

THE CLEAN VESSEL ACT OF 1991

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

—————
FEBRUARY 27, 1992
—————

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



U.S. GOVERNMENT PRINTING OFFICE

56-184cc

WASHINGTON : 1992

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-039484-8

5261-3

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUE, Hawaii

WENDELL H. FORD, Kentucky

J. JAMES EXON, Nebraska

AL GORE, Tennessee

JOHN D. ROCKEFELLER IV, West Virginia

LLOYD BENTSEN, Texas

JOHN F. KERRY, Massachusetts

JOHN B. BREAUX, Louisiana

RICHARD H. BRYAN, Nevada

CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri

BOB PACKWOOD, Oregon

LARRY PRESSLER, South Dakota

TED STEVENS, Alaska

ROBERT W. KASTEN, Jr., Wisconsin

JOHN MCCAIN, Arizona

CONRAD BURNS, Montana

SLADE GORTON, Washington

TRENT LOTT, Mississippi

KEVIN G. CURTIN, *Chief Counsel and Staff Director*

WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

C O N T E N T S

	Page
Opening statement of Senator Breaux	1
Prepared statement	6
Opening statement of Senator Hollings	4
Opening statement of Senator Kerry	2
Prepared statement	3

LIST OF WITNESSES

Jones, Hon. Walter B., U.S. Representative from North Carolina	1
Luttrell, Dennis F., Executive Director, Buzzards Bay Action Committee	14
Prepared statement	17
Moffett, Conley L., Deputy Assistant Director for Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Department of the Interior	6
Peterson, Max, Executive Vice President, International Association of Fish and Wildlife Agencies, Washington, DC	26
Prepared statement	27
Podlich, Margaret, Deputy Director, Pollution Prevention Program Center for Marine Conservation	8
Prepared statement	10
Prosser, Norville S., Chairman, American League of Anglers and Boaters	11
Prepared statement	13
Vogt, Craig, Environmental Protection Administration	7

THE CLEAN VESSEL ACT OF 1991

THURSDAY, FEBRUARY 27, 1992

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

The committee met, pursuant to notice, at 2 p.m. in room SR-253, Russell Senate Office Building, Hon. John F. Kerry, presiding. Staff members assigned to this hearing: J. Michael Nussman, professional staff member; and John A. Moran, minority staff counsel.

OPENING STATEMENT OF SENATOR BREAUX

Senator BREAUX [presiding]. The committee will please come to order. Senator Kerry asked, because he has something to do on the floor, if I would start the hearing. I am pleased to see our distinguished chairman from the House, my former chairman when I was there, up here on behalf of the legislation. We are delighted to have him before the committee and to hear his testimony.

The only thing I noted as I walked over to the hearing, Mr. Chairman, was the preamble to H.R. 1297, to amend the Dingell-Johnson Sport Fish Restoration Act, which is now no longer in existence as I understand. Because of your good help the act is now called the Wallop-Breaux Fish Restoration Program. It must have been a typo those printers over there made. [Laughter.]

I am more than delighted to have the chairman here and to hear his testimony.

STATEMENT OF HON. WALTER B. JONES, U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. JONES. Thank you, Mr. Chairman, and I appreciate this committee holding a hearing on my bill, The Clean Vessel Act, and for inviting me to testify today.

The bill addresses the problem of illegal sewage discharges from recreational boats by increasing the availability of shoreside pumpout stations.

I am sure that other witnesses will discuss the problems associated with sewage discharges so I will confine my remarks to the bill before you.

H.R. 1297 proposes to earmark a pot of money from the Wallop-Breaux Trust Fund—a fund which is flush with money, to finance the construction of shoreside pumpout facilities. Coastal States are to determine how many pumpout stations are needed to meet their vessel requirements.

They are then required to spend up to 5 percent of their annual sport fish restoration account moneys to address these needs. The 5-percent requirement may be waived or reduced if the identified needs warrant.

The bill also directs that the location of pumpout stations be indicated on navigational charts. Finally, H.R. 1297 allows coastal States to spend part of the set-aside to educate the boating public about sewage discharges.

Mr. Chairman, if I may, I would like to briefly address some of the concerns that have been raised about the bill. First, the bill does not propose a new use of the fund, rather it raises the profile of an existing use. Second, H.R. 1297 will not reduce funding for existing sport fish programs because of a recent increase in the Federal gas tax has increased amounts going into the fund by about \$25 million annually.

Finally, the bill allows States the flexibility to tailor expenditures to their own needs. In conclusion, I would like to thank you again for holding this hearing and look forward to working with you and other members of the committee on this bill.

Senator BREAUX. Thank you very much for your testimony. On behalf of the legislation I want to recognize the chairman of our subcommittee who just left the floor to come and be here for any comments he may have.

OPENING STATEMENT OF SENATOR KERRY

Senator KERRY. Thank you very much, Mr. Chairman. I appreciate your taking the chair for me for a brief period of time and I apologize profusely to our colleague as well as to other concerned here, both for the delay as well as for the fact that I need to go back to the floor for a few moments. I am very grateful to my colleagues for taking the chair on an issue that is of similar concern to him. I would just like to make a few comments, if I may.

First of all, Congressman, we are delighted with your leadership on this and we are very appreciative to you for taking time to come here and testify. This focus today is really to try to look hard at all the recommendations with respect to the Clean Vessel Act of 1991.

Obviously, degradation of our coastal environment is a major issue. Senator Breaux and I and others have had the pleasure of working on the coastal zone management act reauthorization as well as trying to deal with some of the wetlands issues, and other issues attending to this.

But learning more about the consequences and causes of pollution on our coast is critical if we are going to develop any kind of comprehensive approach to the problem. I personally am an avid boater. I boat during summer in one of the great resources of the Cape of Massachusetts and have watched what has happened to Buzzards Bay and to our clam flats, and so forth. Obviously the disposal of human waste generated aboard both recreational and commercial vessels is a very serious problem in coastal areas all around the United States, and in the Great Lakes, especially in waters near marinas and recreational boating centers.

The decomposition of sewage from vessels causes a huge depletion of oxygen in coastal waters and that oxygen, we all know, is

necessary for the survival of marine life. Furthermore, we understand that sewage discharge poses a threat to human health. Sewage discharge from vessels can contain human pathogens that cause hepatitis, gastroenteritis, cholera, and this poses further serious threat to people who enjoy recreational activities within the coastal areas.

Harbors, and bays are very valuable estuarine resources. They provide habitat for shellfish beds, fish spawning grounds, submerged aquatic vegetation. All of these areas are very sensitive to increased pollution from a variety of nonpoint sources, including septic tanks, urban and agricultural runoff, wild life, and importantly, sewage discharge from vessels, which is the subject today.

I might just comment very quickly that we have had a huge increase in the closure of our shellfish beds in Massachusetts. I think we have about 1 million acres of shellfish beds in the commonwealth. Over 90,000 acres or almost 8 percent are permanently closed due to fecal coliform contamination in harbors and bays, and data from 1986 to 1989 on oyster landings of Massachusetts shows that landings have dropped from 87,000 pounds annually to 44,000 pounds. Clam landings have also declined by almost 50 percent, from 9.5 to 5.4 million pounds.

Most importantly, the economic impact to our fisherman of this pollution is very serious. It requires us to take action and so, Mr. Chairman, I would ask that the full comments of my statement be placed in the record.

[The prepared statement of Senator Kerry follows:]

PREPARED STATEMENT OF SENATOR KERRY

Good afternoon and welcome to today's hearing on the environmental impacts of sewage 'dumping' by vessels in coastal waters. Today we will focus our discussion on The Clean Vessel Act of 1991 and other recommendations on how best to address this mounting coastal concern.

Degradation of our coastal environment from various sources of contamination is a growing problem. Learning more about the causes and consequences of coastal pollution is critical if we are going to develop a comprehensive approach to improving our nation's coastal water quality. As an avid boater and advocate for improved coastal water quality, I look forward to hearing the comments from today's witnesses.

The disposal of human wastes generated aboard recreational and commercial vessels is a serious problem in many coastal areas, especially water near marinas and recreational boating centers. Quiet backwaters such as harbors and bays are often prone to minimal water circulation and slow to flush themselves of these pollutants. Also, the decomposition of sewage from vessels causes the depletion of oxygen in coastal waters which is necessary for the survival of marine life.

Furthermore, waste generated from boats is a risk to human health. Sewage discharge from vessels may contain human pathogens which cause hepatitis, gastroenteritis, and cholera. This situation poses a serious threat to anyone who enjoys recreational activities in the water, such as swimming, boardsailing, or wading. In addition there are dangers to those who eat shellfish harvested from contaminated waters.

Harbors and bays are valuable estuarine resources inhabited by shellfish beds, fish spawning grounds, and submerged aquatic vegetation. These areas are sensitive to increased pollution from a variety of non-point sources including septic systems, urban and agricultural run-off, wildlife, and importantly, sewage discharges from vessels.

The increasing closures of shellfish beds nationally serve as a good example of the devastating environmental impacts of sewage discharge from vessels. The National Oceanic and Atmospheric Administration recently reported that approximately 1.1 million acres of shellfish grounds are closed nationwide because of boat pollution.

