREAUX. And on the Fishermen's Loan Fund, the second big fishing program that we have in the government to try and assist the industry, what is the Administration's request in this program for fiscal year 1985?

Mr. GRABLE. I believe it is zero.

Mr. BREAUX. This is the type of information that the record should show very clearly and I think it does show very clearly, for those who wonder why we are somehow looking for some other means of trying to be of assistance to both the harvesting sector and to the shoreside processing.

The two major programs we have the administration is asking for zero funding, one of which we did not use hardly at all, and the Fishermen's Loan Fund I think the record speaks for itself as to the problems that occurred in the last fiscal year with regard to that program.

Those are the concerns that we have.

The testimony, Mr. Blondin, that you have, is 3 pages, 2 pages or so explain the bill back to us.

The last page says no as far as an enactment recommendation on the bill. Is that the recommendation in that context that left the National Marine Fisheries Service, or did that develop after it left your shop by other departments that were required to review the legislation, like OMB?

Mr. BLONDIN. Well, Mr. Chairman, you put me in a difficult position.

Needless to say, in the generation of the response from the Administration, it always goes through various steps and there are

always changes that occur along the way, and certainly that was the case here.

Mr. BREAUX. Did OMB recommend it be modified or try to be improved or were there comments on the legislation to the effect that there was no way they could ever see that they could support any concept like this?

Mr. BLONDIN. I was not involved in direct discussions, Mr. Chairman, so I can't answer that other than to state what is in the official Administration statement.

Mr. BREAUX. Do you know if the Secretary of Commerce, who is in charge of supervising programs dealing with the U.S. fishing industry, had that same position in his recommendation throughout the channel?

Mr. BLONDIN. That is the recommendation of the Secretary of Commerce, sir.

Mr. BREAUX. Do you, as a person who deals with and is in charge of the U.S. fishing industries feel that the programs we now have which the Administration is requesting that we zero out, if we assume that we grant your request, that we X-out completely the Fishermen's Loan Fund, that we X-out any assistance available to shoreside processors or to the harvesting sector under title XI if we assume for the sake of argument that we grant all of the other requests the Administration has made like in SK funding for research, etc., which is requested to be zeroed out, that there will be in our Government a source of financial assistance available to the fishing industry?

Mr. BLONDIN. Well, again, Mr. Chairman, you put me in a difficult position.

Naturally the agency that I represent has concern for the well-being of the fishing industry and certainly we have always tried to cooperate in providing for them along with assisting the Congress and the administration generally in an atmosphere that helps in the development of our industry, which certainly——

Mr. BREAUX. You are struggling with these answers. I am not trying to be difficult with you. I am trying to determine the policy of this administration with regard to the U.S. fishing industry. Is it not correct that if we were to grant all of the administration's requests with regard to the fishing industry in terms of the programs that are now on the books, that what we would have left is a set of programs that deal with the management of the resources, but that there would not be a single viable program left on the books with regard to financial assistance to the industry from the Government.

Mr. BLONDIN. Again, it would certainly appear to be moving in that direction, but perhaps not as drastic as you color it. From where we sit what we see obviously is a conflict between the broader administration policies which are important, and those smaller areas where from time to time we in some agencies may be trying to provide for the development of the industry. I am not trying to make excuses for the National Marine Fisheries Service, but rather saying that I think coming here representing the administration, that we find ourselves in a position where we can only support the administration's views.

Mr. BREAUX. Let me ask Mr. Grable, who is running day to day many of the financial assistance programs for the fishing indusry, with all the administration's requests to X-out these financial assistance programs, is it your opinion that there is a sufficient ability and willingness in the private sector to pick up these areas that the Federal Government would be moved out of completely?

Mr. GRABLE. I believe the private capital market's response to the fishing industry is probably consistent with the risks of financing the fishing industry.

Mr. BREAUX. And that means what?

Mr. GRABLE. It means that it is often difficult to finance the fishing industry, primarily because there is such a large amount of uncontrollable variables in that industry, and as a result there is often an attitude in the private credit market to make maturities short, and to charge interest rates that are consistent with what is regarded as a higher risk.

Mr. BREAUX. The gentleman from Alaska, Congressman Young.

Mr. YOUNG. Mr. Chairman, I want to compliment you.

I have an opening statement I would like to submit for the record.

Mr. BREAUX. Without objection.

[The opening statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. Chairman, I want to congratulate you on your efforts to introduce legislation designed to restructure Federal financing programs for the fishing industry and to provide additional assistance for fisheries exports. The bill before us today is certainly preferrable to earlier legislation considered by the Subcommittee.

When I agreed to co-sponsor this bill, I stated that it should be a discussion draft and that further action should only take place after full review by the fishing industry. These hearings today will certainly give us a better idea of industry views.

In regard to the export promotion portions of H.R. 5549, I think we are all in agreement that they are justified and necessary. There are some minor changes that should be made, which will be covered in testimony. For example, I think it very important that—when considering exports—we recognize that the sale of fish through joint ventures is an export mechanism and needs to be supported. We also need to ensure that Federal export programs help, rather than hinder, our fishing industry.

In regard to financing, we need to consider whether Federal financing is really wanted or needed by the U.S. fishing industry. If so, is the bank the proper way to do it? I hope that these questions will be answered by the witnesses here today.

As I said, we have come a long way and we have a better, although perhaps not perfect, product. I look forward to continuing work with you, Mr. Chairman, and the fishing industry, to refine this bill so that it can prove useful in fully developing our fisheries resources.

Mr. YOUNG. As you know, after much reconstruction, rewriting and reanalyzing, I am a sponsor of this magnificant legislation. I hope through the hearings we will take some suggestions about over-capitalization and the hearings should provide us with some information.

I would just like to suggest another thing.

I have no questions for the Administration. On this side, I do not agree with the Administration on the issue. I think during the hearing, Mr. Chairman, we ought to have additional witnesses from the financial institutions, from the areas that have in previ-

ous times been involved in the processing of the vessel construction.

The reason why, Mr. Chairman, I think the gentleman, Mr. Grable, is absolutely correct, there is a reluctance many times in the private sector to become involved in the fishing industry because it is a volatile industry, there is no doubt about that.

We have a lot of ships now in the Seattle area and in the Alaskan area that are virtually on fire sale. In fact, I think some of the lending industry would not object to a few fires. It is just unfortunate. It is one of those things that I think we ought to hear from that side of the issue, Mr. Chairman, the banking field, and see what they have to say.

I think this legislation is necessary because of their reluctance to become involved in it. I understand the reluctance of the Administration, but we do have, if we are ever going to develop the full intent of the 200-mile legislation passed out of this committee, we have to have financing available so we can improve our processing and also improve our catch ability of the products from the sea.

I thank you, Mr. Chairman.

Mr. BREAUX. I would close with a comment and also a question.

I thank the gentleman for his comments and for his sponsorship of the legislation. I think that certainly all of us who have been in this business for any length of time realize we do not want to craft any sort of a program that has anything to do with increasing overcapacity in any particular fishery.

It does us no good to throw good money after bad. It does us no good to encourage people to enter into an industry that cannot support them. I do not want to craft anything that does that. What we want to do is to have a program that works. I am very, very frustrated in the sense of trying to continue to adopt programs and to get the money for the programs, and then to have it frustrated by those who don't like the program in the first place higher up the ladder.

We want to have one program that works. Let me ask the question. Some have feared an over-capitalization and an encouragement of those entering this business who shouldn't be in there if we do this, if we adopt this development bank. In your opinion, if we in fact do adopt a development bank program, could it be crafted, in your opinion, in a way that would put stipulations or have as a philosophy that loans would not be made that would in fact encourage over-capitalization of an industry?

Mr. BLONDIN. Yes, Mr. Chairman. In fact I think that that pertains to our current financial programs as well.

We certainly don't provide any financial assistance to those areas that are over-capitalized.

Mr. BREAUX. We are talking about, in the past, the record of doctors and lawyers all of a sudden when they see a program being created for various tax purposes or what-have-you, all of a sudden deciding they want to be in the harvesting sector of the fishing industry. Certainly if we can craft, in a program stipulations that would protect against that type of occurrence we would be better off?

Mr. BLONDIN. Yes, sir, and I believe they could be patterned after those practices that have already been carried out.

Mr. BREAUX. I have some additional questions that we will submit to the Administration to comment on, but we will do that in writing so that you can respond. We appreciate your being here.

I hope that you do not get from the questions of the Chairman a real problem with you gentlemen individually. I know that you are part of a system and part of a team. I think that the people at the very top are being very, very shortsighted with the problems that this industry has.

We have a $4.5 billion trade deficit in fisheries. I think people in the Commerce Department all of a sudden are just finally becoming aware of that, and they are going to have to start realizing that we are not going to correct that type of deficit by sitting back and frustrating positive efforts at trying to come up with something to address those problems.

We are not going to reverse an almost $5 billion trade deficit by wishing that it would be reversed. It is going to take positive actions and we are trying to be cooperative in coming up with something that we can afford, and yet something that would work. With that, we thank this panel for being with us.

Mr. BLONDIN. Thank you.

Mr. BREAUX. The Chair notes that we are continually being frustrated with votes also. Let's catch this vote and return and we will take the second panel, which will be Mr. Bud Walsh and Mr. Dave Burney. Then we will recess for lunch and come back with panel number three and panel number four.

The committee will be in recess.

[Recess.]

Mr. BREAUX. The committee will please be in order.

We would like to welcome now Mr. Bud Walsh and Mr. David Burney. Bud Walsh, Washington Counsel for the American Tunaboat Association, and Dave Burney, General Counsel of the U.S. Tuna Foundation. Gentlemen, we are pleased to have you, as always.

Dave, will you go first.

STATEMENTS OF BUD WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION; AND DAVID BURNEY, GENERAL COUNSEL, UNITED STATES TUNA FOUNDATION

STATEMENT OF DAVID BURNEY

Mr. BURNEY. Thank you, Mr. Chairman. I have written testimony and I would ask that that be made part of the record.

Mr. BREAUX. Without objection.

Mr. BURNEY. I would like to make a couple of comments on testimony I heard earlier this morning, especially that from Congressman Shumway. I am not entirely sure where he has received the information that he alluded to, but I would like to go on record as saying that U.S. fisheries is not in a state of Shangri-La at the present time.

There are some major difficulties in U.S. fisheries, not the least of which is the lack of what we consider to be an effective financial assistance program. There may be a number of programs available, but you talked about earlier one that is workable, and I would submit that none of them are really workable. They are there. If

you try to use them, you have to cut through a morass of bureaucracy to even get to the person that might be able to make a decision.

It is very similar to what we are hearing here today. You bring in administration witnesses, and they say, "Well, I essentially did not make that decision." What we need someday is to have a room where policymakers come and they listen to the people that are affected by that policy, and there is a thorough discussion. It is disheartening to come to a hearing and to have people testify that you have talked to privately, and you know that their hands are tied, and you can't get the people into the room that should be listening.

There are too many of these little titles used in this town. We are free traders. We are not protectionists, and therefore everything is blizzard and all industries should be thriving. That just isn't the case.

We live in a world. We just don't live in the United States. We deal in world markets, and I would submit as I did on May 17, that free trade is a beautiful concept. Unfortunately it isn't something that survives throughout the world, so you are dealing in inequities whenever you are dealing in business, and the fishing industry is certainly dealing at a disadvantage with regard to a resource that is found around the world.

We have a dominant market here in the United States. We have a great deal of difficulties even providing the resource to our own market because of foreign competition. We have a greater difficulty in penetrating foreign markets, and yet when you talk to the administration, you hear "Well, we are free traders, and everything is going to work out for the best."

Meanwhile you see the U.S. fishing industry to a certain degree going right down a rat hole, and if the testimony on May 17 was any indication, the prospects for the future aren't much brighter.

I support the legislation. I was critical of the earlier version of the legislation. I said that I didn't think it was workable and I didn't think it was salable. I think the necessary adjustments have been made that it certainly is workable. I still question whether it is salable, and mainly that is on the basis of the earlier testimony that we received here today.

People have blinders, they seem to feel that everything is all right because everything is all right in their house, but that isn't true with U.S. fisheries today. We have got to get off of this idea that there is no need for interaction between Government and industry other than in a regulatory capacity. We have got to try to work together to survive, and I think it is very important, when you get into the food business. Nobody in this room can tell me that agriculture, left to its own devices, would thrive. It needs the Government. It needs that support. Well, that is very true of U.S. fisheries as well.

I think what is needed is a review by this administration of what are the real needs of U.S. fisheries, not what can we do, how should we be dealing with U.S. fisheries, but what are their needs.

This has to be done at a policy level. If we are told that the National Marine Fisheries Service is basically in charge of U.S fisheries, then they should have a voice. If they don't have a voice, and these decisions are made at a much higher level, and they are

made on the basis of policy without any understanding whatsoever of U.S. fisheries, then we are doing an injustice. We are doing an injustice to the United States, and I believe we are doing an injustice to U.S. fisheries.

Again, I will just summarize by saying that I support the program. Nobody can convince me that the existing programs work. I tried to get a loan for a U.S. vessel that was going up on auction, that was subsequently—one was sold to Venezuela. The timetable on just getting the loans is almost an impossibility. This was a Government guarantee under title 11. I shouldn't say a loan.

I recognize that there are a number of people that would say, "I would rather keep the Government out of our business. It is hard for me to support this type of legislation because it means more Government involvement."

The truth of the matter is the Government is going to be there whether we like it or not. For once I would like to see them coming in supporting U.S. industry as opposed to not.

Mr. BREAUX. Thank you very much.

[The statement of Mr. Burney follows:]

STATEMENT OF DAVID G. BURNEY, COUNSEL, UNITED STATES TUNA FOUNDATION

Mr. Chairman and members of the House Subcommittee on Fisheries and Wildlife Conservation and Environment, on behalf of the United States Tuna Foundation I welcome this opportunity to comment on the subject bill which would establish a Marine Resources Development Bank.

The United States Tuna Foundation is a non-profit, mutual benefit corporation representing each of the elements of the United States tuna industry, including tuna vessel owners and operators, tuna vessel crew members, tuna processors, and cannery workers.

As you will recall, during testimony on H.R. 3806, predecessor to the present bill, most witnesses were highly critical. The consensus seemed to be that the bill was doomed by its own magnitude.

I appear before you today, however, in full support of the present bill. The tuna industry believes that the Subcommittee staff has done an outstanding job in addressing the concerns expressed by witnesses at the hearing on H.R. 3806. We believe that the government can provide no greater service to the enhancement of traditional fisheries and the development of non-traditional fisheries than legislating a comprehensive financial assistance program. The bill presently under consideration meets this objective.

The tuna industry is pleased that the current bill emphasizes the placement of well-qualified individuals to administer the Marine Resources Development Bank. The previous bill, H.R. 3806, erroneously emphasized the quantity of representation rather than the quality. The tuna industry further supports the establishment of private sector advisory committees. We believe fisheries representatives are best utilized in an advisory capacity rather than as members of the board of directors.

The establishment of a Marine Resources Development Bank should enable both our traditional and non-traditional fishing interests to better compete with the surge of foreign imports coming into the United States. The balance between imports and exports of fishery products will dictate the extent to which the United States reaches its fisheries potential.

In summary, the U.S. tuna industry expresses its appreciation to this Subcommittee for its willingness to work with representatives of U.S. fisheries to develop a workable and needed comprehensive fisheries financial assistance program.

Thank you.

Mr. BREAUX. Bud.

STATEMENT OF BUD WALSH

Mr. WALSH. Thank you, Mr. Chairman. I have a short statement which I will highlight for you, if you will include it in the record?

I would like to harken back to the testimony given by Mr. Felando last year as well as my testimony at that time on the same subject. I think the points we made at that time are applicable here.

We are very pleased with the new legislation. It is a financial assistance program which we feel our industry in particular will need in the future. It will help us cope with one of the major problems facing us at the moment, reducing the cost of producing canned tuna products.

We are pleased that the legislation ensures that the bank shall be operated on a sound financial and economic basis. Some fishery representatives believe that there ought to be both direct loan authority and loan guarantee authority so that private financial institutions could be utilized under certain circumstances. Regardless of whether Federal guarantees are involved, if loan amortization periods can be stretched out to 20 or 30 years and interest rates can be obtained at prime or lower, we will have met the urgent need of the U.S. tuna fleet.

At the moment interest rates are at least 1½ points above prime. Current loan amortization periods will range as far as 12 years, but 7 years is more typical. Recently tuna vessel owners have been left only one reliable lender, which is Production Credit Association, a farm cooperative lending institution. Many of our boats today are financed on demand notes. Obviously there is no way to finance a fishing fleet.

Mr. Chairman, you are aware of our efforts to equalize the tariff on conned tuna products and I won't dwell on that subject. However, the final resolution of our tariff situation will have a lot to do with our utilization of this program. We are confident that we have a good case. We believe that there will be a favorable resolution of the tariff issue, at which point we are going to be faced with a major challenge to revitalize our fishing fleet.

Boat owners know that they have to reduce their costs. They have to find ways of reducing the cost of labor, fuel, and insurance.

Finally, we need to reduce the annual debt service on our vessels. Interest rates and amorization periods are a big factor in their regard. Mr. Chairman, we are very supportive of the present legislation for this reason.

Let me say that I agree 100 percent with Dave. Obviously, people don't play by the same rules. Let me give you a very good example, and I am not saying that we should do the same as this other country, but certainly we can't sit by and ignore their efforts to make their fleet more competitive.

The Mexican tuna fleet has been in substantial trouble for some time. Recently there have been discussions between Bank Pesca and the other lending institutions in Mexico with the fleet. They have roughly $400 to $450 million in debt. The lenders offered to the fleet to stretch out the loan payments, cover some of the losses, and one of the sweeteners was that the boat owners did not have to pay any mortgage payments for 4 years.

Obviously, when you take a major fixed costs like a mortgage payment and you say you don't have to pay it for 4 years, you automatically make that boat, well, I guess it's going to beat anybody

that has to pay a mortgage payment in terms of the price of its landed fish.

Japan is another example. They will make very low interest loans, 3 percent are the numbers I have heard, to penetrate a particular industry or to assist a particular activity that they consider in their national interest. It is not strictly an economic evaluation in terms of what is the quarterly return to the stockholders, but what kind of market share are we going to have.

Does this serve our employment goals; does this serve our diversification of industrial goals and the like. They look at an economic decision much broader than do we do well in the stockmarket and do we make good on our financial reports on a quarterly basis.

Mr. Chairman, we are pleased that you have taken the effort, and we know it is frustrating, and we feel very good about all the help that you have been giving to our industry in particular in coping with easily the most difficult times they have ever had.

Thank you, Mr. Chairman. I appreciate it.

[The statement of Mr. Walsh follows:]

STATEMENT BY JAMES P. WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION

Mr. Chairman and members of the committee, I am Washington counsel to the American Tunaboat Association ("ATA"). The ATA is a non-profit fishery cooperative based in San Diego, California which represents nearly all U.S. flag long-distance tuna fishing vessels. The ATA fleet is made up of large purse seine vessels which catch skipjack and yellowfin tuna, principally in the Eastern Tropical and Central and Western Pacific Ocean. Our fleet's entire catch is sold to U.S. processing companies located in Southern California, American Samoa and Puerto Rico.

We testified before this Committee on November 10, 1983 when you considered the concept of a Marine Fisheries Development Corporation. At that time, we indicated that our industry was interested in new legislation that would help reduce the costs of owning and operating tuna boats in order to make our product more competitive with other world producers.

Consequently, we are pleased with the new bill you recently introduced that would create a Marine Resources Development Bank. In particular, we support the provisions of the bill that would make financial assistance available to help U.S. fisherman (1) finance the cost of purchasing or constructing new fishing vessels; (2) financing the cost of purchasing, reconstructing or reconditioning used U.S. fishing vessels; (3) finance the purchase of fishing gear for new or used fishing vessels; (4) provide working capital necessary to operate a fishing vessel for which a loan is made or refinanced; and (5) refinance any existing obligation for any business activity just described.

With the understanding that the Bank will be operated on a sound financial and economic basis and that a Federal guarantee will be given enabling term of any such loans to extend to 20 or 30 years and to be made at an interest rate lower than prime, we are supportive of this new legislation.

Obviously, the viability of any loan from the Bank to the U.S. tuna vessels will depend, to a large extent, on the general economic circumstances of the industry. As you well know, Mr. Chairman, from Mr. Felando's testimony before this Subcommittee on May 17, concerning the impact of imports on the U.S. fishing industry, the tuna business is in serious trouble in the United States. It faces an explosion of imports of tuna packed in water that has taken market share away from U.S. processors and driven down fish prices to the boat owners such that they are unable to make ends meet. Without U.S. processing capacity, our vessels have nowhere to sell their catch. We are thus at a crossroads in our industry and are petitioning the Federal government for relief.

If trade relief should be forthcoming such that the U.S. processing industry will become more viable and will remain in the United States and its territories and the boatowner will receive a decent price for his fish, then the Bank will help our industry reduce its costs and will bolster us against our foreign competitors.

Again, we wish to thank the Subcommittee and its staff for drafting legislation which could, if properly implemented, provide much needed financial assistance at a

lower cost to our fleet. The high cost of fishing vessels presents a real problem to our entire fishing industry. We are pleased that you are helping us attack this cost directly.

I appreciate the opportunity to testify before you today. If you have any questions, I will try to answer them.

Mr. BREAUX. I thank you for your testimony. One of the concerns that has been expressed by some is that when we establish a development bank we are going to cause problems in the area of overcapitalization. With regard to your industry, do you think a development bank can be established in a manner and operated in a manner that would not cause problems in the area of overcapitalization, or in fact in keeping vessel owners or operators who perhaps should not be in the business because of poor management, being kept in as a result of a development bank?

Mr. BURNEY. I don't think that is really a factor in the tuna fishing. One of the things that I was concerned about with the first bill, and I expressed it at the hearing on that bill, was that the bill emphasized the quantity of board members rather than the quality.

If you have the right people running the corporation, it is my opinion that they will study the industries which are seeking financial assistance. If there is a problem of overcapitalization—although I happen to be one of those individuals that believes anybody in this country has the right to go broke—this will be taken into consideration before a loan is committed.

Mr. BREAUX. Do you think that the members of the board could handle that type of a problem, or should there be language in the legislation which would try and insure that the development bank would not be participating in throwing, in effect, good money after bad?

Mr. BURNEY. I go back to the quality of individuals. Any time you start writing in restrictive language into your legislation, you take a great deal of flexibility out of those that are running the operation.

If they are not doing the job, they should be removed. We all have one common goal if we ever get this legislation passed, and that is to insure that it works.

We need a stimulus in U.S. fisheries right now, in order to begin to decrease our fisheries trade deficit. We are trying to find a way to turn it around.

Mr. BREAUX. So you would not recommend, though, that the committee try and write in standards or criteria on behalf of eligibility for participating in the program; it should be left to capable administrators?

Mr. BURNEY. That is my personal opinion, yes.

Mr. BREAUX. There are so many segments of the U.S. society that have gone along with the idea of development types of banks. We can point to housing, we have Fannie Mae, Ginnie Mae, we have Agricultural Commodities Corporation, we have the Synfuels Corporation which was mentioned this morning.

I don't think there is anything wrong with the Synfuels Corporation other than some very poor management by the people involved. If you have bad people at the top, they are not going to be able to run a good program, if they are defective themselves. I think that has been the problem.

Gentlemen, we thank you. I think your suggestions have been very helpful. We look forward to working with you and having you work with the committee in trying to, if you believe in it, talk to members who have not had the benefit of the hearings today, to talk with them about the advantages of this type of program. It is going to take that kind of effort on your part as well as ours I think to get this thing out of the committee.

Thank you.

With that, as previously indicated, we will stand in recess until 2 p.m., and then return and take the two panels this afternoon, which will complete the day's testimony.

The committee will be in recess until 2:00 p.m.

[Whereupon, at 1:45 p.m., the subcommittee recessed to 2 p.m. of the same day.]

AFTERNOON SESSION

Mr. BREAUX. The subcommittee will please be in order.

This afternoon we receive testimony from two panels.

First we would like to welcome up Deming Cowles, Washington counsel for the United Fishermen of Alaska; Ms. Lucy Sloan, executive director of the National Federation of Fishermen and Richard Gutting, vice president for Government relations, National Fisheries Institute.

We are pleased to have all of you and will be pleased to receive your testimony.

STATEMENTS OF DEMING COWLES, WASHINGTON COUNSEL, UNITED FISHERMEN OF ALASKA; LUCY SLOAN, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF FISHERMEN; AND RICHARD GUTTING, VICE PRESIDENT FOR GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE

Mr. BREAUX. Do you want to start, Mr. Cowles?

STATEMENT OF DEMING COWLES

Mr. COWLES. Yes, sir. I represent the United Fishermen of Alaska, which is a group of some 20 member organizations and 1,500 individual members throughout Alaska.

We very much appreciate the committee's interest and concern in the financing needs of our overall community.

I would like to explain to you the approach we have taken to this legislation in about 30 seconds.

We feel that we are part of a diverse industry, the seafood industry, that has a great deal of needs, sometimes competing, but by and large we have overall similar objectives the growth and health of the seafood industry that is, by and large, in its infancy in terms of capitalization, species development, use of technology and promotion—both domestically and internationally.

In the spirit of attempting to address these common interests, we have been pleased to work with the industry and the committee towards favorable financing legislation. We support the banking concept and generally support this measure.

Our interest is that there be available funding for certain efforts in our established fisheries, and generally as we develop our under-

used species in Alaska. We also feel there needs to be some consistency in the source of those funds and some flexibility in their availability.

We are by and large businessmen and would prefer to deal with businessmen and with institutions that have the flexibility to design loan packages to meet our individual and sometimes unique needs.

It is our belief that any such institution has to adopt at the outset a strong regionalized approach. That is the way our industry is oriented, and, frankly, that is the way UFA members are oriented personally as well.

What we are saying is that we like the idea of an institution that will deal with the overall financing needs of our industry in a businesslike way and we like the idea that such an industry will provide backstop to current commercial and State programs or competition or ability to fill in in the absence of existing funding or where venture capital is not available.

We like these aspects of the banking measure.

We simply would like it closer to South Naknek than to Washington, DC.

The measure does acknowledge the importance of the regional approach by employing regional advisory councils and we laud that approach.

Of importance to us as well, is the proper recognition and emphasis, if you will, of the measure on export financing. UFA strongly supports the promotion of expanding current markets and developing new ones. Our industry is incredibly behind the rest the food industry in terms of market development.

UFA will be pleased to work with the committee as it prepares for markup of the measure. We appreciate your interest in our views today. Thank you very much.

[The statement of Mr. Cowles follows:]

STATEMENT OF C. DEMING COWLES, ESQ., WASHINGTON, DC., COUNSEL FOR UNITED FISHERMEN OF ALASKA

I am C. Deming Cowles, Washington counsel for the United Fishermen of Alaska (UFA). My office is at 1050 Thomas Jefferson Street, N.W., Sixth Floor, Washington, D.C. 20007. The UFA's main offices are located at 319 Seward Street, Suite 208, Juneau, Alaska 99801-1188. UFA is a private, non-profit, statewide organization for local fishermen's associations, permit holders and crew members, consisting of some 1,500 individual members, and 20 member organizations. UFA has been active on specific national fishing legislation since its creation in 1972 and has recently expanded its efforts on the national level to increase public awareness of the importance of commercial fishing to the nation. Today it is our privilege to provide a few words during these hearings on the need of a more comprehensive financing program to assist the further development of the American seafood industry.

At the outset the Subcommittee on Fisheries and Wildlife Conservation and the Environment should know that UFA generally agrees there is need for the Development Bank legislation. UFA has participated in seafood industry discussions on this measure as it has been developing over the last year since the late Congressman Forsythe introduced his original legislation. Discussions of the developing legislation centered around the needs of the seafood industry as a whole and by component parts, the inadequacies of the current federal programs, and the appropriateness of the Development Bank approach.

NEEDS

As a result of UFA internal discussions concerning the needs of the Alaska fishing industry and our discussions with other members of the seafood industry gener-

ally, we agree that basic industry financing needs exist in the following areas: (a) purchase or construction of new vessels and new shoreside facilities; (b) purchase of gear for new or used vessels; (c) purchase of used vessels and shoreside facilities, with the primary purpose of reconditioning or upgrading them; (d) adequate operating capital; (e) refinancing existing debt.

We believe the legislation also properly identifies and emphasizes the importance of encouraging export transactions involving fish and fish products. The ability to provide loans to foreign importers for purchase of fish and product and for facilities to handle U.S. imported fish and product should be of invaluable assistance as we attempt to expand our markets for established U.S. fish and fish products and as we develop markets for underutilized U.S. species. Incorporation of financing for export markets is one of the many steps we need to take to improve the strength of the U.S. seafood industry.

INADEQUACIES OF CURRENT PROGRAMS

Briefly, UFA believes that current federal progams have not been adequately funded or otherwise encouraged to cover the entire range of needs of the seafood industry which must be met in order to promote fully the growth of a healthy seafood industry. Existing programs have not adequately addressed all financing needs, and have too often neglected such areas as the promotion of U.S. fish and fish products, both nationally and internationally. Measures such as the Development Bank and Senator Stevens' marketing concept correctly identify the importance of these essential aspects of a health seafood industry.

Too little federal funding has been made available to the seafood industry, particularly compared with segments of the agricultural industry. One of the major reason stated for not providing additional substantial loan and loan guarantee programs is the concern of "over-capitalization" in certain segments of the established fisheries. While it is right to address this problem, UFA would suggest that most phases of the seafood industry are not currently subject to "over-capitalization", and as mentioned earlier, need to be focused on in the manner of the Development Bank legislation.

FEASIBILITY OF THE DEVELOPMENT BANK CONCEPT

UFA believes that the late Mr. Forsythe deserves substantial credit for beginning to identity and attempting to remedy the overall unmet financing needs of the entire seafood industry. As well, we believe Chairman Breaux should be congratulated for continuing the effort to assist our industry in this area. We think this concept plays an important part in assisting in the development of a strong seafood industry, as one of a number of measures needed to address overall industry needs.

While we agree in major part with the general concept of the current Development Bank measure, we would like to suggest that there be a closer look at the need for a more regionalized approach to a seafood industry financing institution. We suggest as a good model for the Development Bank the approach taken by the Magnuson Act, which deals with management on a more regionalized basis. In fact, use of the Regional Advisory Councils in the Bank legislation is recognition of the need for a more regional view. The industry is locally and regionally based; financing for the industry should follow along these lines much like the current Farm Credit System.