The environmental consequences of pollution to the shellfishing habitat is overwhelming. For example in Massachusetts, of the estimated 1,000,000 acres of shell-

fish beds in the Commonwealth, over 90,000 acres or almost 8 percent are permanently closed due to fecal coliform contamination in harbors and bays. Additional disturbing data indicates that from 1986 to 1989 oyster landings in Massachusetts dropped from 87,000 pounds to 44,000 pounds, and that clam landings declined by almost 50 percent, dropping from 9.5 million pounds to 5.4 million pounds.

Most importantly the economic impact to our fishermen due to this pollution is a serious concern that requires us to take action. The decline in coastal water quality can best be illustrated in the lost revenues to the shellfish industry. In Massachusetts, since 1983, shellfish revenues have fallen from \$21.3 million to under \$16 million in 1990. In these tough economic times this trend is an alarming signal that begs for resolution.

Many have advocated an increase in marine sanitation devices or shore side pumpout facilities as an important element in curbing this coastal pollution. Questions exist as to whether or not these pumpout facilities should be mandated at all marinas, new marinas or expanding marinas and who should assume the cost for the facilities. Is it the responsibility of the federal, state or local governments? Many states on a voluntary basis have encouraged the development of pumpout stations, but surveys have shown that the number of facilities still falls far short of the need.

Some have recommended that funds from the Sport Fish Restoration Program be used to construct and operate these necessary pump out stations. This is an issue that we will fully explore today.

It is my hope that today we will find out more about the scope of the sewage dumping problem, its implications on our coastal environment and living marine resources, and determine what needs to be accomplished in order to address this environmental concern. I look forward to the testimony from our expert witnesses on the issue of sewage dumping by vessels in coastal waters and specifically their views on the Clean Vessel Act of 1991.

I would like to welcome Chairman Jones our distinguished Chairman of the House Merchant Marine Committee. It is an honor to have you before us today. Mr. Chairman before we begin I just want let you know how much I have enjoyed working with you in my capacity as the Vice Chairman of NOPS here in the Senate. You have clearly been a crusader in protecting our coastal waters, fisheries and marine life. You have definitely left a positive mark in this area, and I want you to know how much you will be missed when you leave the Congress.

At this time I would like to welcome our panelists to today's hearing.

Senator KERRY. I simply want to say that questions exist, with regard to this legislation, as to whether requiring every marina to have a pumping station, who ought to handle it, and what the appropriate relationship is between local, State, and Federal entities. These are all legitimate questions and that is what we want to examine today. I will look forward to that examination. I am very grateful to our witnesses for being here and I again thank my colleague for standing in for me. I will be back just as soon as I can.

Senator BREAU. Mr. Chairman, we appreciate very much your coming over. We are sorry for the delay. We want to recognize your leadership in this area. It certainly has been one that has resulted in a Nation that has a better quality of fishing, both commercially as well as recreationally. Your contributions in this area will certainly be long remembered.

Mr. JONES. Mr. Chairman, if you will excuse me, there is a pending vote over in the House.

Senator BREAU. I understand that very well. Thank you and vote right. As we excuse Chairman Jones, we would like to welcome our second panel. But before that our chairman, Senator Hollings, would like to say a few words. Senator Hollings.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Today's hearing addresses an issue which is of concern to all of us—coastal water quality. In our attempt to insure that our nation's coastal waters are clean and productive, we must examine all possible sources of water quality degradation to find

the best comprehensive solution to stemming pollution. Today we will discuss a piece of legislation which focuses on one source of coastal water quality degradation—sewage discharge by recreational boaters.

Congressman Walter Jones, the distinguished chairman of the House Merchant Marine and Fisheries Committee, has sponsored a bill, H.R. 1297, The Clean Vessel Act of 1991, which would mandate that states use 5 percent of their Wallop-Breaux Sport Fish Restoration Account funds to provide sewage pumpout facilities or facilities to receive wastes from portable toilets for recreational boaters. At this hearing, the committee will examine whether this bill provides the best method to address coastal water quality degradation caused by recreational boaters.

I have heard from several organizations dealing with water quality issues, some represented here today, that there is a need to mandate the state spending on pumpout facilities for recreational boaters called for in this bill. Indeed, the record shows that, although States are aware that they may use moneys allocated for boating access in their Sport Fish Restoration Account apportionment for the development of pumpout facilities, only a few pumpout facilities have been built nationwide with these funds.

On the other hand, there are indications that the administration, State fish and wildlife agencies, that generally administer Wallop-Breaux Sport Fish Restoration Account funds, and the American League of Anglers and Boaters—ALAB—are opposed to this mandate on the use of Wallop-Breaux funds for a specific purpose. In this regard, several questions have been raised as to the logistics and feasibility of certain aspects of H.R. 1297. ALAB also has proposed an alternative solution to this problem calling for an increase in the percentage of Sport Fish Restoration Account funds earmarked for boating access.

Regardless of how we decide to proceed on H.R. 1297, it is clear that we must take action on the issue of water quality degradation caused by recreational boaters. Studies have indicated that the number of sewage pumpout stations is grossly inadequate in many parts of the country. For instance, the Chesapeake Bay Commission found that only 52 of 458 marinas in Maryland have pumpout stations.

Furthermore, we are seeing clear indications that pollution from boats is affecting our coastal waters. In 1990, the National Oceanic and Atmospheric Administration estimated that 1.1 million acres of shellfish grounds were closed nationwide due to boat pollution. This figure is just one indication of the growing number of stresses impacting coastal waters, which also provide important spawning grounds and nursery habitat for many commercially important aquatic species.

We all agree that pumpout facilities are a good idea. The question of how best to ensure their development needs to be examined carefully. I look forward to the testimony presented today on these important questions. Thank you.

Senator BREAUX. Thank you, Mr. Chairman. I would like to put my prepared statement in the record at this point.

[The prepared statement of Senator Breaux follows:]

PREPARED STATEMENT OF SENATOR BREAUX

It's good that we are holding this hearing. I understand the problems we're having with untreated, raw sewage discharges from boat toilets into coastal waters. We're talking about the possibility of contaminating or destroying shellfish and fishery breeding waters and habitats. There's the risk of spreading hepatitis, gastroenteritis, cholera and other diseases through shellfish harvested from contaminated waters.

Federal law, Section 312 of the Clean Water Act, Mr. Chairman, makes it illegal to discharge untreated sewage within 3 miles of shore. The states are authorized to enforce this law. The Coast Guard is authorized to enforce this law, and so is the Environmental Protection Agency. But the law isn't stopping recreational boaters from illegally pumping raw sewage directly into shoreline waters.

This bill says that the solution to this problem is to require states to build more marine sanitation device (MSD) pumpout stations. And, Mr. Chairman, the bill tells them that they should use their Wallop-Breaux Fund shares to do this. We're told that there are just 100 MSD waste disposal stations at marinas from Maine to New York.

We're not told why there are not more stations. We don't know why the states have not done more to solve this local water quality problem. The pollution is in state waters, and might seriously affect state residents. At least 88 percent of the state already know that they can use Wallop-Breaux monies to put up more stations. Before acting on this bill, Mr. Chairman, I'd like to know why state government executives have not done more to increase the number of MSD stations. And, since they already have use of Wallop-Breaux funding, why do we need to do more than ask them to assure the construction of more stations, if federal action is needed at all.

Mr. Chairman, I want to hear as many of the witnesses that my schedule will allow, because I hope they can show us why we should, in this instance, intrude on a state's interest in setting priorities for the use of their Wallop-Breaux shares.

Thank you, Mr. Chairman.

Senator BREAUX. I understand that for the second panel we have Mr. Conley Moffett, Deputy Assistant Director, Fish and Wildlife and Mr. Craig Vogt, Deputy Director of Oceans Protection Division from EPA. I ask both of them to take their place at the witness table.

STATEMENT OF CONLEY L. MOFFETT, DEPUTY ASSISTANT DIRECTOR FOR FISH AND WILDLIFE ENHANCEMENT, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. MOFFETT. I am here to talk about the Sport Fish Restoration Program, Mr. Chairman. Thank you for the invitation, Mr. Chairman. I am pleased to be here to testify on H.R. 1297. As you know, the bill generally would require coastal States to use 5 percent of their Sport Fish Restoration Program apportionment for planning construction, constructing, renovating, and maintaining marine sanitation device pumpout stations for fiscal years 1992 through 1996.

Although we support efforts to improve and maintain water quality, we do not support passage of this bill. The construction and operation of pumpout facilities are proper activities under existing sport fish restoration authorities. We encourage the States to include them in boating access proposals, but do not believe they should be told to do so. In fact, on June 28 of last year, the Director of Fish and Wildlife Service sent a memorandum to the States, to the District of Columbia, to Puerto Rico, and to the territories, reminding them of the eligibility of pumpout facilities, and encouraged them to take advantage of the opportunity.

We remain convinced that the success of this grant-in-aid program is due to the fact that the States, within program guidelines,

are free to determine their own priorities. Documentation of State expenditures, indicating the needs of the Nation's recreational anglers and boaters are being met, is available for the committee's use. We believe that creating mandatory expenditure categories would inhibit the States from responding to the specific needs of their constituents and aquatic resources.

The Service is committed to improving the Nation's water quality. One of our major thrusts is the cleanup of contaminants on our national wildlife refuges, and the protection of coastal wetlands through acquisition and restoration, which will be a cornerstone of our Bay-Estuary Program.

By far, the most significant and consistent demonstration of the protection of coastal habitats and resources has come from the States, through the Sport Fish Restoration Program. Coastal States have acquired over 100,000 acres of land for the protection of fishery resources since the inception of the program in 1952. Nearly a quarter of this has occurred since the passage of the Wallop-Breaux Amendment in 1984.

In closing, I would like to mention that the Service recently contracted with Price-Waterhouse to conduct a survey of boaters relative to this issue. This information will be included in a report to Congress, concerning motorboat fuel usage, that was requested by the House Merchant Marine and Fisheries Committee, and of course, by you, Senator Breaux. I thank you for the opportunity to testify, and I am available for any questions you may have.

Senator BREAUX. Thank you very much. Mr. Vogt, do you have any different opinions from Mr. Moffett?

STATEMENT OF CRAIG VOGT, ENVIRONMENTAL PROTECTION ADMINISTRATION

Mr. VOGT. Thank you, Mr. Chairman. I am here to provide technical comments. Mr. Moffett has provided the administration position, but I will be very happy to provide you a view of, say, what the water quality problems are.

Senator BREAUX. Well, I know they have big problems, but does EPA have any difference of opinion from Mr. Moffett, or does he speak for the administration?

Mr. VOGT. He does speak for the administration.

Senator BREAUX. I agree with you, I think that States ought to have the option to use the money for anything that increases the opportunity for recreational and commercial fishing. That is the purpose of the bill and that is how it was drafted. The States present a plan and they could use probably all their money for that if they wanted to, could they not?

Mr. MOFFETT. For pumpout stations?

Senator BREAUX. Yes.

Mr. MOFFETT. If they wanted to under the existing legislation.

Senator BREAUX. Sure, there is no prohibition against using it. In this type of program if it benefits recreation or commercial fishing and meets other normal requirements, it is an eligible project.

Mr. MOFFETT. It is an eligible activity; yes sir.

Senator BREAUX. I agree with others who point out that coastal water quality is a problem. There is no question that the discharge of effluents or other untreated material into the water has an ad-

verse affect on the resources, and particularly fishery resources. But the real question here is, we have a whole array of items that are eligible projects that help improve fishing opportunities. This is one of them.

The bill would impose a requirement that x amount of dollars be spent for the mandated purpose. I believe States should have the option to do it as long as it meets the parameters of improving the quality of fishing opportunities in this country. Some might say, "Well, they have a waiver, they do not have to do it if the Governor requests a waiver." Would you comment on that, Mr. Moffett?

Mr. MOFFETT. Well, in order to get the waiver, you have to develop the plan and it has to be passed, or agreed upon by the Administrator of EPA, and then the Governor may request the Secretary to grant the waiver.

Senator BREAUX. As I interpret the waiver, it would seem to say that a State has to develop a plan, as you just pointed out, to carry out the purposes of the act. The State would then have to seek a waiver based upon the fact that they do not need the money to implement the plan. I do not know that there is a State out there that could ever meet those waiver criteria. Is that a legitimate concern?

Mr. MOFFETT. I think that is a fair observation, Mr. Chairman.

Senator BREAUX. Do you have anything to add, Mr. Vogt?

Mr. VOGT. I think that the funding for pumpout facilities that are included in this bill is one part of an approach for localities to solve their problems; we need not only pumpout facilities around the country, but we also need some incentives to use them, which are public education and enforcement.

Senator BREAUX. I do not think we have any question or difference with the goal that the chairman's bill would provide. It is just a question of Washington making the decision that this is the best approach for each State to have to take. It is the mandating that I object to, and I think that is what I am hearing from you folks.

I appreciate you being here, and maybe some of the other members might have some questions to ask you, which they would submit in writing. Thank you very much.

I would like to now welcome up Mr. Dennis Luttrell, Executive Director of the Buzzards Bay Action Committee; Mr. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies; Mr. Norville Prosser, Vice President of the Sport Fishing Institute; Ms. Margaret Podlich, Deputy Director of Pollution Prevention Programs, Center for Marine Conservation.

Lady and gentlemen, we welcome you. We are delighted to have you speak. Ms. Podlich, why do you not go first?

STATEMENT OF MARGARET PODLICH, DEPUTY DIRECTOR, POLLUTION PREVENTION PROGRAM CENTER FOR MARINE CONSERVATION

Ms. PODLICH. Thank you, Mr. Chairman. The Center for Marine Conservation is pleased to be asked to testify today on H.R. 1297. I would like to ask at this time that my written statement be made a part of the hearing record.

The Center for Marine Conservation is a national nonprofit organization of 110,000 members, committed to the conservation of ma-

rine wildlife and habitats. I am deputy director of the pollution prevention program for the center. I have also served as a member of the Chesapeake Bay Recreational Boat Pollution Work Group, which studied the problems of vessel sewage discharge into bay waters, and I am a lifetime boater.

As proposed, we believe if enacted, H.R. 1297 will lead to a wider availability of pumpout and dump stations around the country. It will decrease the amount of raw sewage being discharged from vessels, improve water quality, and increase compliance with the Clean Water Act in coastal waters. For these reasons, we support the intent and need for H.R. 1297.

The principal concerns associated with the discharge of sewage from boats are the potential threat to public health, and the impact on living resources. These effects have already been discussed today. Although the effect of one discharge may seem insignificant, there are over 19 million recreational boats in the United States, so their effects become much more significant.

Vessel discharges pose the largest threat to water quality in the sheltered places where boats tend to congregate, such as marinas and anchorages. These waters do not readily flush themselves of pollutants, and they are often the site of important sensitive habitat. Waste discharges from boats can elevate coliform levels, reduce the amount of oxygen available to marine life, and can introduce toxic chemicals into our coastal waters.

Under Federal law, discharge of untreated sewage by vessels is illegal. Currently, it is very difficult for boaters to comply with this law in most parts of the Nation, due to the lack of accessible pumpout and dumping stations for marine sanitation devices. Here are three examples showing the need for more onshore facilities, the abilities of a grants program to provide those facilities, and the need for Federal assistance in these efforts.

The Fish and Wildlife Service recently conducted a national recreational boating survey with approximately 10,000 owners of boats 22 feet and longer. Type III MDS's, which are usually holding tanks designed to keep waste out of the water were found on 38 percent of the surveyed boats, while 29 percent of the surveyed had portable toilets.

Information was gathered from the boat owners with the Type III MSD's. The availability and convenience of pumpout facilities was rated low in all regions, except the Great Lakes. Boaters who strongly disagree that sanitation pumpout facilities are conveniently located, only pumped out 35 percent of their waste. When asked what factors would increase use of sanitation pumpout facilities, boaters stressed more convenient location, lower cost, and mobile facilities for greater accessibility.

The State of Maryland operates a grants program for building and maintaining pumpout and dump stations, and education of boaters about the existence of these facilities. In the last 3 years, this program has helped build 42 new facilities to add to 31 existing facilities. While the State still needs additional pumpout facilities, because it has more than 150,000 registered boats, the grants program has doubled the number of places for boaters to legally discharge waste. Marina operators fully use this program; currently 79 marinas have applications for grants into this program.

In addition, the Maryland Boating Administration recently issued a survey to the owners of all registered boats in Maryland. This survey went out to 152,000 boaters in Maryland, and approximately 39,000 of these surveys were returned, despite the fact that the boat owners had to furnish their own postage. The only issue covered in the survey was sewage, and although the results of the survey are not yet available, the overwhelming response to this survey shows that boaters do care about this issue.

Finally, States are currently allowed to spend some of their sport fish restoration account apportionments on MSD pumpout facilities. However, according to the House committee report, the States have only built six pumpout facilities nationwide with these funds.

In conclusion, H.R. 1297 will help keep recreational boat sewage out of our coastal waters. Through its provisions for education, this legislation will help boaters learn where they can legally discharge waste, and why they should use these facilities. It will provide important earmarked funds, and it will increase compliance with Federal law which prohibits the discharge of untreated sewage.

Thank you for the opportunity to testify today. I would be happy to answer any questions that you may have.

[The prepared statement of Ms. Podlich follows:]

PREPARED STATEMENT OF MARGARET PODLICH

Good afternoon, Mr. Hollings, and Members of the Subcommittee. My name is Margaret Podlich. I am Deputy Director of the Pollution Prevention Program for the Center for Marine Conservation. The Center for Marine Conservation is a non-profit organization of 110,000 members committed to the conservation of marine wildlife and habitats. The Pollution Prevention Program works through education and citizen involvement to reduce pollutants going into coastal waters. I have served as a member of the Chesapeake Bay Recreational Boat Pollution Workgroup, which studied the problems of vessel sewage discharge into Bay waters.

The Center is pleased to be asked to testify today on H.R. 1297, the "Clean Vessel Act of 1991." As proposed, we believe if enacted this legislation will lead to a wider availability of pumpout and dump stations around the country, decrease the amount of raw sewage being discharged from vessels, improve water quality and increase compliance with the Clean Water Act in coastal waters. For these reasons, we support the intent and need for H.R. 1297.