Basing the institution more regionally would allow for better interface with existing local and regional financial institutions to which fishermen currently turn. Local institutions will not have the wherewithall in all instances to meet the wide range of financing needs identified in this legislation, however. Rather than be in the position of prime lender for all industry financing needs, the development Bank would be able to provide a backstop role, filling in where local and regional commercial institutions are unable. It has been our experience in Alaska that the needs of the individual are more readily identified and more promptly met the more proximate the impacting institution is to the individual. The legislation should authorize creation of a financing system that will tailor specific lending programs to meet specific local or regional needs, based on sound business judgment.

Perhaps the question of what the financing needs of the seafood industry are to met with this legislation is made easier to answer when we acknowledge the difference between established fisheries and developing fisheries. Each has its own needs. It is possible in most instances that in a given locale the needs of the "established" industry are currently being met. Two possible exceptions are distressed fisheries problems of an environmental nature and those of a market-oriented nature. However, in the area of developing fisheries, or so-called "under-developed" species, it is

most likely that a number of the needs are not currently being met adequately. Again, it is our view that these needs are most readily addressed with a more regionalized banking approach.

One additional point needs to be raised, in our view. We have emphasized throughout our testimony the term "seafood" as opposed to "fishing" industry. Obviously, most of the UFA members are fishermen and marketers. But we are all a part of an industry which encompasses processors, exporters and producers of fish-related products, as well as fishermen and domestic marketers. It is the needs of the overall industry that we have to concern ourselves with if each phase of the industry is going to remain healthy and grow.

With regard to specific recommendations, we would suggest the folllowing:

(1) In the "Purpose" section, substitute for "fisheries development" "the development of the seafood industry" (p. 3, 1.12);

(2) In the "Purpose" section, add an additional category, "(7) encouraging investment in seafood technology research related to new product development" (p. 4, 1.6);

(3) In the "Additional Bank Services" section, add the concept of modeling of fisheries for monitoring. With regard to other industries, substantial economic data exist. In the seafood area, that data base is limited. This need will help to meet the requirements of the management councils as they attempt to make economic decisions. Helping to develop models could be an invaluable service to the industry. (p. 23, 1.16).

UFA very much appreciates this opportunity to present these comments, and will be pleased to work with the Subcommittee as it proceeds with the Development Bank legislation.

Mr. BREAUX. Thank you. We will have questions, but we will wait until everyone has completed their statements.

Lucy Sloan.

STATEMENT OF LUCY SLOAN

Ms. SLOAN. Thank you, Mr. Chairman. This legislation reflects the concern we discussed with you last week as regards the difference between what we would like to see philosophically and what some of the realities in which we find ourselves as an industry are.

The question of quotas, tariffs, and countervailing duties is one of the forms of what is, strictly speaking, a subsidy for the fishing industry.

The obligation guarantee program is another. This, in some of its forms, would be yet another.

We are in a situation where, for a variety of reasons, we are looking at using programs existing or potential in ways that we would prefer not to have to, and one of the things which concerns us is that when it came to expanding the fleets in the post-1976 boom, we were, we now realize, uncautious in the way we encouraged Government involvement in the marketplace.

That is one of the reasons, as I said in my prepared remarks, that we are now extraordinarily cautious about how we seek to work with the Government directly in utilizing and developing our fishery resources.

The overcapitalization of many of the fleets has led various of the managerial types to say that the only answer is limited entry. We don't want to find ourselves in the kind of strictly Government-controlled situation that our competitors in Canada, Iceland, and Norway find themselves.

It is for that reason that, of all of the provisions in the legislation that we are addressing today, we are most interested in looking at the one on exports and export development.

We dealt with the question of imports and the expansion of the domestic market in some greater detail last week, so for that

reason I will look now at the question of moving into markets in the world marketplace, into which hithertofore we have not had significant amounts of products.

There are obviously, as other witnesses have indicated, different ways of doing that. Export trading companies, of course, are one.

Possibilities of expanding what are now called joint ventures into much more integrated operations for access to foreign markets is another possibility.

Mr. Young has referred to that and that is one of particular interest to several of my members.

I think that the main thing about which we are concerned is that although there have been countless discussions of various kinds on this question of legislation for a bank or a financial institution or some sort of Government involvement in the fishing industry, we really have nothing which the industry itself has done in a systematic way, and although Dick Allen, when he suggested using the private sector advisory committees as the basis for study, shuddered himself, and I know that there are others who have also shuddered when I said that this was something in which several of my people were interested.

The reason they were is because there has not been, by the industry itself, what I could call a systematic examination of the needs we really have in what is a rapidly changing situation.

For instance, I have members, both vessels and shoreside, looking at the obligation guarantee program. Yet philosophically there is a consensus among my membership that that program could be done away with with profit.

There is greater interest in the possibility, continues to be greater interest in the possibility of CCF extension, and that may be a trifle closer to reality than it has been recently, but it is because of the problems we have seen with the overcapitalization of the fleet, and the unthinking zeal with which we accepted all of these opportunities, that we are now more cautious about wanting to look at this very carefully.

There are a number of specific points in various sections that I would like to address on a line-by line account, and I would like permission to submit those later for the record, and I would like to work with the staff on them.

Some of them are the question of whether we maximize or optimize the resources we have available to us.

One in which we have been interested since 1978 is the separating of the definition of fishing and of processing. They are defined in this proposed legislation as they are in the FCMA.

Since we have not yet been able to separate them in the FCMA, this might be a good place to start.

We are concerned because we have seen increasingly political games played with the council appointments, and we are very much afraid that simply saying that the directors of any institution should be knowledgeable and experienced in banking, we have similar kinds of legislative criteria for council members, and I can assure you that at least two-thirds of the council members would have a difficult time passing a test on what the FCMA says, so I think I would like to see that more clearly defined.

We are among our members hearing increasing concerns about the detailing of Federal personnel to the bank because there seems to be some very real consideration that some of the difficulties may in fact be with how the programs are being run now, and they are wondering if old wine in new bottles is really going to solve anything.

One of my members, and others followed suit, were concerned about the 5-percent upper limit. Although that might not in absolute terms for the capital needs for today seem like a great deal of money, the potential is for relatively little money to be involved in the process, in the loan process, if it were to take place.

Talking about the equitable use of dollars by the greatest number of eligible persons is to us akin to saying, to asserting, that directors shall be knowledgeable and experienced, without further reinforcing what that would mean.

There are various of these kinds of things that we would like to discuss with the subcommittee, as this legislation goes forward.

We think, as I said in my prepared remarks, that this is certainly an improvement over the legislation which preceded it, and we look forward to working with you all further to improve it, and to make it as responsive as possible to those who wish to use it in a variety of ways.

Thank you.

Mr. BREAUX. Thank you, Ms. Sloan.

[The statement of Ms. Sloan follows:]

PREPARED STATEMENT OF LUCY SLOAN

Good morning, Mr. Chairman, Members. I'm Lucy Sloan, Executive Director, National Federation of Fishermen. We are a Federation of organizations, and through our member groups we represent fishermen who fish from the Gulf of Maine to the Gulf of Mexico and from California to Alaska and the Central Pacific. Among the species our members catch are traditional and less utilized finfish, crab, albacore tuna, shrimp, swordfish, lobsters, eels, clams, and oysters.

Among our members, we've a consensus that H.R. 5549 is an improvement over the corporation bill which preceded it. The proposed bank would be run more nearly like a business. The bill would abolish the Fishing Vessel Obligation Guarantee program, Title XI. And the bank does not directly complete with the activities of the Development Foundations.

However, we continue to have overall concerns as regards whether a new institution is necessary to accomplish the functions outlined in the bill.

As you recall, we have been concerned from the beginning about the establishment of and the proposed uses of the Fisheries Loan Fund. Because we are extremely skeptical about the valid bases for user fees on government services, we continue to think that the precedent of using fees from foreign fishermen to fund various fisheries-related programs could all too likely be translated into ill-considered or unconsidered fees on United States fishermen when the foreign fishermen are no longer paying these fees in these amounts.

The question of how best to expand our markets, both export and domestic, continues to be one of paramount concern and interest for us. Many of my members, however, still remain unpersuaded that a new institution is necessary to achieve this. As I mentioned in my testimony last week on the subject of imports and their impacts on the continued development of the United States fishing industry, we do not think that expanding exports alone will take care of the development needs and goals in which we are interested. The United States, we're told, is one of the best growth markets for seafood in the world. To achieve this growth will require that the United States seek ways of balancing the inequities between US seafood products on the one hand, imports on the other. Increasing the availability of Saltonstall-Kennedy funds designated specifically for domestic market expansion would be one way in which to build on an existing program. Quotas, tariffs, and duties are others.

As regards the importance of expanding our export opportunities we all agree. Increasing availability of SK funds here is also a possibility. In dicussing the importance of export development, including joint ventures and countertrade possibilities, however, the question of the need for this new construct persists. Some have suggested that export development is sufficiently complex and important as to mandate dealing with that issue alone.

Our long-sought Capital Construction Fund extension to shoreside facilities is a mechanism which several thought preferable to a new institution, a mechanism which many thought would be no more difficult to accomplish in the current overall economic climate than this proposed bank. On the subject of additional monies for fishing vessels: as I have said several times before, with the exception of our North Pacific crabbers seeking to convert to draggers, I know of no fleet among our membership seeking significant amounts of vessel monies. On the contrary, as Dan Arnold, Massachusetts Inshore Draggermen's Association and Eastern Region President, NFF, points out, "We can't sell what we have alot of already, so why should we look for more help for boats?" And I've just been told the state of Alaska is considering whether the groundfish fishery in the waters off Alaska is not already overcapitalized and therefore should be declared a conditional fishery. With far too many bureaucrats, academics, and other managerial types dashing hither and yon asserting that the fishing fleets are overcapitalized and therefore limited entry is the only solution, most our fishermen are quite concerned to assure that further monies will not be available to expand the fleet in ways which they see have brought upon us these cries of "Limited entry!!!"

Dick Allen, Atlantic Offshore Fishermen's Association, has suggested that because the industry itself has not had an opportunity responsibly to consider as a group the development needs of the industry and how best to accomplish these, that the private sector advisory committees proposed to be established (Section 6) be set up to undertake this evaluation before any new institution is put in place. Other members concurred.

Because utilization, development, and expansion of our fisheries is clearly becoming more, rather than less, complex, we appreciate the SCtte's continuing efforts to work with us. The changes in H.R. 5549 do reflect accommodations of some of our concerns. We look forward to working with you to build on this base.

Thank you.

Mr. BREAUX. Next, Richard Gutting. Dick.

STATEMENT OF RICHARD E. GUTTING, JR.

Mr. GUTTING. Thank you, Mr. Chairman.

I am Dick Gutting from the National Fisheries Institute.

As you know, Mr. Chairman, we have a very diverse membership and sometimes with such a diverse membership it is hard to get everybody to agree on something.

Our members have many concerns and comments about this bill. I think you have already heard some of those concerns. We haven't had that much time to review the bill from a technical point of view, and we would like additional time to do that.

Overall, however, the Institute does support the bill.

We support it because we are deeply concerned about improving the productivity of our industry, promoting its growth, and we think that a properly structured bank can help us get there.

Our members agree with the emphasis of the two previous witnesses on exports. That is certainly where we think a lot more is needed. We also feel there are other areas which might benefit from having proper financing available.

Mr. Chairman, if there is one point that I want to leave you with today, it is a concern over overcapitalization. It is a concern that the financial programs of the bank be run well.

It is a concern that inefficient operators not be supported, and that the programs and the resources of the bank be targeted on improving productivity. These are very deep concerns. I know the

chairman has spoken on these times publicly and I know it is not your intention to have the bank aggrevate any overcapitalization problems.

I think we need to work very diligently on getting into this bill the language and the safeguards needed to implement that general policy.

The second thing that should be added to this bill involves objectives. It is unclear to me exactly what the bank is targeting on, exactly what the programs are intended to do.

If we don't spell that out more clearly, we are likely to see the bank become highly political. We are likely to see special interests come in and the tugging and pulling that has been before this committee and before the National Marine Fisheries Service will just continue, but in a new forum.

We need some discipline, and that discipline should come in the form of very clearly stated objectives. What exactly is it that we want these programs to accomplish?

The members of the board of the bank should figure out how to accomplish specific objectives effectively, and not be trying to figure out why they were selected and what the bank is supposed to accomplish.

On the last page of my testimony I comment on a few possible areas we would like you to consider when it comes to looking at the programs of the bank. I will just mention these very briefly.

We suggest, as I indicated, that we need better criteria or standards for the programs. We also think that the bank should have guarantee authority for vessel and facility financing. This would broaden the tools available to it.

We think that financing should be available for research and development projects, particularly where they are targeted toward increasing productivity in the industry. We are very concerned that any working capital loan, or any loan for that matter, not be used to bail out inefficient operations.

I won't go down all the changes other than to echo the remarks of the earlier witnesses. We do support this bill. We think some changes need to be made. We look forward to working with you and the members of the committee and the staff on developing the general comments and ideas of the witnesses into more concrete language.

[The statement of Mr. Gutting follows:]

PREPARED STATEMENT OF RICHARD E. GUTTING, JR., NATIONAL FISHERIES INSTITUTE

Thank you for the opportunity to appear before this Subcommittee to discuss H.R. 5549, which would establish a new Marine Resources Development Bank for the United States fishing industry. I am Richard E. Gutting Jr., Vice President for Government Relations of the National Fisheries Institute.

The Institute is made up of vessel operators, fish houses, fresh and frozen product processors, canners, distributors, brokers, importers, exporters, retail and restaurant chains, and support industries. As you know, Mr. Chairman, it is often difficult to take a position on legislation that makes everyone happy when your constituency has such a broad base. Our members have several concerns and comments on issues raised by this bill. We have not had time to review all of the technical issues raised. Overall, however, the Institute supports the bill.

The fundamental objective of the Institute is growth in the production, processing and marketing of fish and seafood by the United States fish and seafood industry. In order to achieve this growth, we believe it is essential to maintain a consistent,

long-term supply of products, build a strong domestic production capability, maintain international trade, educate the consumer, and work for a business climate conductive to making a profit. The Institute's support of H.R. 5549 is based on our behalf that a new fisheries bank could help achieve these objectives.

It is apparent to us that increased productivity is essential to the basic health of our industry and its long-term growth. Those in the marketing end of our business know that we are in danger of slipping competitively against other food products. The root of our problem is a long-term erosion of the relative value we provide the consumer. Remedies must center on improving our productivity and competitive position in the market place. We must produce more and better products and provide them to consumer at less cost.

PRESENT FINANCIAL ASSISTANCE PROGRAMS

Adequate financing for all segments of our industry is essential if we are to increase our productivity and grow. In this regard, the Institute believes that existing federal assistance programs are indequate and need to be refocused. By inadequate, we mean that they fail to provide an efficient flow of capital into profitable investment opportunities in our industry. By refocused, we mean that they need to be aimed at the full development of our industry.

Many companies in the private financial community believe that investments in our industry are high risk. This perception starts with the fact that much of our supply depends upon wild species with population dynamics that are only roughly predictable. Many of the investments needed to improve our industry's productivity and develop our fishery resources are large, while the size of most of the companies in our industry is small. Fishing vessels are not always thought to be the best collateral by bankers. A surprising lack of information about our present and potential markets doesn't help. Because of these and factors, commercial lenders often seek more stringent terms for fishery projects. High down payments, short maturities and high interest rates are often required. In many cases the banks simply say no, particularly when financing is sought for a project in a nontraditional area or in a fishery undergoing stressful changes.

There are three financial assistance programs administered by the National Marine Fisheries Service. These are: (1) the Fisheries Loan Fund; (2) the Fisheries Obligation Guarantee Program; and (3) the Capital Construction Fund. These programs can impact capital investment significantly. Our members are very concerned that they be managed consistent with increasing productivity in our industry.

The Fisheries Loan Fund is intended to assist the owners or operators of commercial fishing vessels. In recent years it has been used only to help vessels avoid default on their mortgages. Priority has been given to those vessels financed under the Fisheries Obligation Guarantee Program. The terms are a three percent interest rate, a repayment maturity of up to ten years, and a maximum loan amount of one year's worth of mortgage payments. Numerous restrictions apply and the use of the program has been minimal given the number of defaults in the industry.

The Fisheries Obligations Guarantee Program aids vessel owners or operators to obtain private financing for the construction of reconstruction of fishing vessels over five net tons. The program was expanded by the American Fisheries Promotion Act to include shoreside fishery facilities. The terms are a 12½ percent down payment, market interest rates, no maximum amount and long-term maturities. The program, however, cannot be used to obtain operating capital, purchase used vessels or facilities, make repairs or finance exports. It is not available to projects in "conditional" fisheries. Past efforts to expand its use in newer fisheries (higher risk areas) have failed.

The Guarantee Program is self supporting and was never fully capitalized. As a result, it is administered on a low-risk basis. In recent years, defaults have used up reserves and the program has had to borrow from the Treasury to meet its obligations. The present delivery of services in this program is poor. Applicants face long delays and numerous frustrations. Decision-making is cumbersome and there is a lack of accountability. Implementation of the program for shoreside facilities is particularly poor.

The Capital Construction Fund allows vessel owners to accumulate investment capital for vessel construction or reconstruction projects by establishing tax-deferred accounts with the Secretary of Commerce. Taxes are recaptured through reductions in the depreciation basis of new or reconstructed vessels. The program is not available to shoreside facilities nor to vessels in "conditional" fisheries. This program runs well. It's major limitation is that it is not available to shoreside fishery facilities.

The Small Business Administration (SBA) has several programs available to companies in the fishing industry. A Direct Business Loan and Loan Guarantee Program is available for vessel and onshore facility construction, acquisition and renovation. Applicants, however, must show that their projects are "not bankable" by private sources and that they are small businesses. A Local Community Development Program provides funding and loan guarantees to companies to promote employment. SBA provides 30 percent of the funding for a project provided it is matched by local community funds. The loan limit is $500,000. It also administers an Export Revolving Line of Credit program to help small businesses export their products with a $500,000 credit line.

The Farm Credit System has been authorized to make marine loans since 1971. Under this system Production Credit Associations (PCA) can make direct loan to fishermen. Several PCA's have used the Fisheries Obligation Guarantee Program to finance new fishing vessel construction. The short-term nature of these loans, however, tends to restrict their use or makes them undesirable. Interest rates are based upon the interest paid on the underlying bond issue. Bonds are issued periodically and thus interest rates are subject to change. All loans must be secured. Financing from PCAs is restricted to farming activities with fish harvesting being interpreted as a special type of farming. Fish processing, however, has not been construed as a farming activity. This has eliminated shore-based processors from loan consideration, except as cooperatives.

The Commodity Credit Corporation (CCC) finances the export sales of "agricultural commodities" under two programs. The Export Credit Sales Program (GSM-5) assures the U.S. exporter that CCC financing (interest-free) is available on a deferred payment basis to cover exports sold to a foreign buyer. The Export Credit Guarantee Program (GSM-102) guarantees private financing of foreign purchases on credit terms up to three years. Under this program the foreign buyer's bank issues an irrevocable letter of credit and the CCC guarantees 98 percent of the amount owed to the U.S. bank in case the foreign bank defaults for any reason. In recent years these two programs have been "blended" to stimulate exports to developing countries. Commodities financed under this program include wheat, corn, rice, cotton, soybeans, vegetable oils, eggs and lumber. These programs work. The major problem is that only those fish products produced through aquaculture are eligible.

The Eximbank provides loans, loan guarantees and insurance to finance exports. Usually, however, direct lending is set aside for large multi-year export projects. A Loan Guarantee Program in intended to give exporters access to working capital loans from lenders if the exporter is creditworthy and can show that: (1) the loan would not be provided without Eximbank assistance; and (2) exporters will not occur through other means. A Discount Loan Program allows U.S. commercial banks to extend fixed-rate, medium-term export loans on terms ranging from one to five years. It also provides insurance through the Foreign Credit Insurance Association which acts as its agent to cover the risk of nonpayment by foreign buyers. These Eximbank programs, however, do not appear to be used by our members.

In summary, existing federal programs are inadequate to meet the financial needs of our industry. The present fisheries programs are limited in scope, under capitalized and burdened down by a combersome and hostile bureacuracy. Other federal programs are not available to many fish companies, or are not being used. There is no single financial insitution with authority to provide the full range of services needed and with a mission to provide those monies to the fishing industry.

THE BANK CONCEPT

If properly financed, a Bank could help meet the financial needs of the industry in a more efficient way than the present system. The concept of establishing a new Bank, we believe, is feasible provided it is viewed as a way to supplement existing capital markets and not replace them.

The Institute is pleased that many of the suggestions made by witnesses last year during Subcommittee hearings on the proposed fishery corporation have been incorporated into H.R. 5549. What is missing now, in our veiw, are clearly stated objectives for the Bank and its programs.

Setting out well-understood objectives is of central importance to the Bank's success. Unless the purpose of the Bank is clear, the work of the Board is likely to be highly political and bog down over disputes among competing interests. The Board should focus its energies on managing its resources effectively, and not sorting out why it was created, or what it should try to accomplish.

Clearly understood objectives and priorities, for example, would be helpful when the time comes for the Bank to divide up its resources among its different programs

and present and future clients. In this regard, there are three basic options: (1) Say nothing and let the Board figure it out; (2) Provide the Board with objectives; and (3) Divide up the funds in legislation. We favor the second approach. Under the first option, the Board may bog down in political infighting. Under the third option, the Board may be denied needed flexibility.

There is uncertainty over what is intended concerning the objectives of the bank's programs and their relative priorities. Section 2 of the bill refers to the purposes of the Act in general terms. No section explains the objectives of the bank itself. Section 9 says the Bank's financial assistance should complement or supplement the assistance provided by other organizations. It also says that loan applicants show "economic soundness" and infers that the bank avoid "undue risk". The description of the bank's export program includes references to loans for increasing export sales and guarantees to expand exports which involve the equitable use of monies and the greatest number of eligible persons and countries. No standards or objectives are set out for the bank's other services.

A large, permanent institution, like the proposed Bank, may become a magnet for special interest pressure, and could provide an incentive for firms to fail in such a way as to require bailing out. We are uncertain whether the purpose of the Bank is to promote growth in new areas, or subsidize the restructuring of declining fisheries, or both, or something else. Depending on its goals and project criteria, the Bank could assist rising, declining, or stable sectors in the fishing industry. It could provide venture capital, refinance the debt structure of mature fisheries, or both. The directors of the Bank are likely to be under considerable political pressure. Rather than fostering growth, they could end up subsidizing inefficient fisheries to maintain employment. Extraordinary discipline would be required to avoid this pressure—specifically, a firm set of goals.

We recommend that the bank's programs be available only to those who are credit worthy and only for those projects which are consistent with increasing the productivity of our industry. Under no circumstances should the bank's programs maintain inefficient operations or otherwise contribute to the overcapitalization of our fisheries. Our members feel very strongly about this issue. We urge you to include express limitations in the bill so that the Bank's programs will not overcapitalize fisheries.

We also recommend that some mechanism be provided to coordinate the bank's program with other federal programs. Section 9 of the bill directs the bank to take into account the assistance provided by other financial programs. The work of the bank, however, should also be coordinated with the fishery management and development activities of other agencies, including those of the National Marine Fisheries Service and the Regional Fishery Management Councils. In this way, the policies of the board are more likely to complement the efforts of other agencies.

In summary, the proposed bank concept is feasible provided:

It is not viewed as the sole source of financial assistance to the industry;

Its objectives are clearly stated and understood; and

Its programs are coordinated with other fishery and financial programs.

THE BANK'S PROGRAMS

The Institute has the following comments and suggestions on the proposed programs of the Bank:

Criteria or standards should define which companies and projects are eligible for assistance to insure that the Bank's programs promote productivity and growth;

Loan guarantee authority for vessel and facility financing should be included to broaden the financial tools of the Bank;

Financing for research and development projects should be authorized to foster productivity and growth;

Working capital loans for operations should be limited to avoid "bail outs" of inefficient operations;

Private institutions should be required to finance a substantial percentage of each project as a safeguard against risky investments;

The proposed authority to finance overseas facilities should be deleted as too ambitious; and

A portion of the unobligated monies in the Fisheries Loan Fund, as well as future foreign fishing fees, should be used to support the marketing program envisioned by S. 2160.

CONCLUSION

Thank you again, Mr. Chairman, for your interest and concern over the future of our industry. Your proposed fishery bank with appropriate changes, is a step in the right direction and we support it. I would be happy to answer any questions.

Mr. BREAUX. Thank you, gentlemen, and Ms. Sloan, for your testimony.

Mr. Cowles, you addressed the problem, as many have before you, about runaway Federal investment, and what may already be an overcapitalized fishery in some areas. If we established a development bank along the lines that we have now in the draft, do you have any suggestions as to what steps or criteria may be included in the legislation to try and prevent any kind of an overcapitalization from occurring as a result of development banks activities?

Mr. COWLES. Other than the fact that there ought to be criteria and guidelines established in the legislation, as Mr. Gutting has suggested, I have no specifics now.

Those are the kinds of things that we would be glad to work with the committee on as you prepare for markup.

Mr. BREAUX. I think we have to be careful in an area where I think we all share a common goal, but even in an overcapitalized industry there are those who should still be in that industry.

Mr. COWLES. That is right.

Mr. BREAUX. You don't just shut down the whole industry, so if you have an overcapitalized industry, one way to deal with it very quick is to cut off all assistance to the entire industry thereby weeding out those fishermen, harvesters, and processors alike who should not be in that industry.

You have to be very careful. It is very difficult for us to write into legislation.

Do any of you think that the development bank, assuming it would be enacted, could be used as a means of trying to address problems of overcapitalization, such as limited entry or what-have-you?

Does anybody have any comments on that? We have not been very successful, those who have come to the committee saying we need some sort of limited entry program for the fishing industry.

States have not been very successful in coming up with plans to do that. Federal fishery management plans have not been very successful.

A development bank may be used for that. I don't know. I am not suggesting that, but that is one way to restrict availability of capital certainly.

Mr. COWLES. I suspect some of the difficulty you have had at the State level in doing that would be magnified several times if you tried to do it at the national level. I think that might be very difficult. I am very glad to hear you take the sophisticated approach of trying to figure out ways that overcapitalization should not occur, and still retain the industry as you have mentioned.

Mr. BREAUX. One of the advantages of a development bank is that hopefully it would be staffed by people with a background and expertise in the fishing industry so that they can see consequences of making loans to an industry further than just dollar and cents implication of whether they are going to lose money or not.

They could also determine and understand what effect that investment in that industry would have to the industry itself, because it would be conscious of the fishing industry as a whole and not just whether we loan *x* dollars, do we get our money back in 5 years.

It would also be able to hopefully determine that if we loan another million dollars in this industry, we are going to hurt those who are already in it because it has reached a point of saturation.

Mr. COWLES. That is right.

Mr. BREAUX. So to a certain extent I think the development bank would have better expertise in being helpful in that area say than the local SBA or the local PCA or the local first national whatever bank that may be involved in that area.

Mr. Gutting, you had a comment?

Mr. GUTTING. One area where the bank programs could help is encouraging diversification, and the development of new fisheries. This involves giving people in mature fisheries, or overcapitalized fisheries, some alternatives and options. I think there is a lot of work that could be done in that direction.

Ms. SLOAN. One of the things that although on paper I think Dick's idea certainly bears looking at, one of the things that concerns us is the one fishery that we thought surely wasn't overcapitalized is now being looked at as potentially a conditional fishery, that is to, say, ground fish in the waters off of Alaska.

That is an indication that there really are very few fisheries left in which the potential for expansion is truly that great, and so one would have to be very careful, and it would have to be part of an institution of this sort, to ensure that in encouraging diversification one didn't, as is unfortunately the case on the west coast right now, take salmon trollers and propose to convert them to small draggers.

If there is anything we don't need any more of on the west coast right now it is draggers, and those are the kinds of things that I think you are saying, Mr. Chairman, might be something which an institution of this sort would take into consideration. But I think that there really are relatively few genuinely underutilized species at this point. We are rapidly approaching, with the exception of a couple of species on the east coast, and one in the waters off of Alaska, a point where it would be difficult to say they are going to be truly underutilized for very much longer.

Mr. BREAUX. We had some observations made by the gentleman from California this morning with regard to what I take to be his impression that we don't really need a development bank because there is enough private sources and what have you to take care of the needs.

Mr. Gutting, your association has a large number, obviously, of processors involved in it. The development bank would have provisions to allow money to go to shoreside processing for reconditioning, rebuilding, upgrading, as well as the initiation of new construction of shoreside facilities.

What is the status of shoreside facilities at present? Do they have adequate financial sources? How do they finance the operations now? Some of them I guess are parts of large corporations and they have no problems with financing. Others probably are

smaller. How do they get their financing now? Do they have any problems in that area?

Mr. GUTTING. Some of the problems and needs are outlined in my testimony. I think an important point here is that there is a need for investment financing for the processing members of my institute, both in the mature fisheries and in those areas where we would like to expand and develop some new species and new products.

For example, financing right now in the menhaden industry, one of our oldest, is critically important, to help that industry upgrade its product forms from industrial products to food products. This would add tremendous value to those landings. The need, however, is throughout the country to modernize and upgrade. As many witnesses have pointed out, we do compete in an international market.

There are seafood products coming in from overseas as well as other food products produced here in the United States, and we have got to modernize our plants and make them more efficient, more productive.

As to where we get our money, we had hoped that, as a result of the American Fishery Promotion Act, that we would gain the benefit of the obligation guarantee program and obtain more reasonable rates, and favorable maturity on our loans.

Our members rather enthusiastically went off to the National Marine Fisheries Service to apply, as soon as the regulations were issued, and ran into a lengthy series of frustrations and delays. One of the problems was that when you would come forward to the National Marine Fisheries Service in the spring, you needed to get your plant going for the summer season, and you would find that it would take 1 year or 8 months before your application could be reviewed.

That just doesn't square with the operations in the business, so people left that program and went off searching elsewhere for money. Some were successful, some were not.

Basically we depend upon, and have historically, the private capital markets. Some of our companies qualify for small business loans. However, there are dollar limits in that regard, and not everybody in the industry would qualify for assistance from SBA.

Mr. BREAUX. A large number of your members are in the export business, import-export business both. I note from other experiences in the Congress, because of my own congressional district's interest in agriculture, that there are a number of existing agricultural programs that provide economic assistance to foreign countries that are searching for U.S. agricultural products, whether it be rice, wheat, corn, or what have you.

Because they could not afford to buy from the United States, the United States either gives them a direct grant under the Food for Peace Program, or if that money is not there, then the United States can have that country come in and borrow from private sources in the United States, and we guarantee that loan. It is called the GSM-102 program, and others, which are really Government-guaranteed loans for foreign countries to buy our products.

Is there anything that your members use along those lines to be able to better export fishery products to countries that might like

and desire our fishery products, but don't have the capital available?