NEED FOR LEGISLATION

Under federal law the discharge of untreated sewage by vessels is illegal. Compliance with this law has proven to be extremely difficult for vessel owners in most parts of the nation, due to the lack of accessible pumpout and dumping stations for marine sanitation devices. This legislation proposes not only to provide a means to reduce the amount of boat sewage entering our coastal waters, which will benefit wildlife and its habitat, but also to provide a means to improve compliance with existing law through the increased use of pumpout and dump facilities. In addition, as proposed the legislation allows monies to be spent on education, to teach boaters the locations of these facilities and the reasons to use them.

CURRENT SITUATION

Type III marine sanitation devices (MSD's) are designed to keep human waste in any form out of the water. These devices include recirculating and incinerating MSD's and holding tanks. Holding tanks are the most common Type III MSD found on recreational boats.

The Fish and Wildlife Service recently conducted a National Recreational Boating Survey, with approximately 10,000 owners of boats 22 feet or longer. Type HI MSD's were found on 38 percent of the surveyed boats, while portable toilets were found on 29 percent of these boats.

Information was gathered from the boat owners with Type III MSD's. The availability and convenience of sanitation pumpout facilities was rated low in all regions except the Great Lakes. It is clear from this study "that conveniently located

pumpout facilities increase the use of sanitation pumpout. Boaters who strongly disagree that sanitation pumpout facilities are conveniently located only pumped out 35 percent of their waste last year." When asked what factors would increase use of sanitation pumpout facilities, boaters stressed more convenient location, lower cost, and mobile facilities (for greater accessibility).

The state of Maryland operates a grants program for building and maintaining pumpout and dump stations, and educating boaters about the existence of these facilities. In the last three years, this program has helped build 42 new facilities, to add to 31 existing facilities. While the state still needs additional pumpout and dumping stations for more than 150,000 registered boats, the grant program has doubled the number of places for boaters to legally discharge waste. Marina operators fully utilize this grants program; an additional 79 marinas have applied to participate in it.

Maryland's program serves as an example of the benefits that could be realized nationally if H.R. 1297 is passed. While Maryland had the ability and fluids to pass a state law which aids the construction of pumpout facilities, other states may not be able to enact similar legislation or fund such an effort. H.R. 1297 would enable all coastal states to access federal fluids to conduct pumpout and dump station construction and education programs.

The Maryland Boating Administration recently sent a survey about boat -sewage to all owners of registered boats. Approximately 152,000 surveys were sent out. Over 39,000 surveys were filled out and returned, despite the boat owners having to furnish their own postage. Although results of the survey are not yet available, the overwhelming response to this survey shows that boaters do care about this issue.

States are currently allowed to spend some of their Sport Fish Restoration Account apportionments on MSD pumpout facilities. However, according to House Committee Report (102-251) on H.R. 1297, the states have only built six pumpout facilities, nationwide, with these fluids.

CONCLUSION

H.R. 1297 will help keep recreational boat sewage out of our coastal waters. Through its provisions for education, this legislation will help boaters learn where they can legally discharge waste, and why they should use these facilities. It will provide important ear-marked fluids for the construction and maintenance of both pumpout stations for holding tanks and dump stations for wastes from portable toilets. By providing adequate and accessible facilities, and educating boaters about them, H.R. 1297 will increase compliance with federal law prohibiting the discharge of untreated sewage.

The time for additional pumpout and dumping stations is now. Use of the recent increases in the Sport Fish Restoration Account as called on by H.R. 1297, "The Clean Vessel Act of 1991," to help all boaters, and to protect critical habitat is needed.

Thank you for the opportunity to testify today on H.R. 1297. I'd be happy to answer any questions that you all may have.

Senator BREAUX. Thank you. Mr. Prosser.

STATEMENT OF NORVILLE S. PROSSER, CHAIRMAN, AMERICAN LEAGUE OF ANGLERS AND BOATERS

Mr. PROSSER. Mr. Chairman, I am delighted to appear today on behalf of the American League of Anglers and Boaters or ALAB. As you well know ALAB is a national coalition, comprised of some 38 national organizations representing the fishing, boating, and conservation communities. ALAB members worked closely with Congress beginning in the late 1970's, culminating in 1984 with amendments to the Federal Aid in Sport Fish Restoration Act.

These amendments created the Aquatic Resource Trust Fund, important I would note that it is popularly known as the Wallop-Breaux Trust Fund, and funded those trust funds with user fees from several sources. The Federal aid in Sport Fish Restoration Act is known nationally and internationally as a model user-fee funded partnership between Federal and State governments, the affected industries and the boating and fishing publics.

The Aquatic Resources Trust Fund has allowed the States, in partnership with the Federal Government to significantly increase recreational boating and fishing opportunities across the country. ALAB's members, and it is our only reason for its existence, is to debate, negotiate, and reach compromise agreements leading to strengthening that program and the enabling legislation. Through lengthy internal negotiations ALAB has been able reach consensus positions on most matters relating to the Act. H.R. 1297 has provoked a wide range of viewpoints within the ALAB coalition and a consensus has not surfaced within our organization.

There are, Mr. Chairman, several principles to which all ALAB members do subscribe, however. One is our respect and admiration for the chief sponsor of this legislation in the House of Representatives. Chairman Jones has made significant contributions to the passage and improvement of this program over the years and for this we are extremely grateful.

Two, each and every member of ALAB fully supports the principle that the investment of moneys from the Sport Fish Restoration Account of the Wallop-Breaux Trust Fund is a legitimate and reasonable source of funding for addressing water quality problems that result from recreational boating activities.

In testimony last May before a House of Representatives hearing on H.R. 1297 ALAB recommended several changes that would strengthen the boating facilities' provisions of the program and I would like to briefly summarize. First, we recommended the scope of projects funded through each State's Sport Fish and Restoration Act allocation should be redefined as boating access and facilities, including marine sanitation device pumpouts.

Second, we recommended the minimum spending requirement for each State should be increased from the current 10 percent to 12.5 percent of the apportioned funds. Third, ALAB recommended new flexibility to all States to pool boating access and facilities' funding on a regional basis.

Specifically, States should be permitted to spend less than 12.5 percent in any single year on boating access if, one, it documents plans to average at least that amount over a 3-year period or, two, if the States enter into an agreement with the adjacent or proximate State or States, the result being that the States collectively invest at least 12.5 percent of their total apportioned share for boating access and facilities.

Fourth, States should be allowed to retain boating access and facilities monies until expended at the discretion of the Secretary, if environmental permitting delays make prompt expenditures impossible. Fifth, any reverted boating access and facilities funds should be placed in a new subaccount controlled by the Secretary. This new account would be used to fund boating access and facilities projects only on a nationwide, competitive, merit-driven basis.

The ALAB compromise assumes that recreational boating caused water quality problems should be addressed nationally and not limited to coastal States. The ALAB compromise did, by the way, also recommend increasing the boat safety account from \$70 million currently authorized incrementally to \$90 million by fiscal year 1996.

Mr. Chairman, within the diverse membership of ALAB there are important organizations which fully support H.R. 1297. On the other hand, there are similarly important organizations within our coalition that cannot support certain provisions most notably the required earmarking of additional Sport Fish Restoration Account moneys.

Again we are absolutely unified in the principle that these moneys, contributed by recreational boaters and anglers, are an appropriate source of funding for sanitation device facilities, construction, and maintenance for all the States, territories, and the District of Columbia.

Mr. Chairman, I thank you for the opportunity to appear and I will be happy to answer any questions you might have.

[The prepared statement of Mr. Prosser follows:]

PREPARED STATEMENT OF NORVILLE S. PROSSER

Mr. Chairman, I am delighted to appear on behalf of the American League of Anglers and Boaters (ALAB) to discuss the relationship between the Aquatic Resource Trust Fund of the Federal Aid in Sport Fish Restoration Act and the proposed funding of sanitation device pump-out stations.

As you know ALAB is a national coalition, comprised of 38 national organizations representing the fishing, boating, and conservation communities. ALAB members worked closely with Congress beginning in the late 1970's, culminating with the passage of the 1984 amendments to the Federal Aid in Sport Fish Restoration Act. The 1984 amendments created the Aquatic Resource Trust Fund (popularly referred to as Wallop-Breaux) and funded the Trust Fund with user fees from several sources.

Those sources are excise taxes on sport fishing related equipment, import duties on sport fishing equipment and pleasure craft, and federal gasoline taxes paid by recreational boaters. In 1990, further amendments to the Act directed federal gasoline taxes contributed by small gasoline powered equipment such as lawnmowers and chain-saws, through the Trust Fund, to an important wetlands restoration program.

The Federal Aid in Sport Fish Restoration Act has been noted nationally and internationally as a model user-fee funded partnership between Federal and state governments, the affected industries and the boating and fishing publics. In fiscal 1992 some \$262,578,000 will be available to the Sport Fish Restoration Account of the Wallop-Breaux Trust Fund. This is approximately \$3.50 for each of the estimated 75 million recreational anglers and boaters in the United States.

The Aquatic Resources Trust Fund has allowed the states, in partnership with the federal government, to significantly increase recreational boating and fishing opportunities across the country. ALAB's members continue to be involved in debate, negotiation, and compromise leading to strengthening changes to the Act. Through lengthy internal negotiations ALAB has been able to reach consensus positions on most matters relating to changes to the Federal Aid in Sport Fish Restoration Act and its regulation. H.R. 1297 has provoked a wide range of viewpoints within the ALAB coalition and a consensus has not surfaced within our organization on this particular bill.