Mr. GUTTING. Mr. Chairman, for 3 years we petitioned the Commodity Credit Corporation, asking them to include fish products in the CCC program. Last year we received a letter denying us access to those programs. We were told fish products qualify but only if they are produced through aquaculture, only if they are connected with farming operations, so we were left out of that program.

From our standpoint that program is highly desirable, not only because of the blended credit, not only because of the guarantees, not only because of the direct loans and the panoply of other support, but it's a place to go, Mr. Chairman. If you are in the agriculture business, you have got a place to go to get advice and help, and you can talk to people who see it as their job to help you export products.

Mr. BREAUX. Is the industry looking toward any Third World nations as a source of possible markets for fish products here in the United States?

Mr. GUTTING. Absolutely. I can tell you the story of one of our members that illustrates the interest. I am not going to name him, but I certainly had many long, painful discussions with him about his efforts.

He is the kind of guy we would like to see succeed. He is the kind of guy I think we need more of. He made an effort to expand markets for the ground fish in the Gulf overseas.

Now, as you know, Mr. Chairman, the species down there quite frankly are not the most desirable from the American standpoint. They are small. They are bony. They may not taste exactly the way we would like them, but there sure is demand for these products in places like Nigeria. So our member said: "OK, let's put together a deal. Let's get the boats to harvest. Let's freeze it, let's get it over to Nigeria and sell it, over $700,000 worth of product."

Now, this individual went to the Eximbank and ran into all kinds of restrictions and time delays, and got nowhere, after going three times in one year to try to get some kind of help. He went to the Small Business Administration. They do have some export programs, and of course he was over the limit, so he had no place to go, so he shipped his product.

He was to be paid a year and a half ago and he still hasn't been paid on his letter of credit. Now, if he had been under one of these programs, he would have had the full faith and credit of the United States standing behind him, and he would have been paid, and perhaps he would have done this again. This man is basically out of business, because he really had no place to go and no one to help him within the Federal Government.

Mr. BREAUX. Thank you for those comments.

Mr. Cowles, I note that you are here as counsel for United Fishermen of Alaska, and you point out that it is an association consisting of some 1,500 individual members and 20 member organizations, I take it mostly in Alaska.

On another piece of legislation that Congressman Young has introduced, which is before the House, basically it deals with manning and Coast Guard inspection of fishing vessels and harvesting

and processing vessels in the area. Do you have any thoughts on that, or comments that would benefit the committee?

Mr. COWLES. We have been working pretty closely with Congressman Young's office on it. We have no general problems with the legislation. We will be working with Congress to see its passage.

Mr. BREAUX. You said you had problems. I have never talked to you; I have no idea what your position is on this. I wonder if you could give us information that may be helpful, not necessarily now, but we will try to work something out.

Mr. COWLES. Certainly.

Mr. BREAUX. With Congressman Young and with everybody else involved, I would like to have any input that you would desire to make on behalf of your association.

Mr. COWLES. I will be happy to help provide that to you.

Mr. BREAUX. Let me excuse this panel. We have another vote and we will come back and take our final panel in approximately 5 minutes.

[Recess.]

Mr. BREAUX. The subcommittee will please be in order.

We have our final panel. I would like to welcome Kristin L. Vehrs, representing the Texas Shrimp Association; Eldon Greenberg, representing the Southeastern Fisheries Association; Mr. Earl Barr, president of The Peregrine Corp.; and Mr. Alan D. Guimond, president of Stonington Seafoods. Ladies and gentlemen, we welcome you and will be pleased to have your testimony.

Kris, do you want to begin? We will take your statement first.

STATEMENTS OF KRISTIN L. VEHRS, WASHINGTON REPRESENTATIVE, TEXAS SHRIMP ASSOCIATION; ELDON GREENBERG, REPRESENTING THE SOUTHEASTERN FISHERIES ASSOCIATION; EARL BARR, PRESIDENT, THE PEREGRIN CORP.; AND ALAN D. GUIMOND, PRESIDENT, STONINGTON SEAFOODS

STATEMENT OF KRISTIN L. VEHRS

Ms. VEHRS. I would like to request that my statement be made a part of the record.

Mr. BREAUX. Without objection.

Ms. VEHRS. Then I will summarize some of the major points of our testimony. It is the view of the Texas Shrimp Association that the proposals included in the Marine Resources Development Bank will allow for a restructuring of the industry.

It will enable the industry to adjust to the economic changes which have occurred in the past several years. To name just a few, the increased capitalization in the industry, increased fuel costs, increased interest rates, loss of fishing grounds, et cetera. This economic revision is especially critical in the area of vessel debt service.

I would like to discuss a few specifics of the Marine Resources Development Bank. The board structure seems adequate in size; the reduced size will allow it to be an effective policy body. However, we are concerned that the board is not politically insulated. This could lead to decisions to make bad loans or an unstable situation. For example if board members refused to make certain loans,

or refused to foreclose on certain loans, they could suffer dismissal from the board and may serve for a short time period.

We remain concerned that any enhancement of a financial program for the fishing industry not be structured to be simply a bailout for marginal operators. The financial expertise of the proposed board should be sufficient to restrict the potential for this to occur.

We do recommend an advisory committee to the board consisting of representatives of conventional financial institutions, with historic interests in the seafood industry. We suggest this because we understand that the bank is meant to supplement existing financial services.

We commend 7(b) of the bill whereby the board can utilize expertise of Government personnel. We believe this is important, because those individuals within the financial services division and their regional counterpart of NMFS are familiar with the financial problems of the industry.

We would suggest that a requirement should not be placed on the industry to finance or refinance under provisions of the bank in order to have the ability to obtain a working capital loan. We believe that the existing restriction on the working capital loan may well encourage refinancing by persons holding loans who need working capital loans to get them started in the season. This would give those persons who refinance an advantage.

We would recommend, however, that one criterion be that those individuals have no other access to reasonable conventional financing, and we would suggest that the terms of such a working capital loan be that the payback period be by the end of the fishing season, no more than 1 year.

Provisions for financing appropriate facilities in foreign countries should include provisions for fish products harvested by U.S. flag vessels in cooperation with those countries. As the bill stands, the marketers receive an advantage from financing facilities in foreign nations where U.S. products are imported. We would like to expand that provision to allow harvesters to take advantage of financing facilities where we catch the product in conjunction with foreigners in their countries

The U.S. fishing industry continues to develop a more complicated economic situation with each passing moment. We believe that this bill will help. We are not looking for a bailout program, but are looking for the ability to compete more effectively against many countries whose fishing industries are subsidized. We are not asking a subsidy but merely the ability to take advantage of programs. We see this legislation as the needed development of an economic scheme for the industry.

Thank you very much.

Mr. BREAUX. Thank you.

[The statement of Ms. Vehrs follows:]

PREPARED STATEMENT OF KRISTIN VEHRS

Mr. Chairman and members of the committee, I am Kristin Vehrs, Washington Representative of the Texas Shrimp Association. Our association represents Gulf shrimp harvesters, shoreside facility owners and support-service industries.

As we have stated before this committee on numerous occasions, the Gulf shrimp harvesting industry has been operating in challenging times and remains in a tran-

sition mode. Over the past decade a number of circumstances beyond the control of the industry, have weighed heavily on us.

There was an increase in the price of diesel fuel from 10 cents to 36 cents per gallon in the early 1970's. Until then, fuel costs were roughly equitable to that of our major competitor, Mexico.

In the 1974-1975 period, fuel costs increased to 60 cents per gallon and the industry petitioned the International Trade Commission (ITC) for relief under the Trade Adjustment Act of 1974 due to substantial economic harm from increased imports. A positive ruling of severe damage or potential for damage was obtained from the ITC investigation, however, almost no relief was granted.

In 1976, Congress passed the Magnuson Fisheries Conservation and Management Act which extended the U.S. jurisdiction over fisheries to 200 miles. Other nations, including Mexico, followed suit and sought to exclude foreign fishermen from their waters. A bilateral treaty for a three-year gradual phase-out of U.S. shrimpers was negotiated between U.S. and Mexico. The traditional fishing grounds of much of the U.S. and the Gulf of Mexico was closed to U.S. shrimpers creating more congestion on the domestic fishing grounds and greater seasonality in the fishery. Our season is limited by both weather and resource abundance to 5-6 months.

In the late 1970's, Congress decontrolled middle-distillates which resulted in increased fuel costs to $1.00(+) per gallon creating an even greater competitive advantage for the fisheries in countries like Mexico which maintained fuel costs well below the world market level.

In 1981, the Administration closed the Public Health Service Hospitals without reducing the liability requirements on vessel owners to provide for the health and well-being of vessel crewmen. Insurance rates are increasing drastically with some underwriters leaving the market.

Also, in the early 1980's, technology on shrimp mariculture, developed through such Government supported activities as the Sea Grant College Program and the National Marine Fisheries Service, was being transferred at an alarming rate to Central and South American countries. The traditional shrimp harvesting industry is beginning to be impacted severely by tremendous increases in shrimp imports.

As a result of these and other factors, the shrimp harvesting industry has found itself in a depressed economic situation with an increasing amount of pessimism for the future.

It is our view that the proposals included in the Marine Resources Development Bank (MRDB) will allow for a restructuring of the industry. It will enable the industry to adjust to the economic changes which have occurred since the increased capitalization of the industry. This economic revision is especially critical in the area of vessel debt service.

During the late 1970's, there was an intensive vessel building effort within the shrimp industry. Not yet realizing the full impact of the loss of traditional fishing grounds and the increase in fuel costs, the industry saw significant appreciation in vessel values as a partial result of unrestrained inflation. Some stimulation was also generated by the move toward lowering equity requirements under the Fishing Vessel Obligation Guarantee Program from 25% to 12½%. Commercial lenders continued to have relatively short paybacks on the vessels such as 5-7 years. This, in conjunction with increased vessel costs, poor production years and increasing operating costs, left the industry in an economic transitional period not conducive to reducing vessel debt. Also, there was little opportunity to liquidate the debt due to poor marketability of the vessels.

Furthermore, the financial assistance programs within the National Marine Fisheries Service were not available for purchasing used vessels and therefore, some willing buyers were not able to arrange financing. In some cases, this left small community banks with trying to extend even more credit to the shrimp industry in order to provide stability to the local economy.

In the Texas area, many of the small banks are being acquired by major bank holding companies. These holding companies do not fully comprehend community needs and the importance of the shrimp industry to the local economy. We understand that some bank presidents are receiving directions to avoid more investment in the shrimp industry. As the economy improves, the leaders of the holding companies may well look to high technology and other such industries as much better risks than shrimping. This will virtually remove sources of capital at a critical time.

In consideration of the general situation I have just described, I would like to discuss specific aspects to the MRDB.

The Board structure seems adequate. The reduced size of the Board will allow it to be an effective policy body.

Also, it provides for financial expertise in the decision-making process and for insight from leaders in the key departments of Treasury, Commerce, Agriculture and the Special Trade Representative. There remains concern that any enhancement of financial programs for the fishing industry not be structured to be simply a "bail out" for marginal operators. The financial expertise of the proposed Board should be sufficient to restrict the potential for this to occur.

We recommend an Advisory Committee to the Board consisting of representatives of conventional financial institutions with historic interests in the seafood industry.

We commend Section 7(b) whereby the Board can utilize the expertise of government personnel. This is important because those individuals working within the Financial Services Division (and their Regional counterparts) of NMFS are very familiar with the financial problems of the shrimp industry.

A requirement should not be placed on the industry to finance or refinance under provisions of the MRDB in order to have the ability to obtain a working capital loan. (See Section 9(b)(D).)

Provisions for financing appropriate facilities in foreign countries should include provisions for fish products harvested by U.S. flag vessels in cooperation with those countries. (See Section 9(c)(C).)

The U.S. fishing industry continues to develop a more complicated economic situation at each passing moment. The common property nature of fishery resources does not allow for as much control of the economics as that of privately owned resources. In that regard, we need an institution which can provide the flexible financial help to overcome the problems being faced by our industry. With the billions spent each year to preserve the economic vitality of the agricultural industry, there can be little justification for not providing a continuous system of support to fisheries.

Thank you, Mr. Chairman and members of the Committe, for the opportunity to address H.R. 5549. I would make one final recommendation—that the headquarters of the Marine Resources Development Bank be named in honor of Congressman Edwin B. Forsythe. Thank you.

Mr. BREAUX. Next, Mr. Eldon Greenberg.

STATEMENT OF ELDON GREENBERG

Mr. GREENBERG. Thank you, Mr. Chairman. I am pleased to appear before the subcommittee this afternoon to present the views of Southeastern Fisheries Association. I am also substituting for Gene Raffield of Port St. Joe, FL, an SFA member who was invited to testify but could not be here today. With the chairman's permission, I would like to ask that my full statement be included in the record, and I would summarize it in the few minutes I have.

SFA, like many of the others testifying today, supports the concept of a Marine Resources Development Bank. We believe that such an institution can make a real contribution to the fishing industry's long-term growth. We also believe, however, that it is essential that this institution be structured in such a way so as to truly promote efficiency, and not freeze development into inefficient patterns.

Other panelists this morning and this afternoon have addressed the industry's financial needs. I want to use my time to suggest some ways to structure a new financing institution to ensure that it operates on the basis of economic efficiency, and does not contribute to overcapitalization in any sector. I have noted the remarkable unanimity among those testifying today that any financing program that would be in the business of bailing out inefficient operators is not one that the industry as a whole would support.

First, we believe that the bank must operate in concert with other fisheries assistance programs. Financing is only one part of an overall national fisheries development strategy, and we believe there ought to be mechanisms for formal liaison between the bank, the National Marine Fisheries Service, and the Regional Fishery

Management Councils. We appreciate that the Secretary of Commerce would sit on the board of directors of the bank. We think something more is required, perhaps in the form of an institutionalized interagency committee.

I would also note that it may be appropriate to consider whether some of the Fisheries Loan Fund moneys should be reserved for other initiatives. As the bill is now drafted, it would take all the unobligated funds presently in the Fisheries Loan Fund as well as future receipts. Our view is that we should look at the Fisheries Loan Fund and determine how best to use all the moneys in that fund for the overall benefit of the U.S. fishing industry.

There are other programs which we at Southestern Fisheries support, including the marketing proposal currently pending in the Senate, which might seek to utilize some of these moneys.

Second, we believe that the bank's objectives must be explicitly stated, and that its financing criteria must be clearly articulated. We appreciate that the bill does include a criterion of basic economic soundness for investments. We would go further to provide direction to the bank.

I would disagree somewhat with Mr. Burney's statement this morning that we should just rely on the intelligence and wisdom of members of the board of directors of the bank. To be sure, we need some flexibility in financing decisions, but, in addition, I believe that the bill should specify that loans should be made to those projects which would promote economic efficiency, facilitate full development, and not contribute to overcapitalization in any sector. And, as Mr. Blondin testified, there are criteria that can be utilized to insure that unwise investments are not made.

In addition, we believe that you can foster the goal of economic efficiency by requiring greater reliance on the private capital market. We have suggested a 50-percent requirement for private capital contributions as a way of helping to assure that only projects with economic merit receive financing.

I would note that some speculate that the reduction of the percentage of private capital required for the OG program from 25 percent to 12½ percent, which occurred several years ago, helped to contribute to some of the overcapitalization problems that we have today, particularly in the Gulf of Mexico.

Third, I believe that there must be mechanisms to overcome the inherent conservatism of public lending institutions. We want to see a bank which will encourage innovation and diversification. Having a policy-oriented board is one mechanism that might help achieve that objective. It might also be appropriate to specify that some part of the bank's portfolio be directed to development of underutilized species.

Ms. Sloan testified that there were relatively few opportunities to truly develop underutilized resources. I don't believe she meant to refer in her testimony to the resources of the Gulf of Mexico. We believe there are substantial underutilized resources in the Gulf of Mexico, resources that can be developed by the U.S. fishing industry and resources which, if they are developed, would help lead to the diversification and decapitalization of the shrimp industry, which is a goal that I believe you, we and others in the gulf all share.

The point is that the bank must not freeze today's industry patterns. Rather, it must assist in developing new and more productive patterns for the industry throughout the United States.

Mr. Chairman, we appreciate the opportunity to testify on this important proposal. We appreciate your efforts on behalf of the U.S. fishing industry. I have made a number of specific suggestions for improving the bill. I don't have time to get into them this afternoon, but I would be pleased to work with the subcommittee in refining the legislation and moving it forward toward passage.

Thank you.

Mr. BREAUX. Thank you, Eldon.

[The statement of Mr. Greenberg follows:]

PREPARED STATEMENT OF ELDON V.C. GREENBERG

SUMMARY OF POSITION

In the following statement, the Southeastern Fisheries Association, Inc. ("SFA") expresses support for the concept of a Marine Resources Development Bank (the "Bank"), as envisioned by H.R. 5549. SFA believes it essential, however, that the Bank be structured in such a way to ensure that it truly promotes efficiency and does not freeze development into inefficient patterns. This means, among other matters, that:

(1) The Bank must operate in concert with other fisheries assistance programs, including formal liaison with the National Marine Fisheries Service and Regional Fishery Management Councils;

(2) The objectives of the Bank must be clearly and firmly articulated, with a focus on promoting economic efficiency and utilization of the private capital market as a check on unwise development; and

(3) Mechanisms must be established to overcome the inherent conservatism of a public lending institution, so as to encourage innovation, diversification, and creativity.

Good morning. I am Eldon V.C. Greenberg, a partner in the Washington, D.C. law firm of Galloway & Greenberg. I am pleased to appear before the Subcommittee today to present the views of the Southeastern Fisheries Association, Inc. ("SFA") concerning H.R. 5549 (the "Bill"), legislation which would create a Marine Resources Development Bank (the "Bank"). SFA believes that the Bill represents a commendable initiative and that the Bank, properly organized and operating in coordination with other fisheries assistance programs, can make a real contribution to the fishing industry's long-term growth prospects.

SFA, which is headquartered in Tallahassee, Florida[1] is the largest commercial fisheries trade association in the southeastern United States. It has more than 400 members from all sectors of the commercial fishing industry—harvesting, processing and marketing—from North Carolina to Texas. In our judgment, the Bank can fill an important need by providing investment capital for the domestic industry. However, the Bank must be structured in such a way to ensure that it truly promotes efficiency and does not freeze development into inefficient patterns. We have several policy suggestions toward this end, as well as a number of comments about the Bill's specific provisions.

I.—THE NEED FOR THE BANK

Other representatives of the fishing industry will address the industry's financing needs in greater detail today. I would like to make several comments, however, about the adequacy of existing financing mechanisms, both federal and private, and the benefits which an entity such as the Bank would offer the industry.

As the Subcommittee is aware, at the federal level, the primary fisheries financing program, the obligation guarantee program under Title XI of the Merchant Marine Act, has a number of deficiencies. Its authority is not broad enough to cover certain needed financial services, i.e., refinancing. Moreover, it is not adequately capitalized, and, therefore, its managers cannot take what would be perfectly rea-

[1] SFA's address and telephone number are: Southeastern Fisheries Association, Inc., 312 East Georgia Ave., Tallahassee, FL 32301, (904) 224-0612.

sonable investment risks if the program had sufficient reserves. Further, the obligation guarantee program operates in a hostile political environment—for the past several years, the Reagan Administration has proposed to eliminate the program altogether. This hostility aggravates the inherent conservatism of the program, leading to the imposition of additional bureaucratic barriers—redundant, time-consuming reviews and the like—which limit the program's responsiveness. Finally, with respect to export financing, either programs available to other food producers, such as those of the Commodity Credit Corporation, are not now open to exporters of fish products, or, where programs are available, as in the case of the Export/Import Bank, they are small and only of marginal usefulness.

In the private capital markets, there are two different, but equally important problems. First, the cost of credit from private lenders in the United States is high. It has been estimated, for example, that the cost of capital is three times as high in the United States as it is in Japan. Such a capital cost differential obviously gives foreign competitors an opportunity to invest in new ventures that would not be profitable in the United States. Second, private capital markets are myopic. As the MIT economist Lester Thurow has pointed out, private banks tend to look at "immediate direct returns", while public financing institutions can look at "total returns", i.e., long term increases in sectoral productivity. An institution with this broader perspective is likely to be more sensitive to the needs of and prospects for the domestic fishing industry.

In such circumstances, it is apparent that the concept of the Bank offers real promise. Adequately capitalized, unencumbered by a negative policy overlay, and free from the vicissitudes of the federal budget process, it could become an efficient provider of the industry's capital needs, particularly by offering financing for a longer term and lower rate than is currently available. Moreover, it should operate as a catalyst for participation by private lenders in the fishing industry. It could thus make an important contribution to achievement of the "full utilization" objectives of the Magnuson Fishery Conservation and Management Act.

The farm credit system in the United States is generally cited as an "industrial policy that works." It has plainly created an environment where the availability of credit is not a problem and where the U.S. is the most efficient agricultural producer in the world. There is every reason to conclude that a similar program could work for the one significant component of our food production economy that does not now benefit from such a system, the U.S. fishing industry.

II.—THE NEED TO STRUCTURE CAREFULLY THE BANK'S POLICIES AND PROGRAMS

Having stated our position that the concept of the Bank makes sense, we wish to caution that great care must be taken properly to define the nature and scope of the Bank's authority. We cannot emphasize more strongly that the Bank's programs must be operated on a basis of "economic soundness", and financial assistance must not be provided if it would lead to "bail outs" of inefficient operators or otherwise contribute to overcapitalization of any sector. Because there are risks that any public financing institution can become a captive of inefficient strategies, we suggest several ways to structure the Bank so as to reduce, if not entirely eliminate, these risks.

(a) The bank must operate in concert with other fisheries assistance programs.—The operations of the Bank must be carried out in concert with other federal programs designed to assist the fishing industry. Financing is only one part of an overall national fisheries development strategy, which must include research and development, management and regulation, training and education, protection of habitat and marketing. All must mesh for the strategy to be successful.

The need to coordinate financial and other fisheries assistance programs leads us to draw two conclusions:

One, there is a need for a board of directors which has a link to and plays a role in formulating these policies and which then can take them into account in directing the operations of the Bank. While we would not want to see the Bank come to dominate decisionmaking concerning future directors of the industry and while we must guard against creating an institution which would be too intrusive, imposing its views on the industry without regard to market forces, nonetheless the Bank should not act in a vacuum or in a haphazard and undirected fashion. A fine balance must therefore be struck between "neutral" banking and operation in a policy context which considers other elements of national fisheries development strategy. Currently, the Bill, while it does establish private sector advisory committees (Section 6), makes no provision for liaison with the National Marine Fisheries Service and/or the Regional Fishery Management Councils. SFA would support inclusion of

a provision that would ensure coordination between the Bank, the National Marine Fisheries Service and the Regional Fishery Management Councils. Effective coordination of policy and planning, in our judgment, will be an important component of a successful institution.

Two, there is a need to examine critically the allocation of funds to the Bank. The Bill, as now drafted, would utilize all present and future monies in the Fisheries Loan Fund to help capitalize the Bank (Section 17). We agree that the Fisheries Loan Fund money must be used for the benefit of the U.S. fishing industry, and not used to offset operating costs in existing programs in the Department of Commerce or the Department of Transportation, as the Administration has proposed. However, it may be that some portion of these monies should be reserved for initiatives other than the Bank, e.g., creation of a National Fisheries Marketing Council, as proposed in S. 2160, an initiative SFA strongly supports. In short, the proper amount of Fisheries Loan Fund capital to be allocated to the Bank should be determined in connection with other programmatic needs of the industry.

(b) The objectives of the bank must be clearly and firmly articulated.—The goals of the Bank must be clearly and firmly articulated. SFA appreciates that Section 9(b)(2) of the Bill seeks to specify appropriate terms and conditions which will ensure a fiscally responsible operation, including the criterion of basic "economic soundness" of the investment. Nonetheless, because of the risks noted above, even a more explicit articulation of objectives and criteria is warranted, with a particular focus on achieving the full potential of the domestic industry.

The overall objective of the Bank must be to promote "economic efficiency" within the United States fishing industry. Money must be directed toward future growth, not maintaining today's marginal operators in business. In the Gulf and South Atlantic region, as the Chairman of the Subcommittee has recognized, this means, among other matters, encouraging decapitalization and diversification, not "proping up the losers" in already overcapitalized sectors. Consequently, Section 9(b)(2) should specify that any project for which a loan is made must facilitate the full development and utilization of U.S. fishery resources, without contributing to overcapitalization of any sector.

In addition, one way to help achieve the goal of fostering economic efficiency is to require a greater reliance by borrowers on the private capital market. Section 9(b)(2)(C) of the Bill as currently drafted would allow 90 percent of the total cost of a project to be financed by the Bank, with only 10 percent coming from other sources. SFA recommends that the requirement for private capital contributions be increased to 50 percent. A requirement for a 50 percent private capital contribution would help assure that government assistance would not be doled out to any project which could not prove its economic merits by attracting substantial private capital. Such a requirement would also help assure the continued involvement of the private capital market in innovative fisheries ventures.

(c) Mechanisms must be established to overcome the inherent conservative bias of a public lending institution. In creating an institution such as the Bank, there is a substantial risk that the institution will be dominated by those who are currently most powerful in the industry. The result could be to freeze economic patterns as they are now, rather than to assist in developing new and more productive patterns.

Congress must establish mechanisms to guard against this result. A policy-oriented board, as noted above, may be one such mechanism. In addition, it may be appropriate to specify that a certain part of the Bank's portfolio should be venture or risk capital directed to development of underutilized resources. The point, however, is that the bank should encourage innovation, creativity and diversification. Otherwise, because private lenders may tend to steer away from investments the Bank won't touch, its presence in the capital market will positively stifle, rather than promote, the long-term prosperity of the industry.

III.—SPECIFIC COMMENTS ON THE BILL

In addition to the general observations we have just made, we have a number of specific comments on the current draft of the Bill, referenced by section number:

Sections 3(6) and 3(10) include as fishery shoreside facilities and fishing vessels eligible for financial assistance those facilities and vessels which involve "commercial passenger-carrying fishing operations". While SFA generally supports the charter boat industry being eligible for some financial support, nonetheless we emphasize that the Bank is an institution primarily aimed at fostering the development and improving the competitiveness of the domestic, commercial fishing industry. Foreign competition is not a major problem for the charter boat industry. Consequently, it would be appropriate to establish a relatively low ceiling on the total

amount of obligations which could be incurred by the Bank to support charter boat vessels and facilities.

Section 3(8) limits assistance for "reconstruction or reconditioning" of vessels or facilities to those which "will have an economic useful life of at least 10 years." While this limitation seems reasonable as to vessels, as to shoreside facilities an even longer period may be appropriate, i.e., 15–20 years.

Section 9(b)(1) authorizes direct loans but not loan guarantees. Guarantee authority has been the primary federal financing mechanism to date, and we see no reason for eliminating it altogether. Indeed, the Bank should have flexibility to utilize various combinations of loans and loan guarantees in its programs, depending upon what would represent the best financial package for a particular transaction. An appropriate ceiling on the amount of guarantees outstanding at any one time would, of course, have to be established.

Section 9(b)(1)(D) authorizes the Bank to "provide working capital necessary to operate successfully a fishing vessel or a fisheries shoreside facility for which a loan is made or refinanced under this Section." As written, this authorization to provide working capital is open-ended. SFA does not support such a broad authorization for the Bank to finance harvesting or shoreside operations. Rather, its business should be capital development. Consequently, the Bank's ability to provide working capital should be limited to making short-term, transitional loans for start-up purposes or portfolio protection.

Section 9(b)(2)(C) requires that "not less than 10 percent of the total cost of the project for which the loan is made will be financed through other sources." As noted earlier, SFA recommends raising the requirement for private capital contribution from 10 percent to 50 percent. Additionally, the Bill might specify that some appropriate portion of this amount be owner equity.

Section 9(c)(1)(C) permits the Bank "to finance the development of appropriate facilities in foreign nations for the handling, marketing, processing, storage or distribution of United States fish products imported into those nations." While it may be appropriate to allow for some financing of foreign facilities, this provision, as written, might permit financing a facility which handled only a small percentage of U.S. products. SFA recommends that, to be eligible for credit, a facility must handle at least 50 percent U.S. products. Some consideration might also be given to establishing a percent of U.S. ownership requirement for such facilities.

Section 9(e), which establishes Bank policy in extending export assistance, calls for the application of monies "to the greatest number of eligible persons to increase sales of United States fish products to the greatest feasible number of countries, consistent with maximizing market opportunities." While SFA applauds the general goal of expanding foreign markets for U.S. fish products, nonetheless having "the greatest number of eligible persons" open the "greatest feasible number of countries" may not necessarily be the best export strategy. Quality or size of markets may be more important criteria. This may mean concentration on relatively few markets. Simply having many exporters sell dribs and drabs of U.S. fish products to small foreign markets may not be a strategy best calculated to promote the overall expansion of export trade.

Section 10 authorizes the Bank to carry out certain additional services, including "an information service" and a "technical support service." SFA considers that it is appropriate for the Bank to carry out such services and, indeed, that they are a necessary concomitant of an effective public banking operation.

Section 11(b) establishes a limit on the Bank's outstanding obligations of $1.5 billion. SFA supports this limit: any lower ceiling would unduly constrain the Bank's lending operations and the Bank's impact upon industry growth.

Section 16 extends the role of Agricultural Trade Officers to fish and fish products and requires coordination between their operations and those of the Bank. This provision makes good sense and should help make the Bank's export lending operation more effective.

Section 17 transfers to the Bank all unobligated monies in the Fisheries Loan Fund, as well as all future collections of foreign fishing fees. As noted earlier, SFA believes that it is necessary to examine whether other initiatives might also be appropriately funded through some portion of the Fisheries Loan Fund and/or future foreign fishing fees.

IV.—CONCLUSION

In sum, the Bill, appropriately modified and strenghtened, represents an initiative worth trying. We appreciate the Subcommittee's commitment to development of the

fishing industry, and we would be pleased to work with the Subcommittee in further refining the Bill and moving it forward to passage.

Thank you for the opportunity to submit our views. I would be most happy to answer any questions that the Subcommittee may have.

Mr. BREAUX. Next, Mr. Earl Barr. Mr. Barr.

STATEMENT OF EARL BARR

Mr. BARR. Mr. Chairman, as always, it is a pleasure to come before this committee, and particularly you as the chairman. I appreciate the opportunity to testify one more time on H.R. 5549.

This excellent legislation promises to propel the U.S. fishing industry into a new era of accelerated development. Enactment of this measure would assure the realization of the ultimate goals of the Magnuson Fishing Act.

As a principal sponsor of AFPA, the Breaux bill, and as the first and most congressionally determined advocated, it is only to be expected that you would play a key role. I am particularly pleased to see that Congressman Don Young has joined this effort, and certainly he has grasped the significance of the fundamentals of the proposed legislation.