There are certain principles to which all members of ALAB do subscribe, however.

One, our respect and admiration for the chief sponsor of this legislation in the House of Representative. Chairman Jones has made significant contributions to the passage and improvement of this program for many years and for this we are all extremely grateful.

Two, each and every member of ALAB fully supports the principle that the investment of monies from the Sport Fish Restoration Account of the Aquatic Resources Trust Fund is a legitimate and reasonable source of funding for addressing water quality problems that result from recreational boating activities.

The ALAB membership's commitment to strengthening the ability of the state fish and wildlife agencies to use these resources to address water quality problems associated with recreational boating was reflected in testimony offered last May before a Rouse of Representatives hearing on H.R. 1297.

In that testimony, ALAB recommended that the present minimum spending requirement of 10 percent of each state's Sport Fish Restoration Account allocation for boating access should be changed. First, the scope of projects should be redefined

as "boating access and facilities", including marine sanitation device pump-out facilities. Second, the minimum spending requirement for each state, should be increased from the current 10 percent to 12.5 percent of the apportioned funds for each state. Third, ALAB recommended new flexibility to allow states to "pool" boating access and facilities funding on a regional basis. Specifically, states should be permitted to spend less than 12.5 percent in any single year on boating access and facilities if either (1) it documents plans to average at least that amount during a 3-year period or, (2) the state enters into an agreement with an adjacent or proximate state or states, the result being that the states will collectively invest at least 12.5 percent of their total apportioned share for boating access and facilities. Fourth, states should be allowed to retain boating access and facilities monies until expended at the discretion of the Secretary, if permitting delays make prompt expenditures impossible. Fifth, any reverted boating access and facilities funds should be placed in a new subaccount controlled by the Secretary. This new account would be used to fund boating access and facilities projects on a nation-wide competitive, merit driven basis. The ALAB compromise assumes that recreational boating caused water quality problems should be addressed nationally and not limited to coastal states. ALAB testimony further recommends that the current cap on the boating safety account should be increased from the present level of \$70 million to \$80 million in FY 993, to \$85 million for FY '94 and FY '95, and to \$90 million for subsequent years, 100 percent of the increase should go to boating safety assistance to the states.

Mr. Chairman, within the diverse membership of the American vague of Anglers and Boaters, there are important organizations which fully support H.R. 1297. On the other hand there are similarly important organizations within that coalition who can not support certain provisions of H.R. 1297, most notably the required earmarking of additional Sport Fish Restoration Account monies. Again, we are absolutely unified in the principle that these monies, contributed by recreational boaters and anglers, are an appropriate source of funding for sanitation device facilities construction and maintenance for all of the states, territories and the District of Columbia.

Mr. Chairman, thank you for the opportunity to appear before you this afternoon. I would be pleased to respond to any questions that you or the other members may have at this time.

Senator BREAU. Thank you. Mr. Luttrell.

STATEMENT OF DENNIS F. LUTTRELL, EXECUTIVE DIRECTOR, BUZZARDS BAY ACTION COMMITTEE

Mr. LUTTRELL. Thank you, Mr. Chairman. Thank you for the opportunity to address this body on the Clean Vessel Act, H.R. 1297. I am the executive director of the Buzzards Bay Action Committee, a nonprofit corporation comprised of 13 municipalities surrounding the estuary of the Buzzards Bay in southeast Massachusetts. The goal of our group is to protect and enhance the waters of our bay and the living resources contained therein and this we hope will reopen the closed shellfish beds and keep our beaches open.

By implementing the Comprehensive Conservation and Management Plan drafted for our bay by the Environmental Protection Agency and Massachusetts Coastal Zone Management, we will accomplish just that. Administrator Reilly intends to sign the plan into Federal policy shortly, in fact, possibly today. It has already been approved by Governor Weld of Massachusetts.

One of our municipalities, Wareham, on January 22 of this year became the first east coast no discharge area designated by the Environmental Protection Agency for the country. Buzzards Bay is 1 of 17 national estuaries designated under the Clean Water Act, section 320. Before I joined the team at the BBAC, I served the State of Colorado as a member of its Wildlife Commission which oversaw the Colorado Division of Wildlife.

I was appointed to the national area's council and prior to that served as a county commissioner for 8 years. I am also a rec-

reational boater and a Coast Guard auxiliarist. I hope that my experience might offer you a perspective concerning H.R. 1297 that may be helpful. Over the last 2 years I have come to recognize the need for funding of facilities to service the huge number of recreational vessels locally, regionally, and nationally.

In my town of Marion, MA, we have nearly 900 moored boats plus numerous day trippers utilizing our embayment. There are currently no public toilets or showers available to the boating public in the town and no public pumpout facilities. Buzzards Bay as a whole has 11,000 boats and only 9 public pumpout facilities available. It is estimated that the bay needs 16 additional more of these facilities to adequately service the boating community.

In checking with other NEP programs it appears that our local need is a national need as well. The Massachusetts Bay and Cape Cod Bay regions also need numerous facilities. Most marinas in Massachusetts do not have pumpout facilities. Over in neighboring Rhode Island the Narragansett Bay Project estimates the need for 20 additional public pumpout facilities to service 30,000 boats currently serviced by only 2 private facilities.

Santa Monica Bay in California has no public facilities to service the 7,000 boats there although there are 5 private facilities, and Puget Sound in Washington State needs many more facilities to service its recreational fleet as well. In reviewing the draft CCMP plans under section 320, I find this need expressed in every available plan.

The private sector currently provides some pumpout facilities generally to their marina members and almost all charge a fee for the service. As a result, most of the boaters do not utilize this limited service. Given the downturn in the economy and boater use days, it is safe to assume that there will not be a rash of new facilities built by the private sector in the immediate future. Nor will there be a rush by the boaters to utilize these services and pay the required fees.

As a result of the lack of availability of adequate vessel pumpout facilities and the declination by the part of the boating public to utilize what pumpouts currently exist, the coastal marine environment is being inundated with discharges from hundreds of thousands of boats. There is also the reluctance on the part of the recreational boater to understand or even recognize the problems resulting from discharging their heads into near coastal waters.

These discharges from marine heads tend to be much more concentrated than effluent emanating from municipal waste water treatment plants as they are not diluted by hundreds of gallons of water per flush as with a home's toilet. Not only are these discharges more concentrated, but they also contain such chemicals as formaldehyde, alcohol, chloride, and others, which also join the nutrient nitrogen and the biological components of fecal coliforms and associated pathogens contaminating the sensitive estuarine environment.

Wherever there is a concentration of boats moored or docked, the area is routinely closed to shellfishing by the State utilizing recommendations by the Federal Government and enforced by the States or local municipalities. Where fecal coliform levels exceed 14

colonies per 100 milliliters, the area is closed to harvesting shellfish. When it exceeds 200 it is closed to swimming as well.

In the Buzzards Bay region, there are over 13,500 acres closed to shellfishing. This represents a tripling of closures over the last 18 years, a time frame where we have seen a substantial increase in recreational boating. This mirrors the statewide trends. The cost estimated by the Massachusetts Division of Marine Fisheries for closures to shellfishing and lobstering is \$7.5 million in Buzzards Bay and \$18.8 million statewide.

These closures are putting fishermen out of work and hurting the local restaurant industry, which depends on purchasing locally caught shellfish and lobsters in order to sell reasonably priced seafood to the public in a tourist economy. The illegal harvest and sale of contaminated seafood has become an ever increasing health problem as a result of the high prices being paid for shellfish and the high unemployment in the region. The unemployment level in this area is approaching 20 percent.

For every person found illegally harvesting or selling seafood from closed areas, there are many more out there not getting caught. Massachusetts Secretary of Environmental Affairs, Susan Tierney, states in a recent speech, "It is a lot cheaper to keep the bay clean than trying to fix it up later—especially when you consider that over one half of the State's economy, in one fashion or another, depends on our marine resources."

There are numerous studies, which conclude with the finding, that the discharges from marine heads are not only resulting in the closing of these areas to the harvesting of shellfish, but also results in the stressing the habitat for all benthic and free swimming species. The decline of the environmental health of the estuary caused by boat discharges and other sources is also resulting in a decline in the habitat itself for many species crucial in the food web network.

This effects the recreational sport and commercial finfishing industry. We have a locally produced bumper sticker from the Coalition for Buzzards Bay which really tells it all. It reads simply, "No Estuaries—No Seafood." The need to protect the estuary habitat from the boating public should be quite obvious to anyone reviewing the situation.

Representative Jones' bill, when enacted, will result in establishing only a handful of new badly needed facilities in Massachusetts. It will take years to meet the needs of the coastal communities at the funding levels set forth. In the case of Massachusetts, \$109,671 will be available under this bill. The average cost of a new unit will be \$15,000, resulting in 7.3 new units that would be constructed if all funds were to go toward construction.

If Buzzards Bay were to receive all the revenues it would take 2 years to build what facilities are necessary in our region. I have no estimate for the statewide additional facilities necessary. To cover the need for the State under this bill would surely take many more years. However, all of the funds under the bill will not go toward construction. In Representative Jones' wisdom, the need for funding boater education to the problem and the location of pumpout facilities has been addressed.