In my judgment, and in the judgment of my associates, the present form of the bill answers the questions of the fishing industry. The time is now, not to talk any further but to act on it. I realize I am talking to a Democratic chairman, but I certainly hope that our President, and this administration, sees the opportunity also to help the fishing industry, and to put it on a fundamental and sound basis.

Mr. Chairman, I have no more comments to make, except that if you have any questions or the committee has any questions, I will be delighted to respond to them.

Mr. BREAUX. Thank you, Mr. Barr. It is always a pleasure to have you here.

Mr. BREAUX. Alan Guimond.

STATEMENT OF ALAN D. GUIMOND

Mr. GUIMOND. Thank you, Mr. Chairman. I too have a very short statement that I would like to submit for the record, and rather than take up unnecessary time, I would hit upon a few points.

One, I think a key thing that is in the legislation is a better utilization of our trade people to treat fish as any other commodity. That is only spelled out in a very small area, but for me as a businessman, I can tell you in the global situation, we have no representation in that area, and they don't treat fish as a commodity. It is a nonentity, quite honestly.

I cannot agree NMFS's statement, Mr. Blondin's comments. First they identify what the bill is, and then when they get into the specifics, we see where it is a subsidy, and I would like the administration to explain how we are getting a subsidy.

The other thing that is most important to me is the fact that others who talk about the availability of private capital and everything else are really not in the fish business. They may be in other businesses, but they are really not. In my area, and one who has borrowed a lot of money, you get the expertise on who does what,

we don't have people who truly know what the fish business is about.

We go to a bank, and we ask them what is their portfolio that they are holding on fishing vessels or on seafood industries, and the majority of the banks in our area will talk about may be a half dozen or so clients who are shore-based, and maybe 20 or 30 vessels maximum, and most of them are trying to get out of the business.

We just went through an expansion program. We borrowed some $2 million of industrial revenue bond money, and I will tell you quite honestly, it was not a question of the financial stability or the contribution or our capital available privately from ourselves to make the project work. The banks don't understand the fish business. They do not understand the seafood business, and this would at least focus some expertise in this area, so you can talk about the assistance.

Additionally, as we all know, there are different factors that when you are making economic decisions and assets employed, as I see it, is one of the things that the board is going to deal with. That gets me into the question as to it seems as I read the legislation that they are talking on fishing vessels, direct loans and so forth, but I don't see the guarantee portion, and I am not so sure if that is not something that should be left as a discretionary thing, because how do you guarantee something? Would you back it up with a reserve on your assets that you have, part of the $1.5 billion? Does it get handled in some different manner?

What I am saying is that given that direct flexibility to either direct loan or guaranteed loans, you are in a much stronger position to use the money that the bank is going to have, so I don't see it in there. But I would hope that the guaranteed portion would also extend into the fishing vessels. It is just silent. I don't know if the intent is that it is going to be, but I am just saying I think it is something that should be included as versatility that is needed for the bank.

The aspect of the trading is going to have to be something that is going to take place. We have tried to go through different aspects of getting financing for our export business since we do a fair amount of it, and it is just nonexistent. It is just totally nonexistent.

Given that there is a major effort undertaken, as we know, to stop certain types of business practices, that is, joint ventures on the east coast and so forth, it is going to become more imperative that the industry that is involved in exporting and is involved in joint ventures is involved for several reasons, least of all not the monetary aspects of it, the availability of funding.

Companies in the United States don't have it available to them, so people who say, look, let's kick the foreigners out and no more joint ventures, and I am again referring to the east coast, and we can take it up, they are not going to have the capital base or the money to do it. I certainly am not, and if people are able to eliminate joint ventures, which is a way of utilizing a resource, it is a way of generating capital, it is a way of acquiring money, and if that is stopped, absent something else, quite candidly, we would shut our doors. We just wouldn't be able to exist. So I urge passage of it. We support it.

I think the mechanisms on a view of the things I touched upon can be worked out.

I do want to emphasize that right now, with the opportunity under the export trading companies, and I know there are going to be others established, this is probably the only mechanism I can see that is going to give the availability for projects to go forward of the magnitude we are talking about.

I don't find that the money, as NMFS has said, is going to be redirected. They have requested in fiscal year 1985 that the fees and everything else go through the management councils and everything else, and I quite candidly tell you that what is really interesting is when you see how the budget is broken down, and how the money is going to be used, I question whether or not we are employing our assets to our best advantage under their proposed budget even. I just feel very strongly that I think the administration's testimony delivered by Mr. Blondin does not truly reflect what the administration or the people within NMFS that are involved in this on a daily basis think about the realities.

They know the program problems. They know what the industry needs, and I think it is obvious that their original position was a favorable one, has been overruled by OMB, who evidently has some miraculous ability to look at our industry, and be able to determine needs and wants and desires that those of us who are spending and losing money in it for the last half a dozen or dozen years, we can't grasp.

I compliment OMB for having such wonderful foresight to tell us that we don't need this thing. I would hope that they could tell us what we do need.

That is all I have to say, Mr. Chairman. I thank you for allowing me to come down here and talk to you nice people.

[The statement of Mr. Guimond follows:]

STATEMENT OF ALAN GUIMOND, PRESIDENT, STONINGTON SEAFOOD PRODUCTS, INC.

Mr. Chairman, I am pleased to testify today in support of H.R. 5549, the Marine Resources Development Bank Act. The enactment of this measure would provide the industry with a badly needed new source of financing. Establishment of the Bank would allow the fishing industry to pursue important opportunities for development, including increased harvesting and processing of underutilized species in our exclusive economic zone (EEZ), and expanded exports of fisheries products to traditional and non-traditional markets.

The loan guarantee program set out in H.R. 5549 would provide improved access to a capital market that, generally speaking, neither fully understands, nor greatly favors, the fishing industry. The direct loan program would open to the industry a new pool of capital in an institution that would comprehend the risks—not merely fear them—and would respond as favorably to industry needs as prudence would permit.

Mr. Chairman, the National Marine Fisheries Service has done what has been possible under the constraints imposed by a bureaucratic system burdened with other, competing priorities. The Bank would not be confronted with such problems, and would be able to dedicate its full efforts to serving the financial interests of the fishing industry. This, in my opinion, is the key reason why this legislation should be enacted.

Mr. Chairman, you have taken the lead in addressing and resolving crucial problems facing the United States fishing industry. We are deeply grateful.

Thank you.

Mr. BREAUX. Thank you. The only foresight we had around here was Ed Forsythe, who started the movement on this legislation. I

particularly appreciate the suggestion that we should pass it, that we would designate the central office as the Ed Forsythe Building, I guess, or whatever. I think that is a good idea.

Either Earl or Alan maybe could respond. The Administration said that you don't really need this, and among other reasons they said, well, you have got the Export Trading Co. in the Department of Commerce. Now, my real feeling about this whole fish problem on a national level is that the people who are calling the shots don't know a lot about the business, and can probably care less about the business.

I don't mean Carmen Blondin and Mike Grable and the people who are up here, Bill Gordon, who are up here on a day-to-day basis. When their recommendations leave the typewriter it can be handled by people in the OMB who don't know the business at all. They don't know about the $5 billion trade deficit. They don't know the first thing about trying to provide a climate that is financially secure or which attempts to help to reduce that deficit. We in this business are going to have to start getting to the people at the very top level, to get them involved in the problem, before they are going to give the green light to those below them that are making recommendations.

It gets quite frustrating for us to have to listen to people in government who I know do not really believe the things they are reading back to the Congress. It is frustrating for them and it is certainly wasting our time to listen to that, so we are going to have to elevate it to a much higher level.

Mr. Blondin said this morning that because of the Export Trading Company, you don't really need this development bank in the area of exports because we now have an Export Trading Company, and that that is going to really take care of export problems. It is not in the Commerce Department, staff tells me, but it is supposed to be there. It is in existence. Have we tried to use that or not?

Mr. GUIMOND. We are certainly looking at it. It is a viable program, but it is not a viable program from my perspective with regard to the financial availability, absent this bill. Export Trading would give some of us in the business the ability to collectively conduct business, and be exempt from certain aspects of antitrust action. I don't see where the financial considerations are going to be any easier than they are now.

Mr. BREAUX. They can't make loans to importers in foreign countries, or make loan guarantees or anything of that nature?

Mr. GUIMOND. I don't see it happening. I just don't see it happening, just under the Export Trading Co.

Mr. BARR. Mr. Chairman, you have two other additional points on banks and export trading companies.

Banks are restricted by law from the amount of dollar investment out of their portfolio they can make in any one single entity. Much of the international fish trade, one deal and you would be out of business with the bank you are working with.

The second thing is that I have talked with banks, Citibank, Liberty National, First National of South Carolina on down the coast, the reaction I get when I talk fish finance to them, they say, look, we don't understand the fish business. We can sit here and loan all the money we have got in real estate loans and automobile loans

and consumer finance and our risk is spread out over a wide area and we don't have any problem collecting it.

Our loss ratio is extremely small and no, sir, no thank you.

The third thing is, I was reading Mr. Blondin's testimony this morning on behalf of the Administration and I quote:

> The source of financing stems from the ability of banks to take equity positions and export companies certified by the Department of Commerce.

Now, suppose Mr. Guimond and several others get together and we form an export trading company. We put our blood, sweat and tears into it and our own up-front money into it, and we go to the bank and the bank is going to say yes, we will loan you 50 percent of what you need, but we want 25 percent of the equity in your company.

That just doesn't seem fair to me.

I again have to come back to the masterful job that this committee and its professional staff has done in finally arriving at a vehicle that will produce the necessary capital.

While I am at it, I have heard two comments repeatedly here about over-capitalization in the fishing industry. There may be some over-capitalization. I don't think that is the problem. I think the problem is that there is over-specialization. The boats are sound. The fishermen can catch fish. Nobody has taken the time and trouble to educate them and bring them along to a point where they would multiple rig. To multiple rig they have got to have some financing. If they multiple rig, they multiple fish. Every single fishing boat almost without exception would be a financially secure transaction.

The other thing is at least in my mind, the intent of this bill is not a bail-out for anybody. If the proper Board of Directors is selected, if the proper operating personnel are selected, and the accountability is there, then certainly in the private sector I know Mr. Guimond would do the same thing I did.

If I found a staff employee not exercising sound judgment and costing us money, we would fire him, and it looks like to me this bank ought to be in the same position.

Mr. BREAUX. I appreciate your comments. I think that, and obviously I have seen it so many different times, that the people who are involved in your particular industry are not necessarily experts in that particular business, and that is true almost throughout the chain.

If you go to the banks in your local community, most of them might want to get into the fishing business only if you have a lot of other assets with them and only if you are doing a bunch of business with them in other ways.

They wish you would go somewhere else.

"Mr. Barr, we have been good friends and we may make you a loan, but we sure don't want to be in the fishing business."

Mr. BARR. You have got that right.

Mr. BREAUX. Then we have the two pitiful government programs, the Fishermen's Loan Fund, which they did not use, and title XI, which is not a fishing program, which we just kind of dovetailed and piggybacked with the Maritime Administration and said you can also use title XI funds to finance fishing vessels.

It was kind of a desperate effort to try and get a source of capital formation. The people running that program really are not in the fishing business, nor do they have a great deal of expertise in that area.

We don't really have a one stop service, which I think is not going to cost the Government any money. I think ultimately we could probably end up doing something about the tremendous trade deficit that we have.

Eldon, in your association if the development bank were in place and operating today, you have a fairly large operation as far as your membership, what type of services do you think that your members would be looking to utilize through a development bank? How would they use a development bank?

Mr. GREENBERG. Well, Mr. Chairman, I think they would use a variety of services provided by the development bank. There is a substantial need, as you know, in the southeast, to modernize some of the shoreside facilities—renovations and so forth—which are sometimes difficult to finance through the private capital market. I see that as one important function that the bank would provide.

We have got a number of members who are interested in developing export markets. They are dealers and processors who are trying to sell overseas. They have some of the same problems that Dick Gutting referred to earlier. I think they would be a clientele of the bank.

And we have got people who are investing in the fishing industry, people, for example, who may not fish for shrimp. They are interested in diversifying. They would like to get into some of the new and developing fisheries in the Gulf, as those fisheries come along, and there again the bank would be a source of needed capital.

Mr. BREAUX. I can't imagine going to your local bank and saying, "I am not making any money in the shrimp business. I want to convert my three boats to surimi to be made out of menhaden" and seeing what kind of reaction you are going to get from your local banker.

The guy is not going to know what surimi is to start off with and doesn't particularly want to know. You really have to have people running these programs that have expertise in these particular areas.

Kris, is there any particular ways that you think the shrimp industry, with the problems they have, would look at a development bank?

Ms. VEHRS. Well, I believe that we would use it for financing the reconstruction on reconditioning of vessels, as Eldon was discussing, for retrofitting vessels to be able to diversify in other fisheries. We would also use it probably most importantly in the refinancing area.

As you well know, we have a number of vessels with a number of different loans outstanding. We would like to be able to use this refinancing ability.

In addition, if the change were made to finance facilities in the foreign countries where we were harvesting in cooperation with the foreigners, we would use, that function.

What I am referring to there, Mr. Chairman, is that as you well know, we have been trying for some time to get back into Mexico to fish. The realities are such that we will probably never ever receive permits to fish there. However, we are starting to receive very positive signs from the Mexicans that there may be possibilities for us to work together in their country.

Mr. BREAUX. Do they have a fisheries development bank that you may be able to get financial assistance from?

Ms. VEHRS. Not to my knowledge, sir.

Mr. BREAUX. One of the problems we are wrestling with, with the staff trying to draft this legislation, is the fact that we want to ensure, as everybody has said, that the monies that the development bank will be utilizing will not be used to encourage overcapitalization in any area.

At the same time, we recognize that for years we have also heard complaints from the industry that many of the programs that we now have on the books, Fisheries Loan Fund, title XI, et cetera., has so many restrictions and so many loopholes that you have to go through in order to qualify for a loan that you never could get one.

Many of those requirements were aimed at ensuring that the money was not used to in fact encourage individuals to go into the industry that should not have been there, so it is a real problem for us as to how do we set out a loan program or a development bank, and say we want to make it easy for the people who need it to acquire the funds, and yet we want to make it strict enough that we don't allow those who in fact are getting in just without any real sense of success, from getting a loan, and that is the problem.

I know you don't have any particular answers right now, but do you have any thoughts along those lines on how we approach that problem?

Mr. GREENBERG. I would agree with you, Mr. Chairman, that there is a balancing that has to be done, but the point I would make is that the Federal loan programs have some extrinsic problems.

They are dealing with political hostility within the administration, an administration which wants to close out the programs altogether and therefore all the external bureaucratic incentives are to go slow and to make things difficult.

Hopefully an institution which is committed to providing financial support to the fishing industry would not set up these artificial roadblocks to effective fisheries financing, and that I think is certainly one of the most important benefits that we would receive from the establishment of an independent bank.

Mr. BREAUX. I guess what I am hearing is that perhaps the standards of the existing programs are not necessarily bad. In fact, they could be utilized, but we just want them to be utilized by a development bank that has access to the funds and a green light to go ahead and use the funds within those parameters, instead of trying to use those restrictions to prevent any loans, they would use the restrictions to perhaps target the loans to areas that are really needed. That may be the best way to go.

Mr. GREENBERG. I think that is part of the problem. Another part of the problem, as you know well, Mr. Chairman, is that the current loan obligation guarantee program is not sufficiently cap-

italized. As a result, the program managers can't take the kinds of risks that an institution like the bank would be able to take if it had sufficient reserves.

Mr. BREAUX. Kris?

Ms. VEHRS. The only other point I might add is that the beauty of a program like this is that it would have the inherent flexibility necessary whereas the programs we now have in the National Marine Fisheries Service don't have that flexibility without statutory changes.

Mr. BREAUX. Mr. Guimond, your industry, the one that you have the most knowledge in, how would you be interested in utilizing a development bank if it was established?

Mr. GUIMOND. The first I would suggest would be on the exports obviously. That is one of the biggest areas because a lot of times, Mr. Chairman, we have customers. They can put up LC's, but the LC's are not drawable for many months and sometimes even longer than that.

I think that that would be the first.

The second would be quite candidly, as I would look at some type of conversions to some floating platforms. Whether that is domestically built, quite honestly, foreign—I read the bill and I am not so sure if a foreign flag vessel that has been transferred to U.S. flag would be eligible for the program or not.

As I read it, it says yes, if it is a U.S. vessel, that would be the requirement.

If I may regress for a moment when you talk about how do we make sure we don't cut the things in the wrong place, over-capitalization and everything else, quite honestly section 9 really in the bill covers it, because I will tell you quite honestly, if you stop looking at the people who are going to be making these loans, are going to have to start personally guaranteeing them, and a certain collateral, and if you look at all the sections from A, B, C, and D, and how much they are going to be done and what expertise is needed in these different areas, and that parent companies will not be able to shell a subsidiary, will not be obligated for it, parent companies must also guarantee the loan.

What I am trying to say, Mr. Chairman, is that people who do not understand the business philosophize with our money and how we are going to do wrong with it. I reverse it and say that in the bill you have got adequate safeguards, that anyone who is silly enough, foolish enough to come in and be willing to guarantee a loan that meets the acid test, which is the borrower must possess such demonstrated ability, must have certain collateral, must make economic soundness as may be necessary to protect a bank from undue risk, that in itself is built-in safeguards that I tell you right now overcapitalization is not going to be your problem.

I look at this second and wonder if maybe it is a little too stringent. I leave that for someone else to decide, but I can tell you right now if I had to personally guarantee, if I had to personally guarantee everything that I have ever borrowed, I probably wouldn't have borrowed everything I borrowed.

I think there are some very good strong things.

The other thing is, I don't know, Mr. Chairman, if in the legislative portion we should be looking at caps, and I hate to use that

word, but with respect to the different areas where the money can be made, whether it is export trading, vessels, or reconstruction shoreside, I wonder if we shouldn't be looking—and again I don't know if it should be in the legislation—at a range, if you will, that we don't want one and a half billion dollars all out, as I see it, all out there on floating factory ships, for example, or certain types of shoreside processing, or just export financing.

I think what we are looking for is a balance and one of the things that is not in the legislation which I think is going to be the best side issue of this, is this bank or this board, and how the legislation is finally adopted, can truly have a tremendous impact at the direction the industry will take as to how the structures and what it considers to be proper loans, what types of things it is interested in pursuing, and when you are talking about that kind of capital resource, it puts us in a stronger position, Mr. Chairman, with our foreign partners, because I have had a lot of people accuse me, saying well, Guimond, I don't need a foreigner for a partner. I have got a bank for a partner.

Well, I tell you something. My standard response has always been, well, my bank that I deal with has never sold a pound of fish, but my foreign partner has.

But in this case we go to them because they have the market, but one of the biggest things is they can afford to offer financing for export on fisheries products, and from my area it is a very low volume in a historical sense, and now we have a tremendous opportunity where I can go to them and say, look, you are not going to cut a slow price for us. We are not going to push the price down to the fisherman. We have the ability financially to finance this stuff. Don't come to me, I am tired of certain countries coming to us, like we are the poor cousin, and I am going to do you this favor, Earl Barr. I am going to buy some product from you. You are not going to make any money, or barely, and I may even screw you in the process.

I heard Dick Gutting say that under a similar set of circumstances.

I would think that the bank would make sure that normal business practices are to be followed in transactions having nothing to do with fishing, but just normal business practices, because I will tell you quite honestly anybody that gets the short end of the stick from an LC really deserves it because they didn't do their homework right and they didn't conduct their business properly and that is part of the problem we have.

Mr. BREAUX. We thank this panel very much. The more I hear about the bank and the way we are trying to structure it, the more I become enthused about the concept and about the idea that we can make it work.

We have a few existing programs that are not being coordinated very well. The right hand doesn't know what the left hand is doing and there is no sense of direction or sense of the future with regard to how we are handling or promoting the fishing industry in the United States, and the results of that policy is very clear.

We have a tremendous trade deficit when in fact I don't think we should have any at all.

I would encourage this panel, as I did the other panel, that in order for us to accomplish the achievement of getting this legislation passed and signed into law, it is going to take some work from you folks in the industry with regard to members of this committee and with members of Congress in general, in addition to the work that you have already given us in helping with suggestions. I think that everyone can see that the suggestions that have been coming from industry have been seriously considered by the staff and by myself and others because they have in fact been incorporated to a large extent in the draft that we are now working from.

We are further down the road than when we started. The bill is a much better product now than it was then, and I am optimistic that it will become even better than it is.

One of the features of the bill is the fact that the industry people will be involved in advising at the highest level how and where the loans should be given. We have, I think, three industry advisory boards that will be part of the development bank. The bank will be run by a board of professionals in the financial markets, but it will be receiving advice from the industry.

I mean it is a very key part of this and for the first time you are going to have people listening to a national concern or concerns about the fishing industry before loans or assistance is made available to anybody.

We are one step further down the road.

I know the staff and myself want to visit with some more people in the financial business. The people who are now in the loan business to the extent that there is one in this fishing industry, and get their suggestions, and then it is going to take some efforts with OMB.

Anyway, that is kind of the scenario for the next couple of months with regard to what we would like you all to do and what we need to do ourselves. I think it has been a good hearing. I thank the people who have been with us.

Mr. BARR. Thank you, Mr. Chairman.

[Whereupon, at 3:45 p.m., the subcommittee was adjourned.]

[The following was received for the record:]

PACIFIC SEAFOOD PROCESSORS ASSOCIATION,
Washington, DC, May 22, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Washington, DC.

DEAR CHAIRMAN BREAUX: On behalf of the Pacific Seafood Processors Association (PSPA), we want to thank you for providing an opportunity to comment on H.R. 5549, the Marine Resources Development Bank legislation. The PSPA membership has not been able to examine this proposal in the detail necessary to offer substantive testimony that would genuinely benefit the Subcommittee's analysis. Therefore, we would like to submit general remarks on the conceptual aspect of the bill for purposes of the May 24, 1984, hearing record.

PSPA is most appreciative of the Subcommittee's pursuit of a mechanism to facilitate beneficial financial assistance for the entire domestic fisheries industry. H.R. 5549 is a more favorable approach to such assistance than its predecessor, H.R. 3806, in that it focuses on a narrower range of services that have been identified among the priority needs of industry segments. Certainly, as competitors in the world market, United States seafood processors are appreciative of Congressional efforts to enhance their ability to vie with foreign producers whose advantages are numerous. An appropriate program to accommodate capital formation for sound

business practices is one of the many areas being addressed by industry in its attempt to overcome hindrances to greater domestic seafood production.

Current financial assistance programs, in large part, have not been utilized greatly by the processing industry in the Northwest and Alaska. Only recently has the Title XI loan guarantee mechanism been available to the processing segment and thus experience with it has not been widespread. However, the few shoreside processor entrants to Title XI are hopeful that it will assist in resource development efforts. We question, therefore, the limitation of its use to export functions as H.R. 5549 appears to do. We are extremely wary of any programs that allow overcapitalization to occur and support tight safeguards against such a possibility. However, it seems that further investigation of potential Title XI applicability is in order before reaching a final decision. We mention this because of potential interest in the construction of new floating processor vessels for use in the groundfish resources. Several other programs are not available to processors, such as the Capital Construction Fund, which you have arduously pursued and for which the industry is grateful. There have been varying statements from users and observers of the different programs in existence as to the practical benefits, if any, which combined leave a sense of confusion on their success rate. Without specific experience in such credit and financing plans, it is difficult to judge their adequacy.

An area of interest for PSPA is the export section of H.R. 5549. Our membership includes major exporters of salmon and salmon products for principal markets in Europe and Japan. Many of these companies have a strong interest in branching into different export items, such as certain groundfish species. While the American market accepts a good deal of whitefish production, much of the current product is imported in either finished form or ready for secondary processing. Countries providing this seafood operate at cost factors generally low enough to make domestic competition difficult, especially in light of prices the American consumer will pay. Markets abroad tend to offer a wider variety of accepted products and often have a larger seafood consumption rate. Thus, exporting of domestic groundfish appears to be a valuable avenue for processors during this developmental phase of these resources. It could assist in stabilizing these ventures and generating a capital flow conducive to penetration of the existing traditional markets, like the United States, for specific groundfish products.

However, serious obstacles face the processors, none the least of which is the currency exchange rate. Additionally, there are the well-known trade barriers, and in some cases, forms of subsidization with competing suppliers. We believe the financial assistance for export development and enhancement envisioned in H.R. 5549 has merit and should be aimed at maximizing market potential. Credit guarantee for foreign purchasers should help considerably in overcoming some of the economic constraints foreign recipients face at present.

The Marine Resources Development Bank, above all, must protect its integrity within the financial institution community. Therefore, criteria should be developed and statutorily stated to assure wise use of the authorities proposed. PSPA recommends the addition of a requirement of no less than 20% participation, for loans, from a commercial lending institution. We feel this would be beneficial in asuring the professionalism and fiscal responsibility of the borrower; it also would allow an additional checkpoint for avoiding overcapitalization. The fear of "easy money" access for less-than-sound, reliable operations spreads throughout the industry. When the economics of the fisheries business are on a downturn, defaults occur, and the concentrated demise of the less stable operators can have a ripple effect throughout the industry. To avoid an inadvertent, but enabling, vehicle for financing of marginal entities, H.R. 5549 should be more specific regarding the standards and decision conditions for loan transactions. For example, "working capital" direct loans are desscribed in an open-ended fashion with little criteria under which such a loan would be made—what does "economic soundness" actually entail?

Another questionable area is whether the transferring of monies from the various programs detailed in Section 17 negates the ability to conduct other services specified by industry segments as useful and necessary. Industry personnel have been perplexed about how best to proceed with the several proposals presented that draw from the same limited funding sources.

In conclusion, we reiterate our conceptual support for the direction of this legislation. We urge further attention to a strengthening of criteria and standards on loan decisions and procedures to prevent unwise financial expenditures that could undercut the intentions of H.R. 5549. PSPA would hope that all aspects of the various provisions in this bill have been thoroughly exhausted through examination with appropriate financial experts and users of similar programs when final action is taken on the measure.

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We welcome any questions you may have and would be pleased to continue to work with you and staff in finalizing this project.

Respectfuly submitted,

M. KATHRYN NORDSTROM,
Vice President and Washington Representative.

THE UNIVERSITY OF CONNECTICUT,
THE COLLEGE OF LIBERAL ARTS AND SCIENCES,
Storrs, CT, May 7, 1984.

Hon. JOHN B. BREAUX,
Chairman, Subcommittee on Fisheries and Wildlife Conservation, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, DC.

DEAR MR. BREAUX: In accordance with your request, I am pleased to provide comments on a draft bill to establish a Marine Resources Development Bank. Since I am in no position to evaluate the justification for a special program of assistance to the United States fishing industry, my comments will be limited to organizational and financing provisions of the bill and the powers of the proposed corporation.

In most respects the draft bill conforms to the usual charter provisions of a wholly owned government corporation. I do have questions, however, about the provisions relating to removal of directors, applicability of Federal laws to officers and employees, expenditure authority, establishment of interest rates, loan guarantees, issuance of obligations, and depositories for bank funds.

Section 5(d)(6) provides that directors may be removed from the Board by the President only for "neglect of duty or malfeasance in office." Such limitations on the President's removal powers are normally imposed only for officers performing quasi-judicial and quasi-legislative functions. Bank directors would be performing exclusively administrative functions and should be subject to removal by the President on the same grounds as other administrative officers. Certainly the directors should be responsive to policy direction by the President.

Sec. 7(c) provides that directors, officers and employees of the Bank "shall not be subject to any law of the United States relating to governmental employment."

Officers and employees of a wholly owned government corporation are U.S. government officers and employees. The personnel requirements of the proposed Bank in no way differ from those of other government lending and guaranty agencies such as the Export-Import Bank. If it is desired to exempt the Bank from the civil service laws and classification act or other personnel statutes, it should be done by specific provisions and not by general language which exempts employees from all provisions of Title 5 of the U.S. code, including the Federal retirement system.

Sec. 8(a)(9) departs from standard language which authorizes a corporation to determine the character and necessity of its expenditures and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to government corporations. In view of the fact that the Bank is established as a wholly-owned government corporation, there would appear to be no intent to waive statutes applicable to government corporations. I do not know the reason for substituting the word "obligations" for expenditures. Whenever changes are made in standard language, even if for exclusively technical reasons, they may lead to disputes in interpreting the statute.

It is unclear whether the Bank is to be a self-sustaining enterprise. Section 9(3) provides that interest should be established at such rates as may be necessary to produce income to restore Bank debt, absorb losses, and maintain adequate reserves. If it is intended that interest income should be sufficient to cover operating and administrative costs as well as debt service and reserves for losses, it should be stated. Otherwise appropriations should be authorized to pay administrative and operating costs. Such appropriations would constitute a significant subsidy to the borrowers.

The provision of Section 9 pledging the full faith and credit of the United States to the payment of all guarantees made by the Bank is wholly inappropriate. This provision at best represents no more than a moral commitment since the Congress would have to appropriate the money to pay the guarantees and might be unwilling to do so. Guarantees should be paid from Bank reserves and, when necessary, from borrowing from the Treasury. The Bank under Section 11 is authorized to issue obligations in amounts sufficient to finance its operations.

Direct borrowing from the Treasury or the Federal Financing Bank would be preferable to the issue of guaranteed obligations authorized by Section 11. Government guaranteed obligations entail a significantly higher interest cost than Treasury issues with no compensating benefits to the Bank or to the government.

The provisions of Section 13 conflict with the Government Corporation Control Act. As provided by the Government Corporation Control Act, bankng or checking accounts should be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, a the Federal Reserve bank, or with a bank designated as a depository or fiscal agent of the United States. Section (13)(b) with respect to investments either should be deleted, or made to conform to the Government Corporation Control Act.

The definition of the Bank as a "government corporation" in Section 4(b) is not sufficient for the purposes of the Government Corporation Control. The Act distinguishes between wholly owned and mixed-ownership government corporations. The section should be revised to read: "The bank is a wholly owned government corporation for purposes of Chapter 91 of the title 31, United States Code."

I hope my comments will be of assistance to your committee in its consideration of the draft bill.

Sincerely,

HAROLD SEIDMAN,
Professor of Political Science.

COASTAL STATES MARINE RESOURCES CONSERVATION ACT OF 1984

WEDNESDAY, SEPTEMBER 5, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The subcommittee met, pursuant to other business, at 10:11 a.m., in room 1334, Longworth House Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Representatives Breaux, Dyson, Tallon, Shumway, Schneider, and Bateman.