Funds will also be utilized for operations and maintenance; these may require as much funding as construction and educational efforts. I believe that we all recognize the need for protecting this crucial resource in both esoteric terms, because it is the right thing to do, but also because of the millions of dollars lost due to the closure of shellfishing areas to the local economies. The jobs created constructing operating and maintaining these proposed facilities will be welcomed by the region.

The real debate is whether to utilize funds from the Dingell-Johnson Sport Fish Restoration Act. The reduction of boat wastes being jettisoned into sensitive estuaries on a national scale will protect crucial estuarine habitat from the current level of toxics, nutrients, and pathogens. This is clearly in keeping with the intent of D-J.

The sportsmen of the country have a proud history of paying for the restoration of wildlife dating back to 1934 with the passage of the Duck Stamp and Fish and Wildlife Coordination Acts and later in 1937 with the Pittman-Robertson Act. H.R. 1297 is another positive step toward protecting wildlife by protecting its habitat.

As one who used to allocate these funds as a wildlife commission and upon checking in with other States' officials, I believe that the 5 percent from D-J funded State programs will not suffer significantly. The windfall from the increase in the fuel tax has not really been planned for. One high-level wildlife official told me recently that, "The moneys are coming in faster than we can spend them."

The State wildlife agencies will complain that by passing this bill you will be hamstringing their ability to maintain their operations. Do not believe it. This is the same outcry you will hear from any bureaucrat if you were to more stringently designate how funds were to be allocated. Many State employees will privately tell you that they favor this bill, but will not publicly, because it would cause friction between State departments, such as coastal zone management, environmental protection, and the wildlife departments, which have to work together on a day-to-day basis.

They are not willing to jeopardize these relationships for only the chance at funding programs to reduce the pervasive discharging from boats into the coastal habitat. In conclusion, I strongly urge you to recommend a favorable designation from your committee for the passage of H.R. 1297. Our wildlife, coastal habitat and local economies need the assistance that the Clean Vessel Act will help to provide.

I would like to thank Representatives Jones and Studds for the work in this area, and thank you, again, for the opportunity to speak before you.

[The prepared statement of Mr. Luttrell follows:]

PREPARED STATEMENT OF DENNIS F. LUTTRELL

Thank you for the opportunity to address this body on the "Clean Vessel Act," H.R. 1297.

I am the Executive Director of the Buzzards Bay Action Committee, a non-profit corporation comprised of 13 municipalities surrounding the estuary of Buzzards Bay in southeast Massachusetts. The goal of our group is to protect and enhance the waters of our Bay and the living resources contained therein and this we hope will reopen closed shellfish beds and keep the beaches open. By implementing the Comprehensive Conservation and Management Plan drafted for our Bay by EPA and Massachusetts Coastal Zone Management, we will accomplish just that. Adminis-

trator Reilly intends to sign the plan into federal policy shortly and it had been approved already by Governor Weld of Massachusetts. One of our municipalities, Wareham, on January 22nd, became the first east coast "No Discharge Area" for the country. Buzzards Bay is one of 17 National Estuaries designated under the Clean Water Act, section 320. Before I joined the team at the BBAC, I served the state of Colorado as a member of its Wildlife Commission, which over saw the Colorado Division of Wildlife. I was also appointed to the Colorado Natural Areas Council and prior to that served as a county commissioner for eight years. I am also a recreational boater and Coast Guard Auxiliariist. I believe that my experience may offer you a perspective concerning H.R. 1297, that may be helpful.

Over the last two years I have come to recognize the need for funding of facilities to service the huge number of recreational vessels locally, regionally, state wide and nationally. In my town, Marion, Massachusetts, we have nearly 900 moored boats plus numerous day trippers utilizing our embayment. There are currently no public toilets or showers available to the boating public in the town and no public pumpout facilities. Buzzards Bay as a whole, has 11,000 boats and only 9 public pumpout facilities available. It is estimated that the Bay needs 16 more of these facilities to adequately service the boating community. In checking with other NEP programs it appears that our local need is also a national need as well. The Massachusetts Bay and Cape Cod Bay regions also need numerous facilities. "Most marinas in Massachusetts do not have pumpout facilities". Over in neighboring Rhode Island the Narragansett Bay Project estimates the need for 20 additional public pumpout facilities to service its 30,000 boats (currently serviced by only 2 private facilities), Santa Monica Bay in California has no public facilities to service the 7,000 boats there (there are 5 private facilities), and Puget Sound in Washington State needs many more facilities to service its recreational fleet. In reviewing the draft CCMP plans under section 320, I find this need expressed in every available CCMP plan.

The private sector currently provides some pumpout facilities generally to their marina members and almost all charge a fee for the service. As a result, most do not utilize this limited service. Given the downturn in the economy and boater use days, it is safe to assume that their will not be a rash of new facilities built by the private sector in the immediate future. Nor will there be a rush by the boaters to utilize these services and pay the required fee. As a result of the lack of availability of adequate vessel pumpout facilities and the declination by the part of the boating public to utilize what pumpouts currently exist, the coastal marine environment is being inundated with discharges from hundreds of thousands of boats. There is also the reluctance on the part of the recreational boater to understand or even recognize the problems resulting from discharging their heads into near coastal waters.

These discharges from marine heads tend to be much more concentrated than effluent emanating from municipal waste water treatment plants as they are not diluted by hundreds of gallons of water per flush as with a home's toilet. Not only are these discharges more concentrated, but they also contain such chemicals as formaldehyde, alcohol, chloride and others, which also join the nutrient nitrogen and the biological components of fecal coliforms and associated pathogens contaminating the sensitive estuarine environment.

Where ever there is a concentration of boats moored or docked, that area is routinely closed to snellfishing by the state utilizing recommendations by the federal government and enforced by the states or local municipalities. Where fecal coliform levels exceed 14 colonies per 100 mls., the area is closed to harvesting shellfish. When it exceeds 200 it is closed to swimming as well. In the Buzzards Bay region, there are 13,489 acres closed to shell fishing. This represents a tripling of closures over the last 18 years, a time frame where we have seen a substantial increase in recreational boating. This mirrors the statewide trends. The costs estimated by the Massachusetts Division of Marine Fisheries for closures to shellfishing and lobstering is 7.5 million dollars in Buzzards Bay and 18.8 million statewide. These closures are putting fisherman out of work and hurting the local restaurant industry, which depends on purchasing locally caught shellfish and lobsters in order to sell reasonably priced seafood to the public in a tourist economy. The illegal harvest and sale of contaminated seafood has become an ever increasing health problem as a result of the high prices being paid for shellfish and the high unemployment in the region. The unemployment level in the area is approaching 20 percent. For every person found illegally harvesting or selling seafood from closed areas, there are many more out there not getting caught.

Massachusetts Secretary of Environmental Affairs, Susan Tierney, stated in a recent speech "It is a lot cheaper to keep the Bay clean than trying to fix it up later * * * especially when you consider that over one half of the state's economy, in one fashion or another, depends on our marine resources".

There are numerous studies, which conclude with the finding, that the discharges from marine heads are not only resulting in the closing of these areas to harvesting of shellfish, but also results in the stressing the habitat for all benthic and free swimming species. The decline of the environmental health of the estuary caused by boat discharges and other sources is also resulting in a decline in the habitat itself for many species crucial in the food web network. This effects the recreational sport and commercial finfishing industry. We have a locally produced bumper sticker from the Coalition for Buzzards Bay, which really tells it all. It reads simply "No Estuaries—No Seafood." The need to protect the estuary habitat from the boating public is quite obvious to anyone reviewing the situation.

Representative Jones' Bill1 when enacted, will result in establishing only a hand full of new badly needed facilities in Massachusetts. It will take years to meet the needs of the coastal communities at the funding levels set forth. In the case of Massachusetts, \$109,671 will be available under this bill. The average cost per new unit will be \$15,000. resulting in 7.3 new units that would be constructed if all funds go towards construction. If Buzzards Bay were to receive all the revenues it would take 2 years to build what facilities are necessary in or region. I have no estimate for the statewide additional facilities needed. To cover the need for the state under this bill would surely take many more years.