OPENING STATEMENT OF HON. JOHN B. BREAUX, CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Mr. BREAUX. The next item of business is a hearing, and we will hear testimony regarding H.R. 6056, a bill introduced by our colleague, Mr. Bateman, which would substantially modify current State authority to regulate commercial fisheries within the internal waters of a State. Although drafted to apply nationwide, I understand that this legislation is largely designed to address a concern of the Virginia fishing industry over unrestricted competition from nonresident fishermen in important Chesapeake Bay fisheries.

I believe a particular concern has been the winter blue crab fishery traditionally conducted by Virginia fishermen in Virginia. Although a very specific concern, I believe the conflict over unrestricted nonresident access to fishery resources is one that is probably shared by many coastal fishermen in many States throughout the Nation and so deserves our attention.

The bill provides that the commercial harvesting of certain fishery resources within the internal waters of a coastal State is subject exclusively to the law of that State with the exception of the "State pre-emption" clause found in section 306 of the FCMA and any applicable international treaties. However, traditionally Congress has retained premier authority over in-State fisheries in the sense that they represent or directly impact interstate commerce as it relates to the commerce clause of the Constitution. In this sense, the bill raises an interesting constitutional issue.

In addition, the legislation authorizes the States, under certain circumstances, to regulate or prohibit commercial fishing by non-

residents as distinguished from resident fishermen. Again, the Constitution has traditionally protected the personal rights of nonresidents to earn a livelihood in another State. Therefore, depending on the nature of State implementing law, the bill may also raise questions regarding the privileges and immunities of State residents and nonresidents under the Constitution.

Both of these constitutional questions have been the subject of a brief analysis by CRS, and I look forward to the expert views of the Justice Departent. Apparently, there remains substantial uncertainty as to how the courts would react to an attempt by Congress to completely divest itself of its commerce clause power over State fisheries or to, apparently, authorize a State override over the "privileges and immunities" clause in this scenario.

Aside from the constitutional issues, however, I think it is also very important that the members carefully examine the conservation and management concept that this legislation proposes. A comprehensive regime involving full interstate cooperation in the conservation and management of fishery resources throughout their range is essential to prevent against the Balkanization of U.S. State fishery management. State-by-State regulation of commercial fisheries may compromise larger national interests in the proper utilization of living resources. Nevertheless, the interests of a State in the commercially valuable resources found within its borders is a sensitive issue deserving of very careful consideration.

With that I would recognize the author of the legislation, Mr. Bateman, for any comments he might make.

STATEMENT OF HON. HERBERT H. BATEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BATEMAN. Thank you very much, Mr. Chairman.

Let me first express my appreciation for your bringing this bill to a hearing this morning. I think it will serve a very constructive purpose, including purposes of the author of the bill to have this public hearing, as an opportunity for me to hear the reactions and to learn of any concerns that any members of the committee or of the general public who may be here to testify today may offer.

Let me, if I may, make some brief comments and ask leave to have appended to our hearing record a written statement at a later date.

Representing Virginia, I am very mindful of the fact that Americans were fishermen even before they were farmers. And in the part of the world that I represent and throughout the coastal States of the United States fishing represents in most instances the oldest occupation or industry that still exists. A great deal has happened in the more than 300 years of fisheries in Virginia and the other coastal States. The bill addresses a problem that has arisen in the context of approximately the last decade since court decisions have stricken down those State statutes which have for generations restricted commercial fishing to residents of the separate States.

I am not quarreling with those court decisions. Unquestionably in the absence of authority granted by the Congress there are indeed very strong and cogent constitutional arguments for not al-

lowing States to discriminate against or to restrict fishermen simply on the basis of nonresidency.

I can assure the members of the committee that my concern is not simply a parochial one of let us keep all of the resources in Virginia waters for Virginians. The bill is offered to give to State fisheries management agencies an additional tool or resource for the sound conservation of the fisheries resource which are so vital to all coastal States.

Let me illustrate why I believe the bill is necessary with not just a hypothetical but with some actual circumstances which I think make the bill important, especially for the future of fisheries management. In 1982, for the first time in history there were found in the waters of the Chesapeake Bay four very large fishing trawlers operated by residents in licensed vessels homeported in Florida fishing in the Chesapeake Bay for bluefish and doing so by a new type or methodology involving very large circular nets which literally were sweeping from the waters of the Chesapeake Bay all the bluefish along with any other fish that happened to get ensnared in the circling nets. This obviously called for and did evoke a regulatory response on the part of Virginia's responsible agency, the Virginia Marine Resources Commission, and steps were taken to modify our State regulations so as to not allow this type of methodology for catching finfish and hopefully that problem, at least has for a time, been solved by those changes in regulation.

But let us assume—and I don't think it is a strong theoretical concern—that numbers of out-of-State fishing trawlers added to those licensed by resident Virginia fishermen return to the waters of the Chesapeake Bay. Even though they comply with existing regulations, how long and how far can we go in adding more and more pressures on the fishery stock without having to be so restrictive in fishing techniques, regulation of seasons, size of catch, size of nets, et cetera, that it becomes economically unfeasible for a working waterman to continue earning a livelihood if the resource is going to be preserved?

It is only in this context of permitting by this act a State to restrict a nonresident if there is a finding of fact, a showing that not to do so will result in depletion of the resource unless regulations so stringent as to make it economically unfeasible for anyone to fish.

That is not exactly a draconian measure. It is a very sound conservation measure.

Mr. BREAUX. Will the gentleman yield on that point?

Mr. BATEMAN. Sure.

Mr. BREAUX. Is the gentleman suggesting that the State would have a different set of regulations for Virginia fishermen as opposed to out-of-State fishermen?

Mr. BATEMAN. I think it would be possible under the bill, depending on finding of fact, for a State to impose some restrictions on nonresidents rather than a ban of nonresidents or if there were no practical way to preserve the resource without the total ban. And if the conservation measures would have to be so strict that no one could make a living, it could exclude entirely. But the bill would not require only the choice of total exclusion. You could come up with a State fisheries management plan for a given specie that

says the existing domestic licensees, in order to earn a living, are going to be allowed to catch *x* quantity and if there is a further quantity which could be caught without endangering the specie, then you could authorize the first *x* number of nonresident applicants.

I think the bill would allow the flexibility of the fisheries management agency to make those kinds of judgments. But to give another illustration, and more will be said about this in specific figures, but in this year of 1984, following 1982 litigation, a large number of Maryland crabbers applied for and received licenses to participate in the early crab-catching season in the lower reaches of the Chesapeake Bay in Virginia waters.

There is nothing wrong with their having done so under the present laws of the Commonwealth of Virginia and its regulations and the Federal court decisions which would not permit any restriction of nonresidents. The problem is when you add *x* hundred additional people fishing for a resource, and specifically in this instance the Chesapeake Bay blue crab, you obviously are putting a greater pressure upon that resource, and unless something is done you put the resource at risk of being depleted. The only question is over what period of time would it become depleted unless you become more restrictive?

Very responsibly and properly, the Virginia Marine Resources Commission backed up by an advisory committee is in the process of considering and it would appear it is necessary to do so modifying Virginia crabbing regulations so as to make them more restrictive. They will be more restrictive in terms of the time, of hours of day that you can participate in crabbing. It will limit the size of the catch to a lower extent than presently permitted by law. There are a number of other conservation measures which may have to be adopted because of the additional pressures coming about for the first time from nonresident fishing sources.

Now, hopefully these regulations will be adequate, near term at least, to handle the problem and protect the resource. But suppose over time the number of nonresidents, along with increases in the number of residents who apply for and receive licenses increases, and additional pressure is brought to bear upon the resource, you inevitably will arrive at a point where in order to protect the resource the regulations become increasingly stringent, increasingly restrictive and to a point where the historic livelihood of the Virginia watermen, in this instance or the watermen of some other State under similar circumstances is endangered to the point where they cannot any longer make a living.

Under such circumstances this Congress I think in the interest of conservation has a clear right and indeed a responsibility to give to the States a management resource or tool which they are presently lacking.

With reference—I will comment briefly on this—to any constitutional problems, there are indeed interesting constitutional questions which arise both under the commerce clause, and privileges and immunities clause, and equal protection clause, and due process clause. The research that I have done and that which I have had done by very eminent constitutional law students indicates to my satisfaction that this bill will withstand judicial scrutiny in the

courts because it is an act of Congress authorizing something to be done by the States, and this dramatically changes the context of the present law, when clearly and admittedly no act of Congress permits a States to discriminate against nonresidents, under any circumstance.

The Congress of the United States does have the power to regulate interstate commerce, but it also has the power to do so by delegating authority by statute to the States. And it is certainly not unusual for States to have regulatory power that affects in some way interstate commerce.

They have that power, according to most constitutional lawyers, even in the absence of any congressional enactment. Clearly if the Congress, as it did, say, in the McCarran Act, has authorized the States to regulate the insurance business, the Congress equally can by statute authorize the States to manage and effect interstate commerce with regard to fisheries.

In regard to the privileges and immunities clause, equally it is very strongly arguable—and the memorandum and research that I have done comes to a bottom line probability that the courts would agree—that if Congress has authorized it, then the States can be more restrictive as to nonresident commercial fishing, where it is bottomed on an objective of conservation, without running afoul of the privileges and immunities clause of the Federal Constitution.

Mr. Chairman, one of the things that I think needs to be pointed out with respect to the bill along with a lot of other things which in a more lengthy statement I would mention is that with respect to this bill and the internal waters of the States it is very much analogous to what has been done under the Magnuson Act where the United States of America has provided in its fisheries management plans that within the 200-mile fishing zone of the United States from the allowable catch that it be first allocated to American domestic fisheries and foreign fishing be restricted to a surplus if any.

If the United States of America in its international waters out to the 200-mile zone can in the interest of conservation and legitimate protection of American fisheries do this, why then under act of Congress should not the States have an offsetting and equal opportunity to wisely manage their fishing resources within their internal waters?

I would emphasize that the bill is one which deals only with internal waters of the State. It does not deal with the offshore coastal waters out to the 3-mile limit, only to internal waters, that is, waters which are landward of the baseline by which you determine the territorial sea of any coastal State.

The bill has been drawn to not extend to any and all marine resources because there is absolutely no intent or desire on the part of this bill to disrupt, interfere with, or change in any way historic fishing practices and any traditional interstate fishery. For instance, the bill very specifically does not include and by its terms could not be extended to cover the menhaden fishery which is truly an interstate fishery and which certainly does not present State fisheries management agencies with the kind of problems that they experience with the other finfish species that are identified in the bill or with shellfish and crustacea.

To the extent that this bill includes within it a specie or waters which would be disrupted in terms of the historic fishing practices of other jurisdictions or States, then I stand ready to listen to my colleagues with respect to any amendments needed in order to avoid any disruption or creation of difficulties or problems for the fishing industry of other States.

Mr. BREAUX. Speaking of disruptions, let me interrupt and see if I can get Mr. Dyson to comment so we can get to the witnesses.

Mr. BATEMAN. Very good.

STATEMENT OF HON. ROY DYSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. DYSON. Based on that comment I will not hold up anything. Obviously I have reservations about this. I understand from reading the Justice Department statement they too believe there are serious constitutional questions about the bill.

I agree with you, Mr. Chairman, that certainly it is a very sensitive issue and it deserves our careful consideration. I would like my colleague from Virginia to know that in the past when these kinds of issues came up, they have been resolved in your very congressional district over on the Western Shore, on the Potomac River. When Maryland and Virginia Potomac watermen could not resolve the issue, the two State legislatures came forward with the Potomac Fisheries Commission and that group resolved some of these issues on a regular basis.

We have a representative here from our watermen's association in Maryland. If you listen to the Maryland watermen, they maintain time and time again that the Virginia watermen get the better end of the deal because you can land capital on your side that is more highly regulated on our side in Maryland.

The concern I have today is that we are getting into something that we as the Federal Government ought not to do. I think that there are people here today representing Maryland both in an official capacity from the department of natural resources and also from the Maryland Watermen's Association. I think those people will make suggestions saying there are other ways to handle this. Maybe the Chesapeake Bay Commission, for instance, could resolve some of these issues.

This is a time when the States of Maryland and Virginia are working together like they have never worked together before on cleaning up the Chesapeake Bay. Your Governor appeared here in Washington to speak on the bill that you and I and numerous others are cosponsoring to clean up the Chesapeake Bay. And he did something that is even more important: he came forth from the Legislature of Virginia with money to make that Federal match so we can start the cleanup of the Chesapeake Bay.

My feeling is that passage of something like this—and I understand where the gentleman is coming from—will do nothing but create a lot of bad blood between the two States that are starting to really work on some of these issues involving the Chesapeake Bay.

I know what the situation is in the upper parts of the bay. The water quality has deteriorated to the point that there has been a

loss in the catch landings in blue crabs and numerous other fish in that area. Naturally they have pushed down into the State of Virginia. But I think to show a preference for one over the other is not the way the Federal Government ought to approach this. Again, that very much concerns me.

You mentioned the bluefish issue and that problem. I was here in Congress at the time. You and I and some of your colleagues in Virginia—Mr. Parris and Mr. Wolf—all spoke for some Federal remedy, and the counsel of this committee basically told us there ought not to be a Federal remedy. Our States worked that out. Virginia's Governor Robb and Maryland's Governor Hughes worked that out. I think although we are not totally pleased with the result, it is working. It is something we have worked out.

Again, I have numerous reservations. I know where you are coming from. In fact, I have an editorial from one of your papers called "A Crab Issue," and I think something it says is very important right now. It says, "Good as Representative Bateman's bill seems to be for Virginia watermen, it could be cause for regret. It could sour cooperation on bay cleanup." I agree.

I might add one final comment. That three of us, Representative Carper, myself, and you, who represent the Delmarva Peninsula, know there has been no better cooperation. And when this issue is resolved, I hope that will be done without passage of your bill and that we can come up with some kind of cooperative effort to work out issues like this.

Mr. BATEMAN. Would the gentleman yield?

Mr. DYSON. Certainly.

Mr. BATEMAN. Let me say that in trying to address these problems and legitimately conserve the fisheries resources of the Chesapeake Bay I do not intend any negative effect upon the cooperation of Virginia and Maryland—cooperation that I certainly applaud. As a member of the General Assembly of Virginia I supported the Potomac River Compact, creation of the Chesapeake Bay Commission, and I applaud their good work.

Certainly I have no diminished ardor for Virginia and Maryland cooperatively doing all that possibly can be done to clean up the Chesapeake Bay. I would only suggest to the gentleman that Maryland's interest is not going to be adversely affected by passage of this bill. A Maryland crabber who is restricted from coming into Virginia waters only by this bill under circumstances when no one can continue to make a living under the conservation measures that would be necessary is not hurt by this bill. The only circumstance in which he would be excluded: is when to include him would require conservation measures so strict as to make it unprofitable for a Virginia crabber or Maryland crabber to earn their livelihood.

That is not detrimental to the interests of any Maryland crabber. It is, however, important to the blue crab resource of the Chesapeake Bay, which is important to Maryland.

[A copy of the bill follows:]

I

98TH CONGRESS
2D SESSION

H. R. 6056

Relating to the jurisdiction and authority of the coastal States regarding fisheries resources.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1984

Mr. BATEMAN (for himself, Mr. TAUZIN, and Mr. PARRIS) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

Relating to the jurisdiction and authority of the coastal States regarding fisheries resources.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Coastal States Marine
4 Resources Conservation Act of 1984".
5 SEC. 2. (a) The Congress finds that—
6 (1) certain species of edible fish, crustaceans, and
7 mollusks within the boundaries of the coastal States
8 are increasingly valuable, but diminishing, resources
9 that sound public policy requires be wisely conserved;

1 (2) each coastal State has the responsibility to
2 conserve the fisheries resources in its coastal waters,
3 and to regulate the commercial harvesting of those re-
4 sources in a manner consistent with its conservation
5 objectives, for the benefit of its citizens and all the citi-
6 zens of the United States; and
7 (3) the exclusive jurisdiction and authority of each
8 of the coastal States to conserve and manage fisheries
9 resources within its boundaries should be confirmed in
10 order that the State can act for the benefit of its citi-
11 zens regarding its fishery resources in a manner analo-
12 gous to that in which the Federal Government acts for
13 the benefit of all United States citizens under the Mag-
14 nuson Fishery Conservation and Management Act.
15 (b) The Congress declares that the exclusive regulation
16 by each of the coastal States of commercial fishing within its
17 internal waters (as defined in section 2(2) of this Act) is in the
18 public interest and that the implementation of such regulation
19 in accordance with sound conservation practices benefits the
20 Nation as a whole.
21 (c) The Congress further declares it to be in the public
22 interest that no coastal State, in taking action to manage and
23 conserve a fisheries resource within its internal waters, be
24 required to extend to nonresidents the same access and ad-
25 vantages with regard to the commercial harvesting of that

1 resource as it extends to its residents if such equal treatment
2 would require restrictive conservation measures which would
3 make harvesting the resource uneconomical.

4 SEC. 3. For purposes of this Act—

5 (1) The term "coastal State" means any State of
6 the United States that is in, or has a border on, the
7 Atlantic Ocean, Pacific Ocean, or the Gulf of Mexico.

8 (2) The term "internal waters" means those
9 waters that are landward of the baseline from which
10 the territorial sea of the United States is measured, but
11 does not include any waters of that territorial Sea.

12 (3) The term "fisheries resources" means eel,
13 shad, herring, catfish, bullheads, white perch, striped
14 bass, black sea bass, weakfish, flounder, and edible
15 species of mollusks, and crustaceans.

16 SEC. 4. (a) The commercial harvesting of fisheries re-
17 sources within the internal waters of each coastal State shall,
18 subject to the conditions set forth in subsection (b), be subject
19 exclusively to the law of that State relating to the regulation
20 of such harvesting.

21 (b) In the exercise of the exclusive regulatory authority
22 granted under subsection (a), each coastal State is author-
23 ized, in implementing those measures it considers necessary
24 for the conservation of any fisheries resource within its inter-
25 nal waters, to give preference, to the extent it considers ap-

1 propriate, to its residents in the commercial harvesting of
2 that resource if that State determines that the application of
3 equal treatment to residents and nonresidents in regard to
4 that harvesting would require the implementation of harvest-
5 ing limitations (including limitations on size of catch, quantity
6 of catch, fishing procedures, or length of season) so stringent
7 as to render harvesting economically unfeasible.

8 SEC. 5. (a) Except as provided in subsection (b), no Act
9 of Congress may be construed—

10 (1) to invalidate, impair, or supersede the law of a
11 coastal State relating to the conservation of fisheries
12 resources within the internal waters of that State or
13 the regulation of the harvesting of fisheries resources
14 within those internal waters; or

15 (2) to extend to any individual or person that is
16 not a citizen of a particular coastal State any right or
17 privilege granted by that State to its citizens regarding
18 the commercial harvesting of fisheries resources within
19 its internal waters.

20 (b) Nothing in this Act may be construed as affecting in
21 any manner or to any extent the application of section 306 of
22 the Magnuson Fishery Conservation and Management Act
23 (16 U.S.C. 1856) or any international treaty to which the
24 United States is a party.

Mr. BREAUX. Let us get on with the hearing.

I would like to welcome at this time Mr. Ralph Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, with the Department of Justice.

Mr. Tarr, if you have anyone you wish to bring with you, feel free to do so. We look forward to receiving your testimony.

STATEMENT OF RALPH W. TARR, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MARK B. ROTENBERG, ATTORNEY-ADVISOR, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. TARR. Thank you, Mr. Chairman.

I would introduce Mark Rotenberg, Attorney-Advisor in our office. He will come to the table with me.

Mr. Chairman, members of the subcommittee, I am pleased to appear today, at your request, on behalf of the Attorney General to present the preliminary views of the Department of Justice on certain constitutional issues raised by H.R. 6056, the Coastal States Marine Resources Conservation Act of 1984. Because we have only had a brief period within which to review this bill, and because the constitutional issues raised by it are multifaceted and complex, I am not in a position today to be definitive about the constitutionality of this bill in particular, or legislation like this in general.

The views expressed here today therefore can only be tentative, and are designed simply to provide the subcommittee with some assistance in understanding how this bill might be analyzed from a constitutional perspective. I note in passing that this bill also appears to raise significant nonconstitutional issues of both a legal and policy nature. Pursuant to the Department's understanding of the subcommittee's wishes today as to this hearing, I will not address those issues in my testimony this morning. Instead the Department of Justice is considering the nonconstitutional issues separately and will provide the subcommittee with appropriate written comments on the bill discussing those matters.

I am not sure what the chairman's pleasure is with respect to my testimony. It is somewhat lengthy because of the lengthy constitutional discussion. And if the chairman——

Mr. BREAUX. Why don't you summarize it, paying particular attention to get to the constitutional concerns?

Mr. TARR. Fine. I assume my prepared statement will be part of the record.

Mr. BREAUX. Your entire statement will be part of the record, yes.

Mr. TARR. Clearly the first constitutional issue that is raised by the bill is the commerce clause. Of course under the theory of the dormant commerce clause, that is, when Congress has not acted to regulate in a particular area, there is wide authority for the States to exercise their police power to care for their citizens and resources. But that wide authority is bounded, and we have set forth in the testimony the test that the courts have developed to determine whether or not a State regulation exercising its police power will withstand constitutional scrutiny.

The first major factor the courts will consider is whether or not there is a discrimination against interstate commerce involved in the State regulation. It is our conclusion based on the cases we have set forth in the testimony—essentially *Hughes* v. *Oklahoma* a 1979 U.S. Supreme Court case overruling earlier views of State ownership of resources found in *Geer* v. *Connecticut*—that a State regulation as contemplated by H.R. 6056 without the passage of the bill would not withstand constitutional scrutiny, but be viewed as a violation of the dormant commerce clause.

Clearly the bill is designed to solve that dormant commerce clause problem. We would just point out that the courts have required that Congress make itself unmistakably clear that it is authorizing the States to be in a position of passing such otherwise invalid State legislation. If it does so, however, the courts have upheld congressional action authorizing of the States to take actions that the States otherwise could not take under the commerce clause.

Therefore, our preliminary view is that as to commerce clause concerns the bill would probably withstand scrutiny because of its exercise by Congress of the commerce power to authorize the States to take actions which may limit the flow of interstate commerce.

Perhaps the most difficult problem raised is the privileges and immunities clause problem. This clause is found in article IV, section 2, of the Constitution. It is designed essentially to serve the interest of bringing the Nation together as a unified whole, and manifests the effort of the Founders to create a union out of a series of States during the Articles of Confederation which were constantly warring with each other economically. Justice Marshall has indicated in a recent case that it is designed to establish a norm of comity among the States giving each of the citizens of the several States substantial equality with the citizens of any single State.

I recall in the opening comments of the chairman that there was some chuckling about the concept of economic Balkanization. That is language that you will find in our testimony at page 9. It is a direct quotation out of a U.S. Supreme Court case *White* v. *Mass. Council of Construction Employees.* It is a rather recent U.S. Supreme Court case discussing the purpose of the privileges and immunities clause. Again it is designed to prevent there being a disruption of the effort to bring together the States as a union by the States each protecting themselves economically to the point where there is an inability to cooperate. That would involve, for example, denying residents of other States substantial equality of treatment as they come into a nonresident State.

I would like to depart somewhat from the direction that my prepared remarks takes to attempt to set forth for you if I can some of the themes that I see in the privileges and immunities clause cases. One of the difficulties in being definitive for you this morning is that the Supreme Court has rendered some rather ambiguous precedents which don't always give us a lot of direction as to the application to a new set of facts. In the early cases, the essential theme was one of natural rights or fundamental rights, that there are certain rights that a citizen has perforce being a member of the

United States--a citizen of the United States that simply cannot be denied to him by any State.

Some of those that were developed early were the right to travel from State to State, laws respecting ownership and disposition of privately owned real property within a State, limitations upon access to the State judiciary, and perhaps most significantly for us today, the pursuit of a livelihood. That is, the early cases recognized that one of the protectable interests of a citizen under the privileges and immunities clause was his right to travel to another State to engage in a livelihood and be able to do so on a substantially equal basis with the citizens of the State to which he traveled.

Now, some of the nonfundamental type of privileges and immunities, if you will, as an illustration, that are not protected by the clause are suffrage, qualifications for elective office, provision of certain benefits, and services; and, as we will discuss in a few moments, some concept of recreational hunting.

Now, the later cases tend to depart considerably from this natural rights or fundamental rights type approach. They seem to focus more on the concept of the discrimination that is being visited upon the visiting citizen. The focus is upon whether or not that discrimination is essentially only because the individual is a member of a class made up of all those who are not residents of the State. Essentially the privileges and immunities clause under this analysis would preclude a State from discriminating against a nonresident merely on the basis that he is a member of a class of nonresidents; that is, that there is no substantial reason, which is the Court's language, beyond the fact that he is a nonresident.

The analysis of the Court in more recent times following this particular tack has been to consider first whether there is some particular evil or cost created by an influx of nonresidents wishing to participate in some State-regulated activity. The Court will then look at whether the degree of discrimination bears a close relation to that identified evil or cost. In this regard the Court has shown a proclivity to investigate what the other options available to the State were short of an outright discrimination against a nonresident.

Now, also, coursing along at the same time these themes were coursing along was the theory of State-owned resources. That is the theory that a State owns its own natural resources in common for its citizens and holds them in trust for the benefit of all of its citizens. That theory would have it that the State is at liberty to distribute those services as it pleases, discriminating against non-residents to the extent it chooses, non-residents being under this theory persons who have no beneficial interest in the trust.

One of the early cases and perhaps a very significant case to your consideration of H.R. 6056 is the *McCready* v. *Virginia* case of which I am sure the committee is somewhat familiar, and it is set forth in our testimony. In that 1876 Supreme Court case, the U.S. Supreme Court upheld a Virginia statute prohibiting nonresidents from planting oysters in the tidal waters of Virginia.

An earlier case which was essentially a district court case was the *Corfield* v. *Coryell* case which upheld a similar restriction on

the taking, actually the raking, if you will, and collection of oysters and other shellfish in the waters of New Jersey.

I might add that the *Corfield* case is a case involving the commerce and privileges and immunities clauses. One of the difficulties here that I need to point out for you so I don't mislead is that some of the cases I want to reference here at this point in my testimony go to the question of the theory of State ownership of natural resources. We have seen those cases particularly in two areas, of the commerce clause and privileges and immunities clause.

It is not altogether clear that there is a direct similarity in use of that theory as to analysis under each of the two clauses. But nevertheless I think it helps very much to understand the State ownership concept.

Now, the State ownership theory was almost immediately subject to severe erosion in a number of other cases. There is the famous case of *Missouri* v. *Holland,* in which Justice Holmes questioned whether anyone could own wildlife since no one really possesses wildlife, and until you possess something, you really don't own it.

Another case is *Manchester* v. *Massachusetts,* in 1891, which suggested that perhaps the McCready view did not apply to free-swimming fish.

More recently, in 1948, the Supreme Court case of *Toomer* v. *Witsell* is a much closer case to the matter that you are considering today involving the striking down of a South Carolina statute which, practically speaking, excluded nonresidents from commercial shrimping in South Carolina waters. The Court in that case rejected the theory that the State of South Carolina could impose such a restriction based on its ownership of those resources.

Similarly, in *Takahashi* v. *Fish and Game Commission,* a case decided virtually back to back with Toomer in 1948, also rejected the theory of the State ownership of resources as a basis upon which the State of California could exclude those who were not eligible for citizenship under the immigration and naturalization laws of the United States from fishing in California waters.

Similarly, in *Mullaney* v. *Anderson,* in 1952, the U.S. Supreme Court considered the territory of Alaska statute which imposed a substantially higher license fee on nonresidents than residents. Again, Court again struck down the statute, and affirmed its holding in *Toomer.*

In the *Hicklin* v. *Orbeck* case in 1978, the U.S. Supreme Court struck down under the commerce claim the the so-called Alaska hire statute which was a statute that provided with regard to certain oil and gas activities that there had to be a preference given to State residents over nonresidents searching employment from anybody engaging in that activity. The State of Alaska argued that because it owned oil and gas in the State and again in common ownership for the benefit of our residents, it could therefore regulate those resources and could determine when those resources can be taken. At the time the State determines that the resources can be taken, the State argued also that it could impose this restriction which [the reporter read the record, as directed] will inure to the benefit of our citizens at the expense of nonresidents, the theory being that the State has the right to discriminate against nonresidents in hiring in order to see to it that these resources are used

for benefit of Alaskans. The Supreme Court did not accept that theory and struck down the statute.

Again, in the case of *Hughes* v. *Oklahoma*, in 1979, the U.S. Supreme Court was faced with an Oklahoma statute making it unlawful to transport any commercially significant number of minnows, natural minnows—a significant point in the case—out of the waters of Oklahoma and across State lines. This case was similar to one decided by the Court in 1896, *Geer* v. *Connecticut*, in which the Connecticut statute had made it a crime to kill or have in your possession certain game birds with the intent to transport those birds across State lines. The Court upheld the Connecticut statute and, of course, Oklahoma in 1979 was arguing based upon the *Geer* v. *Connecticut* case that it, too, should be able to impose such a restriction on the transportation out-of-State of naturally living minnows caught in the State of Oklahoma. The Supreme Court overruled the *Geer* case and again rejected the theory of State ownership of resources as the basis to interfere with interstate commerce in this way.

One further case is *Foster-Fountain Packing Company* v. *Haydel*, in 1928. I raise it because it again involved offshore fish, essentially shrimp taken in the waters of Louisiana. In that case Louisiana statutes precluded the transportation of such shrimp outside the State until the shrimp had been processed in the State of Louisiana. Again the Court rejected the notion that because the shrimp constitute a State resource the State could prevent shrimp lawfully taken from state waters to be transported out-of-state for processing.

All of the foregoing cases would lead one to believe that the theory of State ownership of resources had essentially found its way out of the law, but along came the *Baldwin* v. *Fish and Game Commission* case in 1978 in which the theory once again was demonstrated to have some vitality.

The *Baldwin* case involved a Montana statute which imposed a substantially higher, as much as 25 times higher, license fee on out-of-State residents as for residents in order to obtain a license to take elk within the State. The Supreme Court discussed all the cases to date, although perhaps not as separate themes, some of the themes I have raised with you this morning, pointing to the South Dakota case of *State* v. *Kemp*, a case which the Court refused to hear on the basis of no substantial Federal question being involved. In that case the State court upheld a State restriction which discriminated against nonresidents in the hunting of certain waterfowl, geese and ducks within South Dakota.

In essence, the Supreme Court left in place the South Dakota statute. The Court in *Baldwin* pointed to *Kemp* with approval and upheld the Montana restriction, which was judged by the Court to be highly discriminatory to out-of-State residents.

The Court did, however, make quite a point of the noncommercial aspect of the elk hunting. On more than one occasion throughout the opinion the Court made clear that elk were not a subject of commercial hunting, had never been and never were intended to be the subject of commercial hunting. The importance of that fact to the outcome of the case is one of the ambiguities that we face in trying to analyze these cases.

In the *Baldwin* case the Court made a point of stating the previous law that the State's interest in protecting its own resources must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in that State. Now, notwithstanding that statement in the case, it is not entirely clear whether the noncommercial aspect—in fact, some scholars have suggested the noncommercial aspect is really not significant—is a turning point in the case.

A number of scholars point to the earlier cases of *McCready* where there really wasn't a discussion of commercial taking, but yet it was not something that was involved in the case—the statute was simply not specifically directed at noncommercial recreational hunting as was the statute in *Baldwin*.

So we have serious concerns about whether or not State statutes could withstand a privileges and immunities clause challenge. I am referring to the kind of State statutes that H.R. 6056 is contemplating. Particularly, we are concerned about the standard in the bill for a finding of economic unfeasibility. That perhaps highlights with greatest clarity the notion that the statute is, in essence, an economic protection statute of the State's own residents; that is, that it is clearly involved with the livelihood of nonresidents, which is the most delicate point that we could find in these cases and make it, perhaps, one of the more difficult issues.

Congressman Bateman, you were referring in your statement—not to engage in any form of debate here but perhaps to assist in the reading of some of the cases to which I think you were referring—you mentioned the McCarran Act, and there is a well-known Supreme Court case upholding the McCarran Act permission of the States to impose what is in essence a discriminatory State tax on out-of-State insurance corporations doing business within the state. (*Prudential Insurance Co.* v. *Benjamin.*) I would point out that the Court made clear in that case, first of all, that insurance is a very special animal. It was always viewed as something the States would have more power over than perhaps other types of interstate business.

Mr. BATEMAN. Mr. Chairman, might I interrupt to follow up on that specific point?

Mr. BREAUX. All right.

Mr. BATEMAN. Doesn't that induce a strong argument that given the *McCready* decision and the traditional authorities which were exercised virtually without challenge for most of our history that States could regulate and exclude—which I am not arguing for now—but given that historical practice, doesn't that make it somewhat analogous to the reasoning of the Court in saying that the McCarran Act could and should confer the authority upon the States to discriminate against a nonresident insurance company?

Mr. TARR. I certainly acknowledge the argument you make, and it is certainly not one to be rejected out of hand. I would not find from our review the analysis to be that analogous to the insurance case. One reason is that the *McCready* case, as I attempted to point out in the testimony, has been called into question as to its theoretical underpinning from a very early time, (granted that there was not a direct overruling of the case). And the Court has pointed that

out even recently, that there was never direct overruling of the case.

But I think also that having gone to law school one of the things I seem to come away with from my first year of law school was there was an easy rule of thumb that if an insurance company was a defendant you knew how the case was going to come out. But I wouldn't rely on that for much other than my law school exams.

One other point I think is important about the Benjamin case, with respect to the McCarran Act, is that the Court made clear that even though a statute may discriminate against interstate commerce, it still must withstand scrutiny under other constitutional provisions. The Court in that case specifically stated that no other constitutional provision was being raised for its consideration. Furthermore, the Court has declared that a corporation may not invoke the protection of the privileges and immunities clause under article II, section 4. It applies only to individuals. I am not sure if (Benjamin) is a helpful case. I am not suggesting it is not without basis for the argument which you make, but I think there is some reason to give a number of thoughts to it.

Also, with respect to the privileges and immunities clause the Congressman has identified what is perhaps the most difficult constitutional issue in this entire matter. It is referred to in the footnote in our written testimony, footnote 36 on page 24, essentially as the Congressman stated it. The issue is whether Congress may authorize a State to discriminate against nonresidents that will relieve the State of any problem in justifying its statute under the privileges and immunities clause. That is a subject that I have been surprised in doing the rather rapid research I have done in preparing for this hearing that has not been directly decided thus far.

In the *White* v. *Massachusetts Council of Construction Employers* case, a 1983 Supreme Court case, there is a footnote at 103 S. Ct. 1049, footnote 1, and this is a concurring and dissenting separate opinion of Justice Blackmun. He refers to the fact that the Court in that case had no occasion to determine whether or not Congress may authorize, through affirmative legislation, what otherwise would be a violation of the privileges and immunities clause. He goes on to say this question may present considerations different from those presented by the dormant commerce clause. He cites Professor Tribe's treatise on constitutional law. Professor Tribe makes a strong argument that the privileges and immunities clause ought not to be something that yields to congressional legislation, but rather is a restriction on both State and Federal legislation. That is an interesting question.

If you look at the language of article IV, section II, you see it doesn't talk about who is doing the regulating. It refers to the citizens of each State being entitled to be afforded all the privileges and immunities of citizens of the several States. That is a point that we frankly have not had sufficient opportunity to research.

It is one that is of major importance in my thinking, to whether or not H.R. 6056 would withstand constitutional scrutiny. Clearly if Congress could authorize the States to discriminate against nonresidents, then there would be no privileges and immunities question. If not, and if the State laws stand or fall on their own right, then we have a problem, and I have some serious concerns.

Those concerns can only be fully satisfied one way or another by a complete review not only of the legislative history of H.R. 6056, were it to pass, but also all the facts that have been put together in the legislative record supporting the State statute that was passed under it. Let me just posit the question, if I could, with regard to whether Congress could immunize the States in passing these restrictive laws from a privilege and immunities clause challenge.

In the *Benjamin* case, one of the issues that was raised was the restriction on the power of Congress to pass an "excise", that that excise be uniform across the States. The argument was made by the insurance companies in that case that therefore, because the State was acting on behalf of the Federal Government, and Congress and appointed it with the power to pass a tax which could be restrictive, that that tax became a Federal tax in essense subject to the restriction of article I, section 8.

The Court rejected that notion, saying, no, this is not Federal action. It is State action. This is a State tax. The Court talked about a form of State-Federal cooperation which to this day the academicians and scholars are arguing about whether that is something distinct from Congress acting alone or the States acting alone, and whether the court had in mind giving the States more power as a result of that cooperative effort than they would otherwise have.

Again, while there are ambiguities in the case law, I think if you followed that line of thinking here one could view the State's statutes under the commerce clause clearly as not impeded because Congress had said go ahead. We are not going to assert the commerce clause and you could view it as removal of an affirmative obstacle, whereas, you would still treat the State law as a State law for the purpose of the privileges and immunities clause.

That would be one of the arguments you potentially could make from an analogy to the *Benjamin* case. It perhaps comes in greatest highlight if you think about whether or not Congress could pass a statute affirmatively, amend H.R. 6056 for example, to say that only the citizens of each coastal State shall be entitled to fish in the offshore waters, inland waters of the resident State.

It is an interesting question whether Congress could in fact accomplish that. At that point, I would guess there would be commerce clause attacks made on it for being in essence irrational and therefore the usual deference given to Congress may not be followed. That would be the argument—I am trying to posit arguments as opposed to conclusions—that the deference to Congress in the commerce power area may not be given effect because the very nature of the commerce clause was designed to keep the free flow of commerce within the union and to prevent, again, this form of economic Balkanization where the States are protecting each other's territory and economic interest to the detriment of the Union.

Mr. BREAUX. Let me go ahead and interrupt, if I can. Your entire statement is going to be made part of the record. I commend you for it. It is well written. It is a thorough analysis of the issue, but if we are going to finish this hearing before this session of the 98th Congress is finished, we are going to have to move on.

As I basically understand it, what you are telling the committee, aside from the merits from a fisheries management standpoint, is that Congress has the authority to authorize legislation which in effect would treat residents of State A different from State B if there is a legitimate reason for doing so, however, you have some real concerns that if the sole reason for doing so is economic, whether that is going to hold up a test of constitutionality or not.

If a State acting under this legislation were to close an area for fishing for a species of fish for both residents of State A and State B, there is no problem with that, would there be?

Mr. TARR. As long as under, again, this perhaps more recent theme of privileges and immunities, you are right, Mr. Chairman. As long as the law would operate equally upon residents and nonresidents——

Mr. BREAUX. In order to treat residents of State A different from those of State B, there would have to be some overriding reason for doing so other than economic. Is that what your opinion is? If the State says we want to do it because if we don't restrict State A from fishing in our waters, our fishermen are going to go busted.

Therefore, we are going to restrict them from coming in our waters, only give them an allotment or limit of half of what we give our own residents. Then you are telling the committee that you can come into a pretty unclear area that may have some constitutional difficulties?

Mr. TARR. I think the chairman is right. Essentially, the test is a substantial reason other than the person being a member of a class of nonresidents. And this substantial reason comes under highest scrutiny, as we can see, once you are dealing with the livelihood of the nonresidents, the right of many to——

Mr. BREAUX. In order to treat the residents of one State differently under this grant of authority to the States, it really has to be based in this case, I would take it, on some sort of management philosophy for the good of the resource.

Mr. TARR. Yes, it would, Mr. Chairman. But one of the things I would point out is that in a number of these cases, for example, in the *Toomer* case, the State made arguments that its goal was conservation. And the court in both of those cases was convinced that conservation was really not what the State was after, but that it was this economic protection of its own residents.

Mr. BREAUX. What you say is, no matter what the State does under the guise of conservation management measures, that it is going to be looked at, particularly if challenged in Court, very very carefully to determine whether they could not have accomplished the same goal by treating residents of both States in exactly the same manner?

Mr. TARR. That is true. As you will see in the cases the courts go through, Supreme Court has gone through a number of other options, some of which are set forth in the bill, such as restricting the number of licenses, restricting the number of catches per individual, those kinds of other choices one might make.

Mr. BREAUX. In theory from just a hypothetical situation, if the resident State says all right, we are going to give to all the residents of our State who ask for a license a license to fish unrestrict-

ed. Now the residents of another State that come in and ask for a license, we are only going to give them 25 percent of their request.

Based on the fact that, if we give them 100 percent, it is going to over fish the population we are trying to protect. How does that fall under a test of constitutionality?

Mr. TARR. I would be concerned about that type of structure because again, there is a class of persons that you are restricting entirely. When you move away from a total exclusion of all or most or some nonresidents, you are moving in a direction that is easier to uphold and defend.

Mr. BREAUX. Suppose a State determines they are going to grant *x* number of licenses for crabbing in Virginia, say, 5,000 licenses. And, of course the State decides to process their own residents applications first because they have filed them here in the State and, therefore, they are going to get them first.

If they get 4,900 licenses from Virginia, they will approve those. That means they have 100 left for the rest of the United States that might apply.

Mr. TARR. That might withstand constitutional scrutiny unless the court was satisfied that the whole procedure had been designed to make sure that State residents were first in line and were the first 5,000 licensees. The court will look through what structure of the statute is to see what the effect is. The point I was making about looking at the legislative record, the court is going to want to look at that legislative record and see whether or not it believes the State is out to protect its own economic interests or it really has conservation of its own resources at heart.

Mr. BREAUX. If it is purely conservation of a species, that, in your opinion based on previous court decisions, is a legitimate reason to allow for discriminatory treatment of State A by State B, if, of course, Congress grants the State authority to do that.

Mr. TARR. Conservation is the exercise of the State's general police power over its resources. It is not clear that conservation alone would be sufficient as a basis. Now, some have argued that the *Baldwin* case was really focusing on conservation. Let me, if I could, give you the argument some have made about *Baldwin* very briefly.

Obviously *Baldwin* is that recent case that apparently brought back to life the notion that in some sense, at least, a State may be said to own its resources and can parcel them out to the betterment of its citizens at the expense of nonresidents, to some degree. Some have argued that what the Court was really concerned about was that the State of Montana was trying to protect its elk herds; that it only would have been focused on protecting its elk herds if it was worth it to it and if it had an influx of an enormous number of out-of-State residents who were going to deplete the resources then they might just give up conservation all together.

That is one or two people's theory. It is difficult for me to say definitely that is what the court had in mind, but I would be concerned about the sole issue being conservation as that theory has been rejected in a number of situations.

Again, most of those situations, though, in all fairness were situations where the court had some real doubt about whether or not

the State was trying to conserve the species as opposed to conserve the economic benefits.

Mr. BREAUX. I don't want to get into a discussion on that, but you certainly have reason to conserve things that don't necessarily have any economic value.

Mr. TARR. That is ture.

Mr. BREAUX. What you are basically telling the committee, is that we are never going to know whether it is constitutional until we pass the law and the State enacts a statute pursuant to it and it is challenged in a court and eight men and one woman look at it, review it and give a decision on it. You can only give us some guidelines of previous cases.

Mr. TARR. That's right.

Mr. BREAUX. Can you venture an opinion from your position based on the previous case history that you have cited how you would feel this legislation would stand up to scrutiny?

Mr. TARR. That is a very dangerous question to answer. As I point out, there is very little upon which——

Mr. BREAUX. Do you feel more comfortable arguing for its constitutionality or against it?

Mr. TARR. I think if I were arguing it, just as a totally personal preference, I think I would like to be arguing against it. That seems to be the thrust of the law. Yet if you take the bill's predicated finding, that is that we have tried everything, and we are simply going to have to close down commerce altogether unless we pass some kind of restriction, and we are going to pass it on out-of-State residents, you are in an area where the State has a very strong interest in its resources.

To the extent that that State ownership theory is still alive you are going to have a strong State interest. I still think the next step is the important one. And that is for the State to somehow justify why those nonresidents coming in are a particular evil in a way that residents are not. Do they—are they less careful about what they fish? What is it?

The courts have never been satisfied with what that particular evil is with regard to offshore fishing as far as I can see, that there is something about nonresidents that distinguishes them from citizens.

Mr. BREAUX. All right. I thank you very much. I want to say we are going to try to finish this morning; that not only includes Mr. Tarr, but the other witnesses, too.

Mr. Bateman, questions?

Mr. BATEMAN. Just very briefly, Mr. Chairman. As I have read the memoranda and heard your testimony, Mr. Tarr, and I compliment you on both, I am coming to a bottom line that says there is an argument among constitutional scholars as to whether or not Congress can, by legislation, authorize States to violate, or to do things which would othewise be a violation of the privileges and immunities clause; that simply congressional authorization cures the defect.

Now that has not been a ruling of the courts. There is an argument as to whether it would, but some argue that just a naked congressional authorization solves that problem.

Mr. TARR. Actually, to be fair, Congressman, I have seen more arguments against. I have not seen anybody particularly raise the argument, yet what I have been surprised at is the issue has really not been framed anywhere accept in that footnote.

Mr. BATEMAN. There is no decision of any court.

Mr. TARR. No.

Mr. BATEMAN. Which says Congress has authority to authorize what would otherwise be a violation. Further you go to another threshhold where Congress has granted authorization and it is based upon some rational public policy objective. To the extent it does not permit somebody to do in nonresidence which deprive them of rights of American citizenship, the argument becomes increasingly stronger for its constitutionality.

Mr. TARR. Yes. And I might add that the economic interest of the State is clearly not one that is insubstantial. It is an important interest. I don't mean to suggest that the State protecting its own economic interest is not something the courts would give a great deal of deference to. It is simply that, if that is the only issue that is there, that is the problem the clause was designed to avoid.

Mr. BATEMAN. Mr. Chairman, I have other questions I will withhold from asking accept I would like to make reference to page 3 of your statement. Apparently, at the time written, the bill was being read as affecting the coastal waters of the State out to the 3-mile limit, when the bill as drawn does not include the coastal waters, only the internal waters of the State.

Mr. TARR. I see, all right. That is a mistake that we have made.

Mr. BATEMAN. I would appreciate it if you would reread the bill as drawn, because we went to some pains to not include the coastal waters out to the 3-mile limit, but to exclude those from the operation of this bill, confining it only to internal waters of the State.

Mr. TARR. That would be from the shoreline, in essence, inward?

Mr. BATEMAN. Inward.

Mr. TARR. Let me say, I apologize. We did a very fast review of this at the committee's request. Some of those questions we did not have as much opportunity on. But phrased in that way, the bill is stronger.

Mr. BATEMAN. I thought it was, too.

Mr. TARR. As you move inland, one of the things some of these cases—perhaps the only thing you draw from them at times are factual distinctions. One of the things that seems to have bothered the courts in the offshore fishing case is the fact that the fish migrate and that fishermen chase the fish naturally.

There is almost a sense of those already being in interstate commerce and that they don't really belong to any State because they don't stay in that State. The reported cases have pointed out this migration of the crabs, shrimp, and other things. Totally inland waters are much stronger along the lines of the State resource concept. You are moving closer to the elk that is standing in the hills as opposed to the fish swimming up the shore, passing a number of State lines. I appreciate the congressman bringing that to our attention.

Mr. BATEMAN. Thank you very much.

Mr. BREAUX. Mr. Dyson?

Mr. DYSON. No.

Mr. BREAUX. Thank you very much. I know this is really a difficult issue. We are asking you to speculate based on past history of not only whether this law, but some yet to be enacted law of a particular State may in fact be constitutional. Of course, it is imposible to make that kind of prediction, but I think you have given the committee a very good analysis of things that are brought to mind in making that determination.

We appreciate very much your work on this. It is well done.

Mr. TARR. Thank you very much for the opportunity, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF RALPH W. TARR, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee, I am pleased to appear today at your request on behalf of the Attorney General to present the preliminary views of the Department of Justice on certain constitutional issues raised by H.R. 6056 the Coastal States Marine Resources Conservation Act of 1984. Because we have only had a brief period within which to review this bill, and because the constitutional issues raised by it are multifaceted and complex, I am not in a position today to be definitive about the constitutionality of this bill in particular, or legislation like this in general. The views expressed here today therefore can only be tentative, and are designed simply to provide the Subcommittee with some assistance in understanding how this bill might be analyzed from a constitutional perspective. I note in passing that this bill also appears to raise significant non-constitutional issues of both a legal and policy nature. Pursuant to the Department's understanding of the Subcommittee's wishes as to this hearing, I will not address those issues in my testimony this morning. Instead, the Department of Justice is considering the non-constitutional issues separately and will provide the Subcommittee with appropriate written comments on the bill discussing those matters.

I. SUMMARY OF THE BILL

We understand the bill to have three major operational effects. First, the bill establishes that the commercial harvesting of fisheries resources [1] within the internal waters of each coastal state shall be subject exclusively to the laws of that state. The term "internal waters" is defined by the bill to encompass "those waters that are landward of the baseline from which the territorial sea of the United States is measured. * * *" [2]

Second, the bill authorizes each coastal state, in implementing measures it considers necessary for the conservation of any fisheries resources within its internal waters, to give preference, to the extent it considers appropriate, to its residents in the commercial harvesting of those resources. This preference is permitted by the bill if the coastal state determines that the application of equal treatment to residents and nonresidents in regard to such harvesting would require limitations of general application that would be "so stringent as to render harvesting economically unfeasible."

Third, the bill would declare that no federal law may be construed to invalidate, impair, or supersede the laws of a coastal state relating to the conservation or harvesting of fisheries resources within its internal waters, or extend to any noncitizen of a coastal state any right or privilege granted by that state to its citizens regarding the commercial harvesting of fisheries resources within its internal waters. The bill specifically excepts from this subordination of federal to state law, section 306 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1856, and any international treaty to which the United States is a party.

In sum, the bill would grant each coastal state exclusive regulatory authority over conservation and harvesting of certain fisheries resources. The exercise of this exclusive regulatory authority could include, at a state's option, giving certain preferences to its residents over all other persons engaged in the commercial harvesting of such fisheries resources. Such preferences might, for example, take the form of reduced licensing fees for harvesting activities and equipment, higher allowable limits

Footnotes at end of article.

upon harvesting, or an exclusive right to harvest that would exclude nonresidents entirely.

II. CONSTITUTIONAL ANALYSIS

The Department of Justice believes that serious constitutional issues are raised by this bill, particularly with regard to a state's granting of such preferences to residents under the authority that would be provided by the bill. Because of the short time we have had to review the complicated constitutional issues raised by this proposal, and because of the ambiguity of the legal precedents in this area, we are unable to state definitively whether or not this bill, and state legislation promulgated thereunder, would be upheld against constitutional challenge. In any event, a more definitive determination concerning the constitutionality of H.R. 6056, or any of the subsequent state laws, would have to be based upon a careful review of the entirety of the legislative record supporting the challenged statute, including its legislative history, its factual and policy rationale, and, perhaps most important, the particular state regulatory context and factual pattern within which a constitutional challenge would arise. In the absence of such information, in my testimony this morning I shall attempt to provide the Subcommittee with a brief discussion of the most important constitutional issues raised by this bill, and the manner in which those issues generally might be considered by the federal courts.

The first two of the major operational effects of the bill involve the Commerce Clause, Art. I, § 8, cl.3. The second also raises difficult issues involving the Privileges and Immunities Clause, Art. IV, § 2, and the Equal Protection guarantees of the Fifth and Fourteenth Amendments. Finally, the third major operational effect of the bill involves the Supremacy Clause, Art. VI, § 2. I will proceed to discuss how this bill would likely be analyzed under each of these constitutional provisions.

A. The commerce clause

As you know, the Commerce Clause of the Constitution, Art. I, § 8, cl. 3, vests Congress with the power to "regulate Commerce with foreign Nations, and among the several States.* * *" Although the Commerce Clause speaks in terms of powers bestowed upon Congress, the Supreme Court has long understood the Clause also to limit the powers of the several states to erect barriers against interstate trade.[3] The Commerce Clause limitation upon state laws affecting commerce is by no means absolute, however, In the absence of superseding federal legislation, states retain wide authority under their general police powers to regulate matters of legitimate state concern, even though interstate commerce may be affected thereby.[4] In those areas in which Congress has not exercised its commerce power, i.e., in those areas where the commerce power lies "dormant," the Supreme Court has articulated a three-part inquiry to determine whether state laws imposing burdens on interstate commerce shall be upheld:

(1) whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect;

(2) whether the statute serves a legitimate local purpose; and, if so,

(3) whether alternative means Would promote this local purpose as well without discriminating against interstate commerce.[5]

We believe that in the absence of federal legislation on the subject, state laws mandating the types of preferences authorized by H.R. 6056 would likely be held unconstitutional under the dormant Commerce Clause.[6] A series of decisions of the Supreme Court establish that the Commerce Clause "circumscribes a State's ability to prefer its own citizens in the utilization of natural resources found within its borders, but destined for interstate commerce." [6] Indeed, many Supreme Court cases "have held that the Commerce Clause of the Constitution * * * precludes a State from mandating that its residents be given a preferred right of access, over out-of-state consumers, to natural resources located within its borders or the products derived therefrom." [7] In *Hughes* v. *Oklahoma*,[8] the Supreme Court held that an Oklahoma statute which placed no limits on numbers of minnows that could be taken by licensed minnow dealers and did not limit in any way how minnows could be disposed of within the state, but which forbade transportation of any commercially significant number of minnows out of state for sale, violated the dormant Commerce Clause. The Hughes Court recognized the Oklahoma statute as an attempt to conserve its minnow population, but found that the state had chosen a way "that most overtly discriminates against interstate commerce." Although conservation may qualify as a legitimate local purpose, the court observed, this legitimate purpose may be promoted "only in ways consistent with the basic principle that 'our economic unit is the Nation,' * * *" [9] The Court concluded that when an animal " 'be-

comes an article of commerce * * * its use cannot be limited to the citizens of one State to the exclusion of citizens of another State.' "[10]

The situation presented by this legislation, however, does not present a constitutional issue under the dormant Commerce Clause. On the contrary, this bill apparently is intended to be an explicit exercise of Congressional power under the Commerce Clause to regulate the commercial harvesting of fisheries resources in state waters.[11] Moreover, it is "clear that Congress 'may redefine the distribution of power over interstate commerce' by 'permit[ting] the states to regulate commerce in a manner which would otherwise not be permissible.' "[12] In *White* v. *Massachusetts Council of Construction Employers Inc.*,[13] the Supreme Court declared flatly:

> The Commerce Clause is a grant of authority to Congress, not a restriction on the authority of that body. Congress, unlike a state legislature authorizing similar expenditures, is not limited by any negative implications of the Commerce Clause in the exercise of its spending power. Where a state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.

In *White*, plaintiffs challenged on Commerce Clause grounds an Executive order of the Mayor of Boston that required all construction projects funded with city funds to be performed by a workforce at least half of which were city residents. The Supreme Court upheld the constitutionality of the Executive order, finding, inter alia, that "federal regulations for [the] program affirmatively permit the type of parochial favoritism expressed in the order."[14]

The Supreme Court does require, however, that in order for state regulation to be removed from the reach of the dormant Commerce Clause, "congressional intent must be unmistakably clear."

The requirement that Congress affirmatively contemplate otherwise invalid state legislation is mandated by the policies underlying dormant Commerce Clause doctrine. It is not * * * merely a wooden formalism. The Commerce Clause was designed to "avoid the tendencies toward economic Balkanization that had plagued relations among the colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma*, 441 U.S. 322, 325 (1979). Unrepresented interests will often bear the brunt of regulations imposed by one State having a significant effect on persons or operations in other States.* * * On the other hand, when Congress acts, all segments of the country are represented and there is significantly less danger than one State would be in a position to exploit others. Furthermore, if a State is in such a position, the decision to allow it is a collective one. A rule requiring a clear expression of approval by Congress insures that there is, in fact, such a collective decision and reduces significantly the risk that unrepresented interests will be adversely affected by restraints on Congress.[15]

In sum, assuming this bill and its legislative history make unmistakably clear a Congressinal intent to authorize discrimination against interstate commerce in the harvesting of fisheries resources, we believe the bill probably would survive constitutional scrutiny under the Commerce Clause. Our research reveals no instance in which the Supreme Court has invalidated on Commerce Clause grounds state legislation designed to give effect to an explicit and unambiguous congressional judgment authorizing a limitation or prohibiition upon interstate commerce.[16]

B. The privileges and immunities clause

The Privileges and Immunities Clause, Art. IV, §2 provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Writing for a unanimous Court in *Paul* v. *Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869), Justice Field characterized the Privileges and Immunities Clause as a guarantee of equality for all citizens[17] within any state:

> It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it ensures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

More recently, Mr. Justice Marshall stressed the Privileges and Immunities Clause's "norm of comity" in *Austin* v. *New Hampshire*, 420 U.S. 656, 660-61 (1975): "The Clause * * * establishes a norm of comity without specifying the particular

subjects as to which citizens of one State coming within the jurisdiction of another are guaranteed equality of treatment." In interpreting the clause "the courts have manifested the disposition * * * not to attempt to define the words, but 'rather to leave their meaning to be determined in each case upon a view of the particular rights asserted or denied therein.'" *McCready* v. *Virginia*, 94 U.S. 391, 395 (1877).

In *Baldwin* v. *Montana Fish and Game Commission*, 436 U.S. 371, 383 (1978), the Supreme Court elaborated upon the distinction between those subjects as to which equality of treatment under the Clause was required, and those which were not, as follows:

> Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, purpose, or the development of a single Union of those States. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally.

The Baldwin Court upheld a Montana licensing statute that imposed substantially higher licensing fees on nonresidents than on residents, and that required nonresidents to purchase a "combination license" in order to be able to hunt elk. Justice Blackmun, writing for the Court, emphasized the recreational, non-commercial, nonfundamental character of the right at issue. "Equality in access to Montana elk," the Court declared, "is not basic to the maintenance or well being of the Union. Appellants do not—and cannot—contend that they are deprived of a means of a livelihood by the system, or of access to any part of the State to which they may seek to travel." [18]

Consistent with the Court's reasoning in *Baldwin*, States constitutionally may distinguish between residents and non-residents for the purposes of suffrage, qualifications for elective office, and provision of certain services and benefits.[19] On the other hand, the Privileges and immunities Clause has been interpreted to prevent a state from imposing unreasonable burdens upon nonresidents, for example, unequal laws respecting ownership and disposition of privately owned property within the state,[20] or limitations upon access to the state's judiciary.[21]

The Supreme Court has been particularly reluctant to approve state-created discriminations against nonresidents that impose significant burdens upon those persons' pursuit of a livelihood within the state. In *Ward* v. *Maryland*, 12 Wall. 418 (1871), the Supreme Court held unconstitutional a Maryland statute regulating the sale of goods in the City of Baltimore that discriminated against nonresidents of Maryland by requiring nonresident merchants to obtain licenses without requiring the same of certian similarly situated Maryland merchants; by requiring nonresidents to pay higher license fees than those Maryland residents who were required to secure licenses; and by prohibiting both resident and nonresident merchants from using nonresident salesmen, other than regular employees, to sell goods in Baltimore. In holding that the statute violated the Privileges and Immunities Clause, the Court observed that "the Clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into the other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation." Id. at 430.