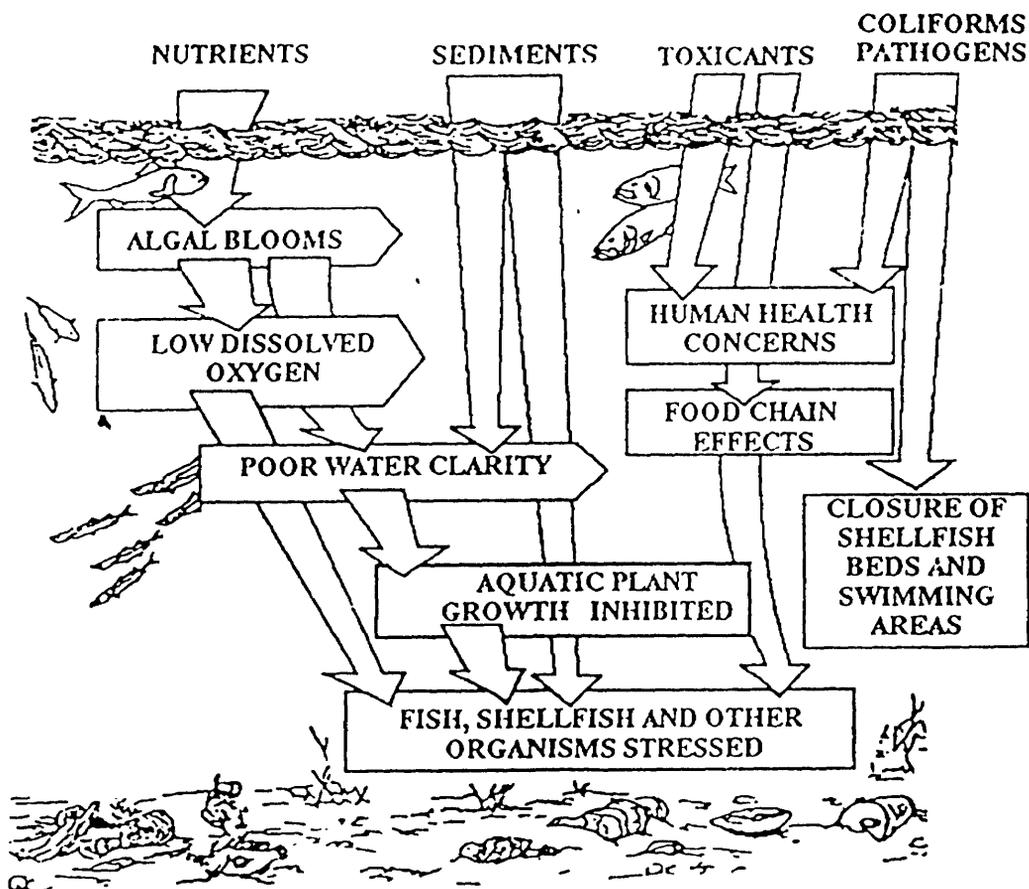
However, all of the funds under the bill will not go towards construction. In Representative Jones' wisdom, the need for funding boater education to the problem and the location of pumpout facilities has been addressed. Funds will also be utilized for operations and maintenance; these may require as much funding as construction and educational efforts. I believe that we all recognize the need for protecting this crucial resource in both esoteric terms, because it is the right thing to do, but also because of the millions of dollars lost due to the closure of shellfishing areas to the local economies. The jobs created constructing operating and maintaining these proposed facilities will be welcomed by the region.

The real debate is whether to utilize funds from the "Dingell-Johnson Sport Fish Restoration Act". The reduction of boat wastes being jettisoned into sensitive estuaries on a national scale will protect crucial estuarine habitat from the current level of toxics, nutrients and pathogens. This is clearly in keeping with the intent of D-J. The sportsmen of this country have a proud history of paying for the restoration of wildlife dating back to 1934 with the passage of the Duck Stamp and Fish and Wildlife Coordination Acts and later in 1937 with Pittman-Robertson Act. H.R. 1291 is another positive step towards protecting wildlife by protecting its habitat.

As one who used to allocate these funds as a Wildlife Commissioner and upon checking in with other states' officials, I believe that the 5 percent from D-J funded state programs will not suffer significantly. The windfall from the increase in the fuel tax has not really been planned for. One high level wildlife official told me recently that "the monies are coming in faster than we can spend them".

The state Wildlife agencies will complain that by passing this bill you will be hamstringing their ability to maintain their operations. Do not believe it. This is the same outcry you will hear from any bureaucrat if you were to more stringently designate how funds are to be allocated. Many state employees will privately tell you that they favor this bill, but will not publicly, because it would cause friction between state departments such as Coastal one Management, Environmental Protection and Wildlife Departments, which have to work together on a day to day basis. They are not willing to jeopardize these relationships for only the chance at funding programs to reduce the pervasive discharging from boats into the coastal habitat.

In conclusion, I strongly urge you to recommend a favorable designation from your committee for the passage of H.R. 1297. Our wildlife, coastal habitat and local economies need the assistance that the "Clean Vessel Act" will help to provide.



Modified from Bay Journal, March 1991, Maryland Department of the Environment

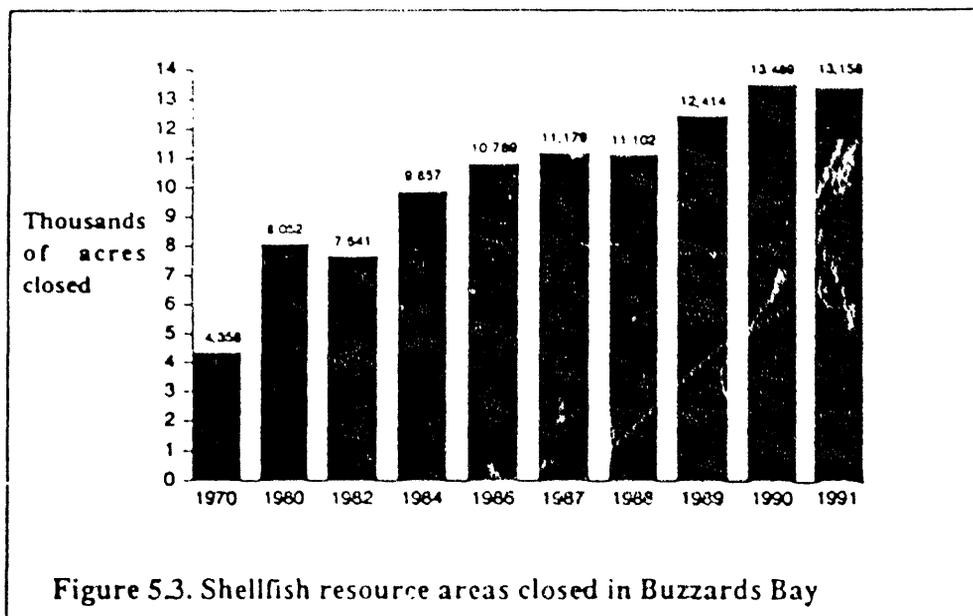
REFERENCES CITED

- "Restoring America's Wildlife," U.S. Dept. of Interior, Fish and Wildlife Service 1987.
- "Narragansett Bay Comprehensive Conservation and Management Plan," draft 1992.
- "Actions," Santa Monica Bay Restoration Project.
- "Buzzards Bay Comprehensive Conservation and Management Plan," final draft August 1992.
- "Massachusetts Bay Comprehensive Conservation and Management Plan," draft 1992.
- "Environmental Guide for New England Mariners," Coalition for Buzzards Bay 1992.
- "Coast Under Siege," Patriot Ledger Sept. 1988.

ACTION PLAN—PROTECTING AND ENHANCING SHELLFISH RESOURCES

PROBLEM

Since the 1970s, Buzzards Bay has been experiencing a tremendous increase in the number of shellfish-harvesting areas closed as a result of potential pathogen contamination (see Figure 5.3). In 1970, slightly more than 4,000 acres of shellfish beds were closed in Buzzards Bay; in 1991, approximately 13,200 acres are closed. Degradation of water quality due to pathogen contamination represents a serious human health risk and economic loss.



These shellfisheries are a valuable resource and need to be protected. Quahogs, bay scallops, soft-shell clams, and oysters are the predominant species harvested. In 1988, the landed value of the commercial shellfisheries of the Bay was \$4.5 million out of a statewide total of \$18.8 million (Figure 5.4). Landings of quahog and bay scallop constitute the majority of the commercial shellfishery in Buzzards Bay.

For these reasons, the closing of shellfish beds is one of the priority problems that has been addressed by the Buzzards Bay Project over the past five years. More beds are being closed because more pathogens are finding their way to the Bay and, to a lesser extent, because improved monitoring has identified previously undocumented problems.

The Coalition for Buzzards Bay has provided a valuable boater education component to this effort through its "Handbook for Mariners of Buzzards Bay". These efforts along with the municipal agreements to maintain and enforce pumpouts and their use has allowed great progress to be made in managing boat sewage in Buzzards Bay.

MAJOR ISSUES

Disposal of boat sewage once it is removed from vessels is often an obstacle in siting boat pumpout facilities. Few marinas in Buzzards Bay are tied into public sewer systems. In addition, recent NEP policy specifies that boat waste cannot be disposed of in a septic system. This regulation is based on the possibility of failure in the performance of the septic tank, as well as the potential of groundwater contamination. As a result, most sewage pumped from boats will be stored in tight tanks and then transferred to treatment works for ultimate disposal. Three major problems emerge: (1) formaldehyde that now must be disposed of at the treatment plant may not be diluted (as it would be if carried through a sewer system) and some contend that it will interfere with the treatment process (2) during peak flows, particularly in the summer, local treatment plants may lack the capacity to accept any additional sewage and; (3) pumpout facilities are often far from the nearest treatment plant, which makes hauling of the boat sewage expensive.

A successful boat pumpout program is a major undertaking that demands the full commitment of the harbormaster, the board of health, and the shellfish warden. It requires a comprehensive program with equal parts public education and enforcement. This type of total townwide dedication and cooperation is necessary to generate the ingredients for a successful program. Grass roots support for action was also an important ingredient in the initiation of some programs.