In another, more recent case implicating the right of nonresidents to pursue their livelihood free of state-imposed discriminatory burdens, the Supreme Court held the so-called "Alaska Hire" statute violative of the Privileges and Immunities Clause.[22] That statute, enacted allegedly for the purpose of reducing unemployment in the State of Alaska, required that all oil and gas leases, easements or right-of-way permits issued by Alaska for oil or gas pipeline purposes contain a provision requiring the employment of qualified Alaska residents in preference to all nonresidents. The Court found that the state had failed to show that nonresidents were "a particular source of the evil at which the statute is aimed," [23] namely, the state's unemployment problem. Moreover, the Court was unable to find any substantial relationship between the state's unemployment problem and the statutory scheme which granted to all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the statute. "Even if a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly in not." [24]

The Hicklin Court also rejected the state's contention that because the oil and gas resources that were the subject of the Alaska Hire law were owned by the state, ownership was sufficient justification for the law's discrimination against nonresidents and took the law totally outside the scope of the Privileges and Immunities Clause. The Court rejected Alaska's reliance upon *McCready* v. *Virginia*, 94 U.S. 391

1877, which upheld a Virginia law prohibiting noncitizens of Virginia from planting oysters in the Virginia tidewaters:

> Although some courts, including the court below, have read *McCready* as creating an "exception" to the Privileges and Immunities Clause, we have just recently confirmed that "[i]n more recent years * * * the Court has recognized that the State's interest in regulating and controlling those things that they now claim to 'own' * * * is by no means absolute." [Quoting *Baldwin* v. *Montana Fish and Game Commission*, 436 U.S. at 385.][25]

The two cases most relevant to the analysis under the Privileges and Immunities Clause are *Toomer* v. *Witsell*, 334 U.S. 385 (1948), and *Mullaney* v. *Anderson*, 342 U.S. 415 (1952). In both cases, the Supreme Court held that state legislation which discriminated against nonresidents with respect to commercial fishing in offshore waters violated the Privileges and Immunities Clause. In *Toomer*, plaintiffs challenged a South Carolina statute that required nonresidents to pay a license fee of $2,500 for each shrimp boat working in the three-mile maritime belt off the coast of South Carolina, while imposing upon residents a fee of only $25.00 for the same privilege.[26] The Supreme Court held this "severe discrimination"[27] against noncitizens violated the Privileges and Immunities Clause. The Court declared:

> [The Clause] was designed to ensure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizens of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation . * * *
>
> In line with this underlying purpose, it was long ago decided that one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State.
>
> Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures.[28]

In analyzing the South Carolina law, the Court first found that the discrimination against nonresidents was so great that "its practical effect is virtually exclusionary."[29] The Court expressed some skepticism concerning South Carolina's justification for the statute, the conservation of shrimp. The Court noted, for example, that South Carolina imposed no limitation on the number of resident shrimp boats which may be licensed, and cited state reports which revealed South Carolina's concern for increasing the market for shrimp. More importantly, the Court found that there was no reasonable relationship between any particular danger presented by noncitizens of South Carolina, as a class, and the discriminatory provisions imposed upon them. There would be little question, the Court observed, as to the state's authority to restrict the shrimp harvest in general; to restrict the type of equipment used in fishing operations; to graduate license fees according to the size of boats; or to charge nonresidents a fee to compensate the state for the added enforcement burden they may impose or for the conservation expenditures otherwise paid by residents through local taxes. On the other hand, South Carolina could not adopt a remedy "so drastic as to be a near equivalent of total exclusion"[30] when there was no "close relation" between such an exclusion and a valid legislative purpose. Finally, the Court rejected the state's argument, based upon *McCready* v. *Virginia*, 94 U.S. 391 (1877), that wild fish and game are the common property of the state, as trustee for the benefit of its citizens only, and that the state may discriminate as it sees fit against persons lacking any beneficial interest in the trust. The Court expressed serious reservations with respect to extending *McCready* beyond its particular facts,[31] and quoted with approval Justice Holmes' statement that " '[w]ild birds are not in the possession of anyone; and possession is the beginning of ownership.' "[32]

The Court's decision in *Toomer* was expressly reaffirmed in *Mullaney* v. *Anderson*, 342 U.S. 415 (1952). In *Mullaney*, the territorial legislature of Alaska imposed a $5.00 licensing fee on resident commercial fishing in territorial waters, but a $50.00 fee upon nonresidents. The Court found that the fee did not fall within the principles discussed in *Toomer* that might make discrimination against nonresidents permissible under the Privileges and Immunities Clause.[33]

State laws implementing H.R. 6056 undoubtedly would be analyzed under the *Toomer-Mullaney* standard. A preference authorized by H.R. 6056 and implemented by state law might be approved by a court if such preference were based on something more than the mere fact of residency. When there are "valid independent reasons" for disparity of treatment among residents and nonresidents, and when the degree of discrimination bears a "close relation" to those reasons, the Privileges and Immunities Clause is not violated.[34] We understand that H.R. 6056 would authorize preference for residents only upon a finding by the state that application of equal treatment to residents and nonresidents in regard to fisheries harvesting would require implementing of harvesting limitations "so stringent as to render harvesting economically unfeasible." The rationale for discrimination between residents and nonresidents appears to be based upon both conservation and commercial considerations. It trends to suggest that economic protection of the state's residents as against nonresidents is the key consideration, however.

We certainly can make no defintive prediction at this time as to how a court might view this justification and its factual basis. From our preliminary review of the cases, we have serious questions about whether such a finding of "economic unfeasibility" would be a sufficient basis under the Privileges and Immunities Clause for such discrimination. Our research has disclosed several cases invalidating such discriminatory statutes in the face of proferred justifications of conservation and enforcement needs of the state.[35] Of course, as previously noted, the constitutionality of this legislation and of state implementing laws and regulations will depend in large part upon the legislative history of this bill and the state laws, including especially the Congressional and state legislative findings contained therein. We caution, however, that regardless of the contents of this legislation and its legislative history,[36] state legislation discriminating against nonresidents will be closely scrutinized by the courts under the Privileges and Immunities Clause. Those who would defend such legislation must be prepared to present persuasive reasons for such discrimination "beyond the mere fact that (those discriminated against) are citizens of other States," *Toomer* v. *Witsell*, 334 U.S. at 396, and must show that the particular discrimination bears a close relation to those reasons.[37]

C. Equal protection and due process clauses

It is clear that a state or federal law which infringes upon a class of persons' rights to employment in a major sector of the economy implicates potentially serious issues under the Due Process and Equal Protection components[38] of the Fifth and Fourteenth Amendments. See, e.g., *Truax* v. *Raich*, 239 U.S. 33, 41 (1915) ("it requires no argument to show that the right to work for a living in the common occupations in the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure"). In cases in which a class of persons is disadvantaged—but not absolutely barred—from a significant employment or business opportunity solely for reasons of nonresidency in a particular state, we believe a court more likely than not would choose to analyze the constitutional issues under the Privileges and Immunities Clause, rather than under the Equal Protection or Due Process Clauses.[39] It is possible, however, that if nonresidents were barred entirely from commercial fishing pursuant to state legislation or regulation promulgated under the aegis of H.R. 6056 that the court might consider the claims of such persons under the Due Process and Equal Protection Clauses.

For example, in *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410 (1948), the Supreme Court held that a California statute barring issuance of commercial fishing licenses to resident aliens was unconstitutional. The Court assumed for purposes of decision that the object of the statute was to conserve fish in the ocean waters off the coast of California and to protect California citizens from outside competition in the commercial fishing industry.[40] The State of California argued, first, that it was simply following federal legislation in the immigration and naturalization area which adopted classifications based in part upon nationality and other factors. The Court, however, found that a state has "no power to single out and ban its lawful alien inhabitants * * * from following a vocation simply because Congress has put some such groups in special classifications in exercise of its broad and wholly distinguishable powers over immigration and naturalization."[41] Second, the Court rejected California's argument that its "ownership" of fish within its boundaries entitled it to establish an exclusionary rule against aliens as a conservation measure:

> To whatever extent the fish in the three-mile belt off California may be "capable of ownership" by California, we think that "ownership" is inadequate to justify California in excluding any or all aliens who are lawful residents of the

State from making a living by fishing in the ocean off its shores while permitting all others to do so.[42]

More recently, in *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976), the Supreme Court held federal regulations which excluded all persons except American citizens (and natives of Samoa) from employment in most positions in the federal civil service to be unconstitutional. The Court began with the observation that depriving aliens of "employment in major sector of the economy is of sufficient significance to be characterized as a deprivation of an interest in liberty" protected by the Due Process Clause.[43] Based upon the Court's decisions in *Sugarman* v. *Dougall*, 413 U.S. 634 (1973) and In re *Griffiths*, 413 U.S. 717 (1973),[44] the Court observed that the discriminatory rule at issue would violate the Equal Protection Clause if adopted by a state. The Court went on to find that the Federal Government had failed to establish "an overriding national interest as justification" for a rule excluding noncitizens from such an important sector of employment.[45]

In sum, we believe there is some risk that a court may decide to review this bill and implementing state laws and regulations under the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments. Should it do so, it would be necessary—just as it is in the Privileges and Immunities Clause context—to be able to demonstrate an important state or national interest which would be directly furthered by a preference of privilege based on state residency.[46]

D. The supremacy clause

The Supremacy Clause of the Constitution, Art. VI, provides that the Constitution and the laws of the United States made in pursuance of it, as well as treaties made under the authority of the United States, shall be the supreme law of the land. Put simply federal law prevails over state law when there is a conflict between the two. In determining the validity of a state commercial regulation subjected to a Supremacy Clause challenge, "[t]the first inquiry is whether Congress, pursuant to its power to regulate commerce, U.S. Const., Art. 1, § 8, has prohibited state regulation of the particular aspects of commerce involved in [the] case. Where * * * the field which Congress is said to have pre-empted has been traditionally occupied by the States * * * 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' "[47] Even when federal laws do not exclude all state legislation in the same field, they nevertheless override state laws with which they conflict.[48]

In a case presenting the same type of discriminatory state restriction envisioned by this bill, the Supreme Court stated that case involved federal legislation arguably supreseding state law in a "field which * * * has been traditionally occupied by the States." *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265, 272, (1977). In *Douglas* the Court considered a Virginia statute prohibiting federally licensed vessels owned by nonresidents of Virginia from fishing in the Chesapeake Bay. The statute was challenged on Supremacy Clause grounds, among others. The Court held that a federal statute, the Enrollment and Licensing Act, under which the ships obtained their federal licenses, pre-empted the state statute and therefore the latter could not be givern effect. Id. at 282.[49]

The third major operational effect of this bill specifically states an intent that federal law not pre-empt state regulation of commercial fishing in the state's internal waters. Such deference to state law is within Congress' power to grant. Presumably, therefore, the states would be empowered to regulate in this area free from the restrictions contained in other federal laws, except for one exemption.[50]

The bill exempts from this deference to state laws international treaties as well as section 306 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1856. Section 306(b) of the Act provides that under certain circumstances, and after following specified procedures, the Secretary of Commerce may undertake regulatory authority over a fishery within a state's territorial waters, ousting the state from such regulatory authority. The Department has some concern that this bill would complicate the determination of whether state law or federal law governs under a given set of circumstances, particularly in situations of "indirect conflict" between state and federal regulations. Due to time constraints, we have not had the opportunity to fully investigate and consider the interrelationship of the bill with this or other provisions of federal law regulating commercial fishing in offshore waters.

This concludes may prepared remarks, Mr. Chairman. Again, the Department appreciates this opportunity to assist the Subcommittee in its consideration of this legislation. I would be glad to answer any questions you or Members of your Subcommittee might have.

FOOTNOTES

[1] The term "fisheries resources" is defined in the bill to mean "eel, shad, herring, catfish, bullheads, white perch, striped bass, black sea bass, weak fish, flounder, and edible species of mollusks, and crustaceans."

[2] We are informed that in most cases this baseline is the shoreline. In the case of "judical bays," such as the Chesapeake Bay and San Francisco Bay, however, the baseline is drawn across the mouth of the bay so as to make such waters "internal waters" for purposes of this bill.

[3] *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 35 (1980) (cases cited).

[4] Id. at 36 (cases cited).

[5] *Hughes* v. *Oklahoma*, 441 U.S. 332, 336, (1979).

[6] But cf. *Tangier Sound Watermen's Ass'n.* v. *Douglas*, 541 F. Supp. 1287, 1301-1306 (E.D. Va. 1982) (dictum that dormant Commerce Clause is not violated by Virginia law denying nonresidents the right to commercially harvest blue crabs in Virginia's waters; court holds, however, that the law violates privileges and immunities clause.

[7] *Hicklin* v. *Orbeck*, 437 U.S. 518, 533 (1978) (cases cited).

[8] *New England Power Co.* v. *New Hampshire*, 102 S.Ct. 1096, 1100 (1982) (cases cited).

[9] 441 U.S. 322 (1979).

[10] Id. at 338-39.

[11] Id. at 339. See also *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1 (1928) (Lousiana statute forbidding interstate transportation of in-State shrimp unless the heads and shells had been removed violated dormant commerce clause.).

[12] There is litle doubt that commercial harvesting of fish in State waters, and the movement of vessels from one State to another in search of fish, are activities which affect interstate commerce and are subject therefore to congressional regulation. See *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265, 281-82 (1977) (cases cited).

[13] *South-Central Timber Development, Inc.*, v. *Wunnicke*, 52 U.S.L.W. 4631, 4632 (U.S. May 22, 1984) (cases cited).

[14] 103 S.Ct. 1042, 1047 (1983).

[15] 130 S.Ct. at 1047. Justices Blackmun and White, concurring in part and dissenting in part, observed, "Congress unquestionably has the power to authorize State or local discrimination against interstate commerce that otherwise would violate the dormant aspect of the commerce clause." 103 S.Ct. at 1048-49.

[16] *South-Central Timber Development, Inc.* v. *Wunnicke*, 52 U.S.L.W. 4631, 4633 (U.S. May 22, 1984).

[17] See generally *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408, 423-24 (1946) (Court notes that in each case wherein Congress authorized State action previously held invalid under the dormant commerce clause, Court has subsequently given effect to congressional judgment contradicting the Court's own previous holding).

[18] The privileges and immunities clause has been interpreted to protect citizens as individuals, but not corporations or other artificial legal entities. See, e.g., *Western and Southern Life Insurance Co.* v. *California Board of Equalization*, 451 U.S. 648, 656 (1981); *Hemphill* v. *Orloff*, 277 U.S. 537, 548-50 (1928); *Asbury Hospital* v. *Cass County*, 326 U.S. 207, 210-11 (1945); *Paul* v. *Virginia*, 75 U.S. (8 Wall.) 168, 177 (1869).

[19] *Baldwin* v. *Montana Fish and Game Commission*, 436 U.S. at 388.

[20] See id. at 383.

[21] See *Blake* v. *McClung*, 172 U.S. 239 (1898).

[22] *Canadian Northern R. Co.* v. *Eggen*, 252 U.S. 553 (1920).

[23] *Hicklin* v. *Orbeck*, 437 U.S. 518 (1978).

[24] Id. at 526.

[25] Id. at 528.

[26] Id. at 528-29.

[27] The Court provided the following background concerning the statute in question:

"The fishery which South Carolina attempts to regulate by statut[e] in question is part of a larger shrimp fishery extending from North Carolina to Florida. Most of the shrimp in this area are of a migratory type, swimming south in the late summer and fall and returning northward in the spring. Since there is no federal regulation of the fishery, the four States most intimately concerned have gone their separate ways in devising conservation and other regulatory measures. While action by the States has followed somewhat parallel lines, efforts to secure uniformity throughout the fishery have by and large been fruitless. Because of the integral nature of the fishery, many commercial shrimpers, including the appellants, like to start trawling off the Carolinas in the summer and then follow the shrimp down the coast to Florida. Each States has been desirous of securing for its residents the opportunity to shrimp in this way, but some have apparently been more concerned with channelling to their own residents the business derived from local waters. Restrictions on nonresident fishing in the marginal sea, and even prohibitions against it, have now invited retaliation to the point that the fishery is effectively partitioned at the State lines; bilateral bargaining on an official level has come to be the only method whereby any one of the States can obtain for its citizens the right to shrimp and waters adjacent to the other States." *Toomer* v. *Witsell*, 334 U.S. at 387-88.

[28] 334 U.S. at 385.

[29] Id, at 395-96 (emphasis added).

[30] Id. at 396-97.

[31] Id. at 398.

[32] The Court noted, for example, that the rule in *McCready* may not apply to "free-swimming fish." 334 U.S. at 402 (citing *Manchester* v. *Massachusetts*, 139 U.S. 240, 265 (1891)).

[33] 334 U.S. at 401 (quoting *Missouri* v. *Holland*, 252 U.S. 416, 434 (1920)).

[33] *Mullaney* v. *Anderson*, 342 U.S. at 417 (citing *Toomer*, 344 U.S. at 398-99).

[34] *Toomer* v. *Witsell* 334 U.S. at 396.

[35] *Mullaney* v. *Anderson*, 342 U.S. 415 (1952) (Territory of Alaska statute charging residents $5 and nonresidents $50 for a commercial fishing license); *Toomer* v. *Witsell*, 334 U.S. 385 (1948) (South Carolina statute that virtually excluded nonresidents from commercial shrimping); *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410 (1948) (California statute banning issuance of commercial fishing license to any person ineligible for U.S. citizenship). See also *Tangier Sound Watermen's Ass'n* v. *Douglas*, 541 F. Supp. 1287 (E. D. Va. 1982).

[36] Unlike the case law concerning the dormant commerce clause, the Supreme Court has not, to our knowledge, determined whether Congress may, through affirmative legislation, authorize a state to enact legislation which in the absence of congressional authorization would violate the privileges and immunities clause. See generally *White* v. *Massachusetts Council of Construction Employers*, 103 S.Ct. 1042, n.1 (1983) (Blackmun & White JJ. concurring in part and dissenting in part). At least one leading constitutional scholar as stated:

[It cannot be assumed] that Congress has limitless power to authorize State discrimination against out-of-State citizens. The privileges and immunities clause * * * confers a personal right against State action unjustifiably discriminating against out-of-State citizens whether or not such discrimination is congressionally authorized. L. Tribe, American Constitutional Law §§ 6-31, at 403 n.18 (1978) (original emphasis).

[37] We recognize that some earlier cases have held that the States have virtually unlimited authority to grant preferences to their citizens concerning fishing in their waters. See, e.g., *McCready* v. *Virginia*, 94 U.S. 391 (1877); *Corfield* v. *Coryell*, 6 Fed. Cas. 546 (No. 3230) (C.C.E.D. Pa. 1823) (Bushrod Washington, J. on circuit) (noncitizens have no right to gather shellfish in New Jersey waters). We believe the property right principles underlying these cases have been considerably diluted by subsequently Supreme Court rulings analyzing of State discriminations against nonresidents with respect to fish and game resources. See, e.g., *Hughes* v. *Oklahoma*, 441 U.S. 322 (1979); *Hicklin* v. *Orbeck*, 437 U.S. 518 (1978); *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265, 284 (1977); *Toomer* v. *Witsell*, 334 U.S. 385 (1948); see also *Tangier Sound Watermen's Ass'n* v. *Douglas*, 541 F. Supp. 1287 (E. D. Va. 1982).

To the extent it has continuing vitality, the ownership theory appears to be confined to discriminatory provisions involving inland hunting and fishing. See *Baldwin* v. *Montana Fish and Game Commission*, 436 U.S. 371 (1978).

[38] See generally *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976).

[39] See e.g., *Hicklin* v. *Orbeck*, 437 U.S. 518, 534 n.19 (1978); *Toomer* v. *Witzell*, 334 U.S. 385, 403 (1948); *Mullaney* v. *Anderson*, 342 U.S. 415, 416 (1952) (in each case equal protection clause issues were raised but not addressed by Court, which analyzed discrimination issues instead under the privileges and immunities clause).

[40] *Takahashi* v. *Fish and Game Commission*, 334 U.S. at 418.

[41] Id. at 420.

[42] Id. at 421.

[43] *Hampton* v. *Mon Sun Wong*, 426 U.S. at 102.

[44] *Sugarman* held that a New York law which provided that only U.S. citizens could hold permanent positions in the competitive class of the State's civil service violated the equal protection clause. In *Griffiths*, the Court, on the same day, held that Connecticut's exclusion of aliens from the practice of law was unconstitutional under the same clause.

[45] 426 U.S. at 103, 116.

[46] Of course, if analyzed under the equal protection and due process clauses, there would not be any issue, as there might be under privilege and immunities clause analysis (see n.36, supra), as to whether Congress could authorize the States to discriminate in a manner in which they could not if acting solely under their own authority.

[47] *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977) (citations omitted).

[48] Id. at 525-26.

[49] See also *Tangier Sound Waterman's Ass'n* v. *Douglas*, 541 F. Supp. 1287, 1306 (E.D.Va. 1982) (citing *Douglas* to strike down a Virginia statute denying to nonresidents the right to harvest blue crabs in the Virginia waters of the Chesapeake Bay).

[50] Considerable confusion, however, may still exist in practical terms in some areas. For example, it is unclear how the authority to discriminate granted to the States by the bill would operate given the national standards for fishery management and conservation currently set fourth in Federal statutory law. Specifically, § 301(a)(4) of the Magnuson Act, 16 U.S.C. § 1851(a)(4), directs that conservation management measures not discriminate between residents of different States.

Mr. BREAUX. With that we will excuse Mr. Tarr and invite up Mr. Harry Simms and Mr. Greg Parks. Mr. Simms is president of the Maryland Watermen's Association and Mr. Parks is president of the Tangier Watermen's Association. Gentleman, we are glad you are here and want to hear what you have to say.

STATEMENT OF LARRY SIMMS, PRESIDENT, MARYLAND WATERMEN'S ASSOCIATION AND GREG PARKS, PRESIDENT, TANGIER WATERMEN'S ASSOCIATION

Mr. SIMMS. Thank you, Mr. Chairman.

Mr. BREAUX. I spent a great deal of time in Maryland yesterday checking the dove population. It is less since I left, but not by much.

Gentleman, Mr. Simms, do you want to go ahead and start or Mr. Parks, either one.

STATEMENT OF LARRY SIMMS

Mr. SIMMS. I am Larry Simms, president, Maryland Watermen's Association. We represent 17 county organizations that border the Maryland portion of the Chesapeake Bay. I have a written statement. There is a correction I would like to make where it says "Supreme Court," change to the Federal Court of Richmond. I am not going to read my statement, but I would like to make a few comments.

The one reason we oppose the bill as it is written is that the Chesapeake Bay is a body of water that two States are bordering on. It is kind of unique in that situation, and it also presents a problem to watermen when there is an imaginary line drawn across a body of water and you can work one side of that. You can't work the other side.

The recent court decision that allowed waterman to cross State boundary lines has created a problem for the Virginia watermen. We recognize that because we had a similar problem in the State of Maryland in 1970. We used to have county boundary lines. You were restricted to working in your counties. You had imaginary lines out in the water that you couldn't cross and the counties that had the most product, for whatever reason it might have been, through their conservation methods or through natural habitat or whatever, those counties wanted to keep the county boundary lines.

And the counties that at that particular time were having a problem with their resources due to natural problems, wanted the county boundary lines struck down. Eventually, the courts took away the county boundary lines. This created a real big problem immediately and we found that the watermen coming into the counties that had abundance were upsetting the watermen that lived in the counties.

They thought this was one of the most disasterous things that could happen. We found a couple years later that the counties that were affected by it at first benefited by it later on because a natural disaster came along and made that county unproductive and those residents had to travel to another part of the State in order to make a living off the water.

In the times we are having now, and Maryland has seen it more so than Virginia because the population increase is happening more in Maryland than it is Virginia. We are also at the head waters of the bay. The problems that man is creating for the bay are creating bigger problems for the watermen. We have places that now don't reproduce. We have natural disasters such as pollution or spills or things of that nature that man creates that causes our watermen who used to stay right at home and work right in their own backyard, now to travel throughout the State in order to make a living year around.

They are also finding that they need, with the economics of things today, as far as cost of equipment and boats and gear, to extend their seasons. They no longer can sit in one area and wait for the species that swim to swim to them and catch them for 2 or 3 weeks or 1 month and make enough money for them to survive for the other 6 months or whatever.

So we are finding it increasingly harder and harder to make a living due to manmade problems. With the State boundary lines being struck and the reason for that was the people who lived right on the State boundary lines such as Somerset County, Smith Island, the Virginia line ran right to their back door.

So there is an imaginary line that, when they left home they had to go up the bay to work and they couldn't go down the bay which meant a hardship on them. What had happened in the past was that the marine police in Virginia really didn't enforce the line that strictly. So the Maryland watermen were allowed to go a mile or two into Virginia, which made it easier for them to work.

When Virginia tightened down on that law and enforced laws they had on the books, it created a hardship that the Maryland watermen weren't used to in that area. That is the reason for the court case and that is what started this whole thing going. It leaves us with lots of things that happen.

In Maryland we are faced with a problem of not Virginia watermen coming into the State, but people from Pennsylvania coming into Maryland and setting up a watermen's business, fishery, or whatever and we are faced with Delaware coming into Maryland. It is not a problem that Virginia is just faced with. But the problem we have with passing a bill such as this, we feel there are agencies that can handle this problem, such as the Chesapeake Bay Commission, which is a fairly new agency.

We feel they are capable of handling this problem. What we really need to do is work closer together, Virginia and Maryland, and solve our problem of influx of nonwatermen coming in and using the bay as a hobby and taking their species out and still selling them, making a sideline. We need to tackle that problem more than we do preventing each other from going State to State.

The problem I see, and I can sympathize very much with Virginia watermen because they have seen crabbers coming into their area they haven't seen before. Their methods are a little different. That always causes conflicts. I have found in the past when you let watermen alone they will work these situations out.

When they get to know one another they get to work together and recognize each other's ability. But when we let the Government interfere it keeps the conflict going. The biggest conflict I think we have had is the newspapers building a big issue out of it and stirring it up. If they stayed out of it we might have got it settled before now. So I think it is imperative that we let the two States work together and not pass a broad bill that is going to encompass everything and maybe hamper us in the future.

I caution Virginia watermen, even though that now they are being the ones put upon, to not think they are going to be immune from some manmade disaster or some natural disaster. There is going to be a time that something is going to happen that they are going to need to go somewhere else in order to stay in the business.

That would mean for them to come to Maryland because of their boats and type of equipment. Their equipment is for the Chesapeake Bay and they are not really that good to use out in the oceans or other bodies of water. So I think the time has come that we need to get the two States together, manage the Chesapeake Bay as one entity instead of two separate entities and not have that imaginary line. The species that swim, such as the blue crab, which this is all about, they hatch in Virginia, swim into Maryland waters and go all the way to the head of the bay. What our watermen are finding out, and not all of our watermen, but a few that work in the bay and are equipped to do it, that they need to stretch their season longer by going down the bay, meeting the crabs, following them up the bay and then going back with them.

I think eventually with Virginia watermen, there will be a certain segment that will do the same; come into Maryland waters and go back.

Mr. BREAUX. Mr. Simms, if it is all right now, unless you have something else, I want to get Mr. Parks on the record and then we can ask some questions.

Mr. Parks?

[The statement of Mr. Simms follows:]

STATEMENT OF LARRY SIMMS, PRESIDENT, MARYLAND WATERMEN'S ASSOCIATION, INC.

The Maryland Watermen's Association is the trade association for the commercial watermen of the State and represents its members who work and reside in the Counties that border on Chesapeake Bay, and on their behalf, the Maryland Watermen's Association opposes H.R. 6056—Coastal States Marine Resources Conservation Act of 1984.

Maryland watermen began the process of eliminating the State boundaries for the crab harvest. The main reason for this was the fact that Somerset County, Maryland, borders the Virginia state line and these Marylanders were not able to harvest crabs in their own back yard.

The Supreme Court ruling was in favor of the Maryland watermen which gave them the privilege to harvest crabs in Virginia waters with a non-resident license. The Supreme Court ruling should stand and this H.R. appears to be not only unconstitutional but is serving only to prolong a situation which has already been settled by the highest Court in the land.

H.R. 6056 is a "knee jerk" reaction to that Supreme Court decision and will only complicate matters for the watermen of both States. There are agencies at the present time which were created for working out solutions to these types of problems, i.e., the Chesapeake Bay Commission and the Natural Resources Departments of both States. It is the feeling of the Maryland Watermen's Association that these agencies be allowed to do the work for which they were designed.

The point should be brought out that this is not the first time problems have arisen over boundary lines. Within the State of Maryland, boundary lines were lifted and there was much negative thinking which surfaced immediately following the action as will happen in any situation when there is a drastic change from past procedures. But, we have found that time takes care of many things if left alone for the people involved to work out solutions. As it turned out, the very people who were so dismayed by the County boundary lines being lifted were the very people who benefited the most after a period of time. A fishery was all but wiped out in one County and in order to make a living the commercial watermen of that area had to move into another County in order to work. If the boundary lines had still been intact, their ability to move around would have been badly hampered. In these times of man-made problems, pollution problems and natural disasters, combined with the added cost of living and the added cost of harvesting (fuel, equipment and gear), watermen need the flexibility to move around in order to overcome these obstacles.

No one area will be left untouched by the increase in population and the pollution that follows. Being able to move around whether it be counties within one state or the Bay within two states will be absolutely necessary.

Virginia watermen will have as much or more to benefit from the lifting of the State boundary lines as do the Maryland watermen over the long term, and Maryland will welcome the Virginia watermen at such time.

The Maryland Watermen's Association would recommend that an unfavorable report be given to H.R. 6056 as it is going to do more damage to the State's ability to work together. We would further recommend this matter be turned over to the agencies that were set up to handle disputes and situations of this nature.

STATEMENT OF GREG PARKS

Mr. PARKS. Good morning, Mr. Chairman. I am president of Tangier Watermen's Association. I want to thank you on behalf of the Virginia watermen for the opportunity to speak before the committee in support of Congressman Bateman's bill. Virginia watermen are now faced with difficult choices.

Passage of the Bateman bill would make these choices much easier, since Maryland watermen have started fishing in Virginia, Chesapeake Bay. It has become necessary for the State to begin reviewing ways in which to reduce take of blue crabs. Unfortunately, without Federal legislation these catch restrictions will apply to Virginia residents as well as nonresidents who have made the regulations necessary.

This certainly makes for an unfair situation. Virginia watermen have conserved the blue crab resource on which we rely for a good part of our livelihood so that we and our children will have means to support ourselves in the future. We did not conserve the resource so that crabbers from another State could come into Virginia waters and deprive us of our livelihood. We feel that the Bateman bill will supply the State with a vital tool with which to conserve our important and declining Chesapeake Bay fisheries resources without harming the economy, security of the watermen who have used these resources for generations.

That is about all I have to say on it.

Mr. BREAUX. OK, you gentleman, the crabs at some point during the year are on both sides of the Maryland/Virginia line. I take it in Maryland there are some Virginia crabmen that fish in Maryland waters, what, during the summertime or later on during the year?

Mr. PARKS. Yes, sir. At the time this was passed for the Marylanders to come in Virginia, they said that it was unconstitutional. But it is unconstitutional right now for the Virginia watermen.

Mr. BREAUX. Virginia watermen could go up into the Maryland waters?

Mr. PARKS. No, sir, we cannot in the wintertime. And it is not right.

Mr. BREAUX. That is not because of a loss. It is because there are no crabs, isn't it?

Mr. PARKS. No; there are crabs and I can prove it because I am a waterman.

Mr. BREAUX. Is there a law that says Virginia crabmen cannot go into Maryland watermen in the——

Mr. PARKS. Right. It is a law in Maryland because the Marylanders can't do it either.

Mr. BREAUX. It is closed to everybody?

Mr. PARKS. Right.

Mr. BREAUX. Closed to Virginia as well as Maryland or Louisiana crabmen who want to drive up and go crabbing in the area during the winter' they can't do it either?

Mr. PARKS. Right. Why is it they can come into our State and do it and not do it in their own State? Isn't that unconstitutional?

Mr. BREAUX. Mr. Simms, from your perspective you oppose the legislation. What are the reasons basically?

Mr. SIMMS. Our reason basically, we think that the Chesapeake Bay Commission should be the one working out the problem. I think they have already addressed the problem of some legislation they are going to look at now.

Mr. BREAUX. When you fish on the Virginia side, do you have to buy a Virginia State license?

Mr. SIMMS. Yes, you have to buy a nonresident license. Both States have the same type thing.

Mr. BREAUX. Nonresident is more expensive?

Mr. SIMMS. What you have to do is buy a nonresident license, that allows you then to buy whatever license is in the State.

Mr. BREAUX. How do you sell them and process them, bring them back into Maryland or sell them in Virginia?

Mr. SIMMS. Both ways.

Mr. BREAUX. Mr. Bateman, questions?