The Division of Marine Fisheries prohibits shellfishing in the areas beneath marinas and in buffer ones around marinas. The buffer area site depends upon the number of boats and a specific dilution ratio. It is critical that Buzzards Bay towns work with DMF in developing data on water quality and pumpout utilization to minimize the size of the buffer zones around marinas. The towns, through more effective plan-

ning and management, should address and minimize the inherent conflicts between these two uses of coastal waters.

GOAL—ELIMINATE THE DISCHARGE OF WASTEWATER FROM ALL BOATS IN BUZZARDS BAY EMBAYMENTS

OBJECTIVES

1. To build more pumpout facilities and to promote their use by educating boaters, making facilities more accessible, and enforcing the regulations.

WHAT IS THE BUZZARDS BAY ACTION COMMITTEE

The Buzzards Bay Action Committee (BBAC) is a voluntary organization comprised primarily of municipal governmental officials along with several state, regional and citizen advisory members. The BBAC is a task oriented group which will:

1) Facilitate regional communication and cooperation among municipal and state and federal agencies concerned with the management of Buzzards Bay and its watershed by discussing water quality concerns in their communities.

2) Take advantage of the Buzzards Bay Technical Assistance Program through which CZM staff provide technical assistance to local boards and commissions on water quality issues.

3) Assist Buzzard Bay Communities in identifying public and private funds for pollution control projects through such programs as the non-point source bill, transportation bond issue, proposed coastal research and monitoring program and the Buzzards Bay Project grants program.

4) To serve as a political force to assure continued funding for water quality projects from state and federal legislators. Generally the organization is dedicated to working together in a cooperative manner in order to protect and enhance the water quality of the Buzzards Bay drainage basin as detailed in the Buzzards Bay Action Compact.

HOW DID THE BUZZARDS BAY ACTION COMMITTEE COME ABOUT

In 1985 the Buzzards Bay Project (BBP) was established by Massachusetts Executive Office of Environmental Affairs (EOEA) and the United States Environmental Protection Agency. The projects purpose was to set up a management structure to coordinate project activities and help achieve long term goals, to identify and research the priority water quality problems in Buzzards Bay, and based on these findings to develop a management plan for the protection of the bay water quality and valuable resources. A Citizens Advisory Committee was established. This committee soon split into two groups: the Coalition for Buzzards Bay and the Buzzards Bay Advisory Committee. In 1990, the Buzzards Bay Project, with input from the BBAC, issued a Comprehensive Conservation and Management Plan for the benefit of the bay's water quality. In January 1991, the BBAC adopts a compact unifying the groups efforts towards common goals and objectives. The BBAC then decided to change its name to the Buzzards Bay Action Committee. The organization's name would reflect the newly evolved role from the more advisory to an action oriented group taking definite steps to protect and enhance the Buzzards Bay resource from pollution.

WHAT IS THE BUZZARDS BAY ACTION COMPACT

The Buzzards Bay Action Compact is a document which stipulates a municipal alliance among the city and towns surrounding Buzzards Bay. The pact's member governments, of 12 municipalities, unanimously voted to communicate and cooperate to regionally act responsibly to protect and enhance the water quality of Buzzards Bay by adhering to the ten action plans contained in the Comprehensive Conservation and Management Plan:

Manage nitrogen sensitive embayments; Protect and enhance shellfish resources; Control stormwater runoff; Manage wastes from boats; Manage individual septic systems; Prevent oil pollution; Protect wetlands and marine habitat; Plan for a shifting shoreline; Reduce and or eliminate toxic pollution; and Manage dredging and disposal of dredged materials.

Every selectman, city councilor, and mayor from the 12 municipalities surrounding Buzzards Bay voted to ratify the compact.

WILL THE ADOPTION OF THE BUZZARDS BAY ACTION COMPACT RAISE PROPERTY TAXES

No. The compact seeks to utilize existing personnel and not necessarily to hire additional personnel. By focusing the towns various departments on the topic of water quality, the compact will unify the towns internal actions in improving the bays water quality. By pooling our knowledge and expertise we will advance the environmental cause more quickly and at a reduced cost to the tax payers.

WHAT IS THE BUZZARDS BAY ACTION COMMITTEE'S MOTTO

The Buzzards Bay Action Committee's motto is "Communities united to preserve and protect Buzzards Bay."

WHAT DOES THE BUZZARDS BAY ACTION COMMITTEE HOPE TO ACCOMPLISH

The Buzzards Bay Action Committee hopes to accomplish the enactment bay wide measures that will both protect and enhance the water quality of Buzzards Bay. This would be facilitated by adopting official policy, regulations, by-laws and coordination unilaterally and jointly which will perpetuate this shift in focus by the local governments. Indirectly we hope to induce spin off improvements to public health, wildlife, economic vitality, recreation and general quality of life concerns.

WHAT IS THE RELATIONSHIP OF THE BBAC TO THE BUZZARDS BAY PROJECT AND THE COALITION FOR BUZZARDS BAY

The Management Committee for the Buzzards Bay Project originally had as one of its components a Citizen Advisory Committee. This committee early on split into the Buzzards Bay Advisory Committee the precursor to the Buzzards Bay Action Committee and the Coalition for Buzzards Bay. The Advisory Committee was the governmental component and the Coalition became the independent citizen educational organization with political clout from its over 800 members. The Director from the Coalition sits as a member of the BBAC board and the Director of the BBAC sits on the board of the Coalition. The Buzzards Bay Project staff are the technical advisors and supply the scientific and technical expertise. Together they function cooperatively and compliment each other in seeking to clean up the water of Buzzards Bay.

WHO COMPRISES THE MEMBERSHIP OF THE BUZZARDS BAY ACTION COMMITTEE

The Buzzards Bay Action Committee is comprised of representatives from each of the following municipalities:

Acushnet; Bourne; Dartmouth; Fairhaven; Falmouth; Gosnold; Marion; Mattapoisett; New Bedford; Plymouth; Rochester; Wareham; and Westport.

It is hoped that later the inland towns of Middleboro, Carver, Lakeville, and Fall River will join as well. The representatives are appointed to the BBAC by their respective Boards of Selectmen or Mayor.

THE BUZZARDS BAY ACTION COMPACT

We, the undersigned municipalities, recognize the serious threat to Buzzards Bay as a significant resource through its deteriorating water quality and the associated threat to public and environmental health, the viability of the economic base, and the quality of life.

We further recognize that the drainage basin of Buzzards Bay crossed municipal boundaries; that the future of the Bay depends on the ability of neighboring communities to control the quality of their environment through regional communication and cooperation among municipal, state, and federal agencies responsible for managing the Bay and its watershed.

We support the formation of a voluntary, regional organization of local governments to be known as the Buzzards Bay Action Compact. the Compact's members agree to exchange information and ideas that will expedite the region's ability to implement sound environmental regulations and by-laws to protect and enhance our mutual resource, Buzzards Bay.

We agree to review and update our individual town by-laws and regulations so as to voluntarily:

- manage nitrogen sensitive embayments
- protect and enhance shellfish resources
- control stormwater runoff
- manage wastes from boats
- manage individual septic systems

- prevent oil pollution
- protect wetlands and marine habitat
- plan for a shifting shoreline
- reduce/eliminate toxic pollution
- manage dredging and disposal of dredged materials

These actions are contained in the Buzzards Bay Comprehensive Conservation and Management Plan.

Signed by the towns of Acushnet; Bourne; Dartmouth; Fairhaven; Falmouth; Gosnold; Marion; Mattapoisett; New Bedford; Rochester; Wareham; and Westport.

THE BUZZARDS BAY COMPREHENSIVE CONSERVATION AND MANAGEMENT PLAN

What is the Buzzards Bay Comprehensive Conservation and Management Plan?

The Buzzards Bay Project has prepared a draft Comprehensive Conservation and Management Plan (CCMP) for Buzzards Bay. This management plan includes recommendations on how federal, state, and local government can control pollution and protect the vital aesthetic, ecological, and economic resources of the Bay. The CCMP is the culmination of five years of scientific research and management strategy development directed through a combined effort of planners, scientists, and local, state, and federal managers.

The CCMP is an advisory plan. It is a blueprint to achieve our goal of preserving, protecting, and enhancing water quality and living resources in Buzzards Bay. Because the management plan is not a regulatory document, it is necessary for all levels of government to participate in its implementation.

Most of the pollution problems facing Buzzards Bay result from the localized impacts of growth and development. Because municipalities in Massachusetts have broad authority to plan and manage growth, and because state and federal agencies are unlikely to develop comprehensive programs to fulfill local needs, most of the recommendations in the CCMP are directed at local government. For these reasons, it is vital that municipalities take the first steps to better manage their coastal resources.

The first step in protecting the Bay as a whole is to protect its embayments. Each of the more than 30 major embayments around Buzzards Bay receive most of their pollution inputs from land use in their surrounding drainage area. In many instances, two or more municipalities share a drainage area and will need to work cooperatively to protect a particular embayment or coastal resource. This management plan looks at Buzzards Bay as a regional resource shared by 17 municipalities; each must take steps to protect this common resource.

Due to of the complex demographic, political, and economic make-up of the communities surrounding Buzzards Bay, the Project did not recommend the creation of a regional regulatory authority. Instead, we