Mr. BATEMAN. Question? Yes. Mr. Simms, let me first say that I certainly don't want this bill and this bill has no design or objective from preventing Virginia and Maryland and the Chesapeake Bay Commission, Potomac River Commission or any other bistate body or organization, from cooperating to solve their mutual problems with reference to marine resources of either State.

But isn't it the case that the Chesapeake Bay Commission cannot by any action it would take limit or restrict an individual Maryland crabber from coming into the waters of Virginia if he buys a license? And so there is no mechanism by which you can control or avoid depletion of the resource, unless you are going to continue more and more restrictions on what anybody can catch, how they can try to catch it, where they can catch it, the size and quantity they can try to catch.

If I thought there was something the Chesapeake Bay Commission could do to solve this problem, both now and more especially as it may arise in the future, I would agree the bill would be unnecessary. But if the State of Virginia can't exclude a Maryland crabber, if the State of Maryland can't prevent its crabbers from getting a license in Virginia, and pursuing the resource, you are just adding to the number of people who are seeking the same limited amount of resource.

How bad is it to a Maryland crabber that at a point when, due to Maryland crabbers in Virginia water, no one, Marylander or Virginian, can continue to make a livelihood? How much has the Maryland crabber been damaged by saying under these circumstances you are going to have to stay in Maryland waters?

Mr. SIMMS. I understand what you are saying. What we are promoting, I guess, is the fact that maybe the Chesapeake Bay Commission is the tool in which to get the two States to pass laws that will make us work better together and conserve the species as a whole. Because you can protect it all you want to in Virginia, but

it is going to swim to Maryland. If we don't do anything in Maryland to protect it, and the same with the striped bass, Maryland can protect it all it wants, but if it swims to North Carolina and they don't protect it, then you haven't done anything.

As far as the bay itself, I think what we need to do is treat it as one, not two separate bodies of water. I think maybe this bill may be what you need. I just think that it is a little bit too quick. And I think the watermen need to get together with the legislators and work something out.

And maybe that is the best answer. I don't know. I just think that at this time it is a little premature.

Mr. BATEMAN. Not to extend this unduly, but I hope you are aware that there is nothing in this bill which restricts or discourages the Chesapeake Bay Commission or regulatory agencies of either State from working cooperatively to assure that the marine resources of the Chesapeake Bay are not depleted. There is nothing in here which prevents that happening.

It ought to happen. Certainly, you will find me cooperative, supportive of their doing. Second, there is nothing in this bill that says a Maryland crabber, the day it became effective, could no longer crab in Virginia waters. They would be restricted only and in no ways at all until such time as the pressure from increased numbers of crabbers made it impossible for the Marylander or the Virginian to continue earning a livelihood.

At that point isn't it rational and logical to limit or to restrict the number who can particpate in catching the resource so that those who remain able to do so can continue to make a living and without the resource being depleted?

Mr. SIMMS. Yes, I agree, but only to the extent that any limit should be total bay-wide and not separated between Maryland or Virginia. Next year we might have an influx of Virginia crabs in Maryland.

The crabs might decide to all come to Maryland. We might have the same problem Virginia is having. What I am saying is, what we need to do is manage it as one entity and not have a bill that says that Virginia can restrict Maryland or Maryland can restrict Virginia from flowing back and forth so that you have the two States working together managing that fishery and saying OK, this is how much we can take.

When it gets to the point where the catch is down low, you cannot work away from home. You can't afford to work away from home, the economies limit itself. The only reason Maryland watermen happen to be going to Virginia right now is there is an abundance of crabs at this time of year and none in the other section. So they go with it.

If the situation were reversed, the whole situation would reverse. So what I am saying is, if you pass a law, then you are going to have the problem of people, either Maryland or Virginia, trying to force that State into conserving it by keeping people out maybe before it is time to keep them out. I don't think keeping them out is helping the problem because the crab swims back and forth and doesn't see that imaginery line.

What we need to do is manage the bay as a two-State entity. Maybe your bill would work if you included other States coming

into the Chesapeake Bay system, but when you are talking about Maryland and Virginia you are talking about the same body of water, the same people almost, and you are talking about the same crab.

Mr. BATEMAN. Mr. Chairman, I have other questions, but I know time is short. If I may, could we have the record remain open for purposes of later questions that might be submitted?

Mr. BREAUX. Sure. Is there any difference in the methodology or techniques that the Maryland crabbers use as opposed to the Virginia crabbers when you are fishing for crabs? Are the techniques pretty much the same?

Mr. SIMMS. Well, Mr. Parks spoke of the one situation. In Maryland we are not allowed to dredge for crabs in the wintertime. We are not allowed to even crab in the winter or dredge for crabs. The only way we can dredge for crabs is go into Virginia and do it.

Mr. BREAUX. You are dredging crabs in the Virginia waters, Mr. Parks?

Mr. PARKS. Yes, sir.

Mr. BREAUX. So when you are operating in the Virginia waters, the Virginia crabmen and Maryland crabmen pretty much use the same type boats and same type equipment.

Mr. PARKS. Yes, sir.

Mr. SIMMS. Yes, if Virginians comes to Maryland they have to abide by Maryland laws. If we go to Virginia we have to abide by their laws.

Mr. BREAUX. While you are fishing in the Virginia waters the boats are pretty much the same size and equipment and dredges are pretty much the same, and everything is pretty much the same as far as the methods you use?

Mr. SIMMS. Basically.

Mr. BREAUX. Mr. Dyson?

Mr. DYSON. I think what you are saying there is that no one has any particular advantage in that they have any kind of equipment that would be more inducive to, say, a Marylander over a Virginian wherever they apply their trade in the Chesapeake Bay.

Mr. SIMMS. Wherever they go they have to abide by that State's laws and use that equipment.

Mr. DYSON. Regarding the comments my colleague from the lower eastern shore of Virginia was making relative to the Chesapeake Bay Commission, you know, they have not been in operation that long. They are just basically getting their feet on the ground.

I served in the State legislature in Maryland for a number of years, and most of the members of the Bay Commission are State legislators from each State. Once they make those decisions they have to go back to their individual legislatures to in fact pass a law.

The commission itself can't change the statutes relative to the two State's water resources, but I think that again it is evenly decided. The States seem to be getting off the ground. They seem to be doing a good job with the whole cleanup of the Chesapeake Bay.

I think, and I think Larry Simns agrees, that if this issue needs to be resolved, and I say if, this would probably be the best body to do that. Mr. Simns also makes a valid point that the environmen-

tal changes in the future may mean that someday we will be on the other side of where we are today.

We may be faced with the Virginians coming up into Somerset, Dorechester, Queen Anne's County and those places, harvesting our fishery.

Mr. BREAUX. Maybe, Congressman Dyson, you will want to put something in the bill to regulate that.

Mr. DYSON. I just don't think this is the wisest way to go. I thank both gentlemen, though, for their testimony this morning. I think it was very good.

Mr. BATEMAN. Mr. Chairman, this is not the time to debate the bill. But let me comment with reference to a line of questions that you asked. My understanding is that during this early lawful Virginia crab season the Maryland boats are historically larger than the Virginia crabbers' boats. They have larger crews and they come into Virginia waters, and I guess because of the fact they have a longer distance to travel. And for whatever combination of economic and other reasons, they crab 24 hours a day in shifts with members of the crew staying in motels in order to get some sleep and get back on their boats and continue to crab.

Mr. DYSON. Probably Virginia motels.

Mr. BATEMAN. Well, you know I will take whatever consequences come from Virginia motel operators. But that certainly has generated a pressure on a limited resource, limited most especially during that early Virginia crab season, which has been something authorized under Virginia law for I don't know how many years, and authorized and going forward in the way it has been handled without depletion of the resource.

But that resource most especially in the early part of the year is going to be a resource that is going to be depleted unless you put regulations on that early crab season so stringent that the Marylander can no longer make a living from it, nor the Virginian. Insofar as environmental or natural disasters which may befall anyone in any region of the Chesapeake Bay, I hope to gosh none ever occurs.

But I would point out that under this bill, what is good for Virginia is equally good for Maryland. If the same consequences are to ensure and the livelihood of watermen, Virginia or Maryland or wiped out by Virginians fishing or crabbing in Maryland waters, Maryland would then, but only then, have the authority to exclude them.

I think that is a very rational and appropriate and equitable way to try and deal with the problem.

Mr. BREAUX. Mr. Parks, Mr. Simms, we thank you very much for being with us. I think you have been very helpful in your statements and information that you have given us and we appreciate your being here.

Mr. BREAUX. I would like to excuse these gentlemen and welcome up now Mr. Bruce Gilmore, Director of Intergovernmental Relations for the Maryland Department of Natural Resources; Dr. Herbert M. Austin, Department Head, Virginia Institute of Marine Science; and also Mr. Bill Pruitt, Commissioner of Virginia Marine Resources.

Gentleman, we welcome you and are pleased to hear your testimony today.

Mr. DYSON. Mr. Chairman, I would like you to note how frugal we are in Maryland. We have exactly one bureaucrat from Maryland and, five from Virginia. We also have a balanced budget in Maryland.

Mr. BREAUX. All right, Mr. Gilmore, do you want to start off?

STATEMENT OF BRUCE GILMORE, DIRECTOR OF INTERGOVERNMENTAL RELATIONS FOR THE MARYLAND DEPARTMENT OF NATURAL RESOURCES; HERBERT M. AUSTIN, DEPARTMENT HEAD/ASSISTANT PROFESSOR OF FISHERIES, VIRGINIA INSTITUTE OF MARINE SCIENCE, ACCOMPANIED BY BILL PRUITT AND JACK G. TRAVELSTEAD

STATEMENT OF BRUCE GILMORE

Mr. GILMORE. Thank you. I am Bruce Gilmore, Director of Intergovernmental Relations for the Maryland Department of Natural Resources, here on behalf of the Department in the place of Dr. George Krantz, our Director of Fisheries and our Tidewater Administration in the department.

I had a statement submitted on behalf of Dr. Krantz. I would request that it be made part of the record and I will endeavor to very quickly review that statement and address some of the points that have been raised in the hearing thus far.

First, in Mr. Tarr's thorough discussion of the constitutional reference there is reference to the *Tangier Sound* case, a Federal district court case in Richmond which was brought by some Maryland watermen against the Virginia Department with respect to the crab statute. There is a quote in that decision which I would like to use as sort of a departure point for my own testimony.

The court in that decision, which struck down that statute as violative of the privileges and immunities clause, said a crabber, whether from Maryland or Virginia, must be free to engage in his livelihood of pursuing his peripatetic query subject only to reasonable nondiscriminatory rules similar to those Virginia imposes on its own citizenry. I think that that is essentually the heart of the discussion day.

It is our belief that the way to go about addressing the problems of a possibly depleting resource with respect to the total bay fishery resources is for the two States to work together. In my statement we have submitted we have discussed the institutions that exist to undertake that effort.

One of those has been addressed. All of them has been addressed today. The Potomac River Commission is a bi-State commission. There are representatives from both Maryland and Virginia on it. It can establish rules and regulations which can be enforced by both States and the State legislatures can change those rules and regulations. In the Potomac River the fishermen, both Maryland and Virginia, are governed by those rules and regulations.

With respect to rock fish, for instance, there is approximately a 56-percent reduction, if I am correct, of rock fishing effort in force in the Potomac River. It has to be adhered to by both Maryland and Virginia fishermen. Also discussed today is the Chesapeake

Bay Commission. In my testimony I describe the makeup of that commission.

It is composed of—it was created in 1980 by the general assemblies of both States. It is composed of 14 members, 7 each from Maryland and Virginia. Ten of those members are representatives from the legislatures of those two States, five each. It is one of the things the Commission is undertaking at the present time, a review of the proposed Virginia crabbing regulations.

It is interesting to note that this evening we will begin discussion down in eastern Maryland of those crab regulations. Those regulations are being proposed by Virginia. I am sure my colleagues from Virginia can address those regulations if the committee so desires.

Essentially, those regulations would effect every waterman, both Maryland and Virginia watermen. We have had the opportunity to review those regulations and our only point is that they are—that they have a basis in conservation. That there is some scientific basis for their purpose, where they restrict fishing or restrict bushel catches or whatever they do, that they apply evenly and have a basis in management for their existence.

Essentially, beyond those tests we cannot quarrel based upon the *Tangier Sound* decision which is the decision that controls in the Bay area at this time, whether those regulations, how they go into place. Finally, I would like to point out that the Chesapeake Bay Commission, as a result of the *Tangier Sound* decision proposed three pieces of legislation to address the decision.

First, legislation established a nonresident fishing surcharge by both States. Essentially, that was basically in the amount of $350 annually that a nonresident fisherman would have to pay once he already obtained the fishing license of either State. The second bill was a bill to provide that both States, marine and police, could cross the State line, an imaginary line, a very real State line that crosses the bay that Larry Simms spoke of, that both States marine police can cross that line to enforce their respective State fishing laws.

The third bill, was to provide for mutual suspension of licenses for failure of watermen to appear in court in response to a summons or citation issued by the other State. Both pieces of legislation were passed. In Maryland they were passed as part of our overall review and rewriting of our fishery license law and are also in the Virginia general assembly, passed, also. That, essentially, is a review of our testimony and I would be happy to answer questions the members may have.

[The statement of Mr. Krantz follows:]

STATEMENT OF GEORGE E. KRANTZ, DIRECTOR OF FISHERIES, TIDEWATER ADMINISTRATION, MARYLAND DEPARTMENT OF NATURAL RESOURCES

Mr. chairman, members of the Subcommittee, I am George E. Krantz, Director of Fisheries, Tidewater Administration, Maryland Department of Natural Resources. I welcome the opportunity to appear today to present testimony on H.R. 6056, the Coastal States Marine Resources Conservation Act of 1984.

The thrust of H.R. 6056 is to enable states to regulate commercial fishing within their borders by preventing nonresidents from participating in the fishery so long as there was a conservation basis for prohibition. Under the bill, coastal states like Maryland and Virginia could ban non-resident fishermen as a management and conservation action where they determine that equal access to their fishery resources

would result in harvesting limitations "so stringent as to render harvesting economically unfeasible.".

From the perspective of a fishery manager, this purpose has substantial appeal and, in fact, both Maryland and Virginia recently had laws which sought to accomplish this aim. Unfortunately, precisely because H.R. 6056 does seek to reestablish the ability of states to discriminate against non-residents in the management of fishery resources, we believe the bill is flawed both in terms of constitutionality and public policy.

The discussion, here, of the possible constitutional faults will be brief inasmuch as other witnesses will likely lend more detailed and expert focus. As the members of the Subcommittee know, there has been a substantial line of Supreme Court decisions (as well as lower level federal court decisions) which have held that state fishery resource management laws must meet the rigorous tests posed by the commerce clause, and the privileges and immunities clause of the United States Constitution and the test of federal law preemption in situations of federal vessel licensure.

In a most recent case involving our Department, *Tangier Sound Watermen's Association* v. *Douglas*, the United States District Court for the Eastern District of Virginia struck down the Virginia statute prohibiting non-residents from fishing and crabbing in Virginia waters on the basis that it was violative of the privileges and immunities clause of the Constitution. The Department of Natural Resources joined the litigation as defendent-intervenor because Maryland, too, had a similar statutory scheme.

In terms of today's hearing, a portion of the court's decision gets at the heart of the matter:

"A crabber, whether from Maryland or Virginia, must be free to engage in his livelihood of pursuing his peripatetic quarry subject only to reasonable, nondiscriminatory rules related to those Virginia imposes on its own citizenry." It is our belief that the "reasonable, nondiscriminatory rules" governing the harvesting of the fisheries resources on both Maryland and Virginia are far more important to ultimate success of the conservation of these resources than any attempts by either state to limit their access to only its own residents. It is this area to which I would like to turn my attention for a moment.

As this Subcommittee knows, in recent years, Virginia and Maryland have undertaken significant steps to cooperate on the restoration of the Chesapeake Bay's water quality and natural resources. The legislatures of each state have approved a broad range of actions to abate pollution. The legislatures have also charged their respective natural resource agencies with the task of both conserving and enhancing the fishery resources of the Bay.

In addition, as this Subcommittee well knows, both Maryland and Virginia are members of the Atlantic States Marine Fisheries Commission and both have taken significant steps to reduce harvest pressure on the striped bass, our State fish, which perhaps of all fisheries is the most stressed at this time. These regulatory actions have and will result in substantial catch reductions and, or course, apply to all fishermen irrespective of domicile. We believe that these efforts clearly underscore how states can work cooperatively to restore a natural resources which pays no attention to state boundaries.

There are other very significant institutions in place which now govern resources in the Bay and its tributaries. The Potomac River Fisheries Commission is made up of three members from Maryland and three from Virginia. The compact establishing the Commission grants it licensing and general rulemaking authority. Its regulations may be changed or rescinded by joint enactment of the two state legislatures and the two states enforce those rules and regulations in the Potomac River including those pertaining to striped bass and other fishery resources.

An institution of perhaps the most significance with respect to today's hearing is the Chesapeake Bay Commission which was created by the 1980 General Assemblies of both Virginia and Maryland. The Commission is composed of 14 members; seven each from Virginia and from Maryland. Ten of the members are from the legislatures of each state—five each.

One of the purposes the Chesapeake Bay Commission is charged with is to assist and promote intergovernmental cooperation in resource planning and action. Most significantly, after the *Tangier Sound* court decision, the Commission proposed three pieces of legislation in response to the decision:

1. Establish a non-resident fishing surcharge by both states in the amount of $350 annually.

2. Provide authority for both states marine police to cross the state line in pursuit of violators of fish and shellfish laws.

3. Provide for mutual suspension of licenses for failure to appear in court in response to a summons or citation issued by other state.

These three legislative proposals were approved by both General Assemblies and are now law.

In addition to these actions, the Commission is currently involved in the Virginia crab situation which gave rise to the *Tangier Sound* case. The current activity involves working with both Maryland and Virginia public officials and watermen on the proposed regulations issued by the Virginia Marine Resource Commission bearing on crabbing. Interestingly enough, the Chesapeake Bay Commission is holding a meeting this evening in Easton, Maryland during which the Virginia crab regulations will be reviewed. Both Maryland Secretary of Natural Resources Torrey C. Brown and I will be attending that meeting this evening.

Clearly, the most appropriate way to address the great problems facing both Maryland and Virginia in terms of fishery resources is to forge cooperative actions on the part of the two states. As I have indicated, there are institutions in place through which agreement and cooperation can exist. The two states should work together and exploit fully the emerging spirit of close cooperation on the broad range of problems affecting the Chesapeake Bay.

Mr. BREAUX. Mr. Pruitt, your statement.

STATEMENT OF BILL PRUITT, COMMISSIONER OF MARINE RESOURCES, STATE OF VIRGINIA; ACCOMPANIED BY JACK TRAVELSTEAD, ASSISTANT FOR FISHERIES MANAGEMENT

Mr. PRUITT. Thank you, Mr. Chairman, members of the subcommittee. I am Bill Pruitt, Commissioner of Marine Resources in Virginia. I have with me Mr. Jack Travelstead, my assistant for Fisheries Management.

On October 1, 1982, as a result of the Tangier Sound Watermen's Association versus Douglas decision, Virginia's blue crab fishery was opened to nonresident harvesters for the first time. The result of that decision has been a large increase in the numbers of nonresidents in the Virginia crab fishery.

Over 550 nonresident fishermen have applied for licenses to harvest crabs in Virginia since October 1982. The entrance of these additonal harvesters into Virginia's fisheries clearly has placed an added burden upon our resources. These nonresidents have accounted for a 6-percent increase in crab pot licenses, a 35-percent increase in crab dredge licenses, a 40-percent increase in crab scrape licenses and a 53-percent increase in crab trot line licenses.

Congressman Bateman's bill, H.R. 6056, Coastal Stats Marine Resources Act, may, if it is found to be constitutional, provide one means of addressing the problem confronting Chesapeake Bay fisheries on a long-term basis.

In the meantime, however, the Virginia Marine Resources Commission established an advisory committee consisting of commercial fishermen, crabbers, processors, legislators, and sport fishermen to see if changes could be made in its regulatory program to deal with the situation on an immediate basis.

As a result of the committee's recommendations, VMRC has now advertised new regulations designed to limit the harvest of blue crabs by all crabbers, resident and nonresident alike. These regulations will be adopted on October 23. The regulations will reduce the winter crab dredge limit from 25 barrels to 17 barrels per boat per day and will place a 51-bushel limit on crab potters.

They will require advanced purchase of crab fishing licenses so that early assessments of additional fishing effort can be made and catch limits set accordingly and the Commission can, at its discre-

tion, also require the reporting of commercial landings information by licensed commercial fishermen and licensed seafood buyers.

Each of these actions is in response to the concern that the increases in additional harvesting pressure may eventually result in the depletion of Virginia's blue crab resource, threatening the livelihood for several hundred full-time fishermen.

We are confident that the changes in State regulations and laws as outlined above have a good chance of controlling this situation.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to speak before you today. Thank you.

Mr. BREAUX. Mr. Pruitt, thank you.

Dr. Austin?

STATEMENT OF HERBERT M. AUSTIN, VIRGINIA INSTITUTE OF MARINE SCIENCE, THE COLLEGE OF WILLIAM AND MARY

Dr. AUSTIN. Thank you, Mr. Chairman. It is the position of the Virginia Institute of Marine Science to support H.R. 6056 relating to the jurisdiction and authority of the coastal States regarding fisheries resources.

Passage of H.R. 6056 will facilitate more efficient marine resource management in the internal waters of coastal States. Management of any stock should, as specified in Public Law 94-265, the Magnuson Fisheries Conservation and Management Act of 1976 be managed for its optimum yield using the best scientific information possible, as modified by relevant social and economic considerations. The MFCMA has since 1976 become a national standard for development of fishery management plans in both coastal and international/territorial waters.

Most marine resource stocks, currently harvested in coastal and internal waters, are coming under increased harvest pressure. Some are declining. The MFCMA stipulates that domestic harvesting potential be developed to its capacity before any surplus is allocated to foreign harvesters.

H.R. 6056 will give each State the same right to provide for its domestic fishing indusry first, with the surplus, should there be any available to industry from other States.

Current management practices dictate that resident and nonresident harvesters be treated equally. This practice, in light of shrinking stocks, and resultant stringent management regimes, can make harvest economicaly infeasible for both groups.

H.R. 6056 will not provide a mechanism for direct biological management, but will result in reduced harvest pressure on the stocks and hence defacto conservation.

Mr. BREAUX. Thank you, gentlemen. Thank you very much for your testimony.

Dr. Austin, you have given us a management plan in terms that you have outlined. Perhaps what you say is one way of looking at it but it seems to me the best way to manage a fishery would be to manage over the range of a species throughout the length and breadth of the Chesapeake Bay instead of trying to divide up an allocation process that Maryland will get so many and Virginia is going to get so many and have a reserve for anybody else.

Dr. AUSTIN. I don't think it is in conflict, Mr. Chairman. Scientific management provides to the managers in this case of both States, the size of the pie. As far as the fish or the crabs are concerned, they don't care how the pie is sliced. They don't really care whether they are caught by Maryland, Virginia, or North Carolina fishermen. So from the scientific point of view it is simply our job to indicate the size of the pie so that it can be allocated among users and leave enough so the stock can reproduce itself for following years.

Mr. BREAUX. It would seem what Mr. Pruitt outlined, though, is a method to reduce the catch-per-day limit per vessel, but it has nothing to do with the number of vessels operating and the number of individuals catching 17 barrels of crabs per day. So, you have a thousand people catching 17 barrels and have no restrictions on the entry of the number of people who are doing the crabbing—do you, Mr. Pruitt?

Mr. PRUITT. Mr. Chairman, at the present time we don't. The committee did look into the question of limited entry but decided—we were hoping of course that Congressman Bateman's bill would go and we want to see what these regulations will do. If we reach a point, then we will entertain limited entry into the fishery.

Mr. BREAUX. Isn't the best way to handle this problem, in theory, would be to have a cooperative management relationship between Maryland and Virginia on the crabs to catch and the limits and the seasons and everything else?

Dr. AUSTIN. Which one of us do you direct that to?

Mr. BREAUX. Anybody that has a comment on that?

Mr. GILMORE. I would agree with that.

Dr. AUSTIN. I would, too. In fact, through the Atlantic States Marine Fisheries Commission we have done this with striped bass.

Mr. BREAUX. There is a question of whether that is true, but go ahead.

Dr. AUSTIN. It is difficult to have interstate fisheries management and to get more than one State to agree, particularly when they fish on the resource at different times in its life cycle.

Mr. PRUITT. If you are speaking of the ideal, the ideal was before the decision was made to allow the out of staters and we didn't have any problems. They made money in Maryland we made money in Virginia apparently.

Mr. BREAUX. Prior to the time of the court decision, how long have you had a prohibition against Maryland crabbers fishing in Virginia waters?

Mr. PRUITT. It has always been on the books prior to October 1981.

Mr. BREAUX. Within the last 50 years or more?

Mr. PRUITT. The line was drawn, yes, and it was challenged, and the Federal judge made the decision in 1982. The impact however was not felt until this spring fishery when all the crabbers were down at the——

Mr. BREAUX. Assuming this law was enacted in the present form, what type of legislation would you envision, Mr. Pruitt, the State of Maryland or Virginia enacting in order to regulate the crabbng industry?

Mr. PRUITT. I don't have an answer to that at this time. That is something we would have to get with our scientific advisers and the committee to work on.

Mr. BREAUX. Would the legislation contemplate some sort of scenario to limit the size of the boats or limit the color of the boats or to limit where the boats are from? How would you use this Federal law to enact legislation which apparently you feel you cannot enact without this legislation?

Mr. PRUITT. Let me refer that to my fishing management.

Mr. TRAVELSTEAD. There are several possibilities. One would be to impose catch limits that differ between residents and nonresidents.

Mr. BREAUX. How does this help the stock conditions?

Mr. TRAVELSTEAD. If you assume there is a limited stock out there, you simply divide it up so that the resident crabbers get what they need to make a decent living and then whatever surplus is available you divide that against the estimated number of nonresidents entering the fishery.

Mr. BREAUX. Mr. Tarr from the Justice Department seemed to indicate that a discrimination between State A and State B based on economic reasons would found to be unconstitutional. Is there any reason why you would choose to limit more drastically the catch from Maryland fishermen than from Virginia fishermen other than economics? Is there something from a fisheries standpoint that they do differently from your fishermen fishing in your waters that make it, from a fisheries management standpoint, important to give them different restrictions than you give on the restrictions of the Virginia fishermen crabbing?

Mr. BATEMAN. Mr. Chairman?

Mr. BREAUX. Unless you know what Virginia is getting ready to do let me let Virginia answer this one. You don't really, do you?

Mr. TRAVELSTEAD. I don't really have an answer for that.

Mr. BREAUX. That is where your problem comes.

Mr. PRUITT. If I may, Mr. Congressman.

Mr. BREAUX. Mr. Pruitt.

Mr. PRUITT. Neither Virginia or Maryland have had fishery management plans by species. We, in our last session of the General Assembly of Virginia, the Marine Resources Commission was given authority by law to develop fishery management plans, so really we don't have a fishery management plan on the blue crab. That is coming anyway. We are taking them—the first plan we were doing is on the oyster, then the striped bass. Then I am sure the blue crab will be one of the top priorities. So it is kind of hard—it is impossible to answer that without completion of those plans.

Mr. BREAUX. The question I am asking is there any reason, from a fisheries management standpoint, for treating the Virginia crabber differently from an out-of-State crabber for the sake of the management of a species? I think the answer from your associate is that he can't think of one.

All right.

Mr. BATEMAN. Mr. Chairman?

Mr. BREAUX. Mr. Gilmore, did you want to comment?

Mr. GILMORE. I would only say that if there was going to be—the best way to do this, if Congressman Bateman's bill were to pass,

would be for the States, both States, using the Chesapeake Bay Commission, to try to agree on legislation that would somehow effectuate a management process and the best way to do that would be to have that aimed at catch limits or equipment limits or some criteria that apply to all the watermen.

Mr. BREAUX. I would suggest that that is the best way to do it whether this legislation passes or does not pass.

Mr. GILMORE. That is correct.

Mr. BREAUX. Mr. Bateman.

Mr. BATEMAN. Mr. Chairman, in response to your question, which I think is really the bottom line of everything we are talking about, what the bill gives as a fisheries management tool or vehicle is an opportunity once you have imposed regulations, which have become so stringent, to preserve the resource that no one can make a living, then and only then would you resort to exclusion of a nonresident. But we have already seen, as Mr. Pruitt has pointed out, that through the influx of Maryland crabbers for the first time, catch limits have dropped from 27 barrels to 17 barrels.

Maybe everybody can make a living with those catch constraints and the other constraints being imposed by regulation. But suppose the resource drops based upon the findings of the fisheries scientists. Suppose the pressure of those seeking to catch the resource continues to climb. Obviously without this bill all you can do is become increasingly more restrictive on who can catch, how much they can catch, when they can catch it and how they can catch it, at a point where no one makes a living.

In the interest of, then, the only rational conservation plan that is left, you could begin to exclude in whole or in part or to limit in some way the nonresident participation. To me it is a very simple and very logical tool for fisheries management.

Mr. BREAUX. You are recognized for any questions.

Mr. BATEMAN. Mr. Chairman, in view of the house I shall suspend.

Mr. BREAUX. Mr. Dyson, do you have any questions?

Mr. DYSON. My only concern is that, Herb, once your people here make the decision to restrict harvesting, the first people cut off may be Marylanders. The resource is depleted or still being depleted. Then what do you decide? The State legislature gets together and decides that Accomack County ought to have the right to fish in those regions?

I don't know where you draw the line. If it the purpose is conservation, which I doubt, there is no guarantee that the resource will replenish itself. If you allocate 100 licenses and half go to Maryland and you cut that half out, the other 50 are going to be picked up by Virginians. I don't think you have saved a whole lot in trying to conserve a very valuable resource.

That is my comment.

Mr. BREAUX. Well, gentlemen, we thank you very much for your presentation. I certainly realize the pressure that all of you are under. I have seen this same situation develop in other industries, and in my State as well, and it is always a tough issue. I understand that you are wrestling with a very difficult problem both from a management standpoint as well as from a political standpoint. We certainly want to be of help to the extent we can.

I appreciate your making your recommendations and giving us your thoughts on this legislation. I can only offer, immediately, that if any of you gentlemen have any problems with having a shortage of crabs, Louisiana is more than pleased to provide any that you need for the future at a very good price.

Mr. DYSON. Mr. Chairman, I was in Louisiana just last week, and they are just not the same. [Laughter.]

Mr. BREAUX. I totally agree. Ours are better.

Gentlemen, we thank you very much.

This will conclude this session of the subcommittee and the committee will be in recess until further call of the Chair.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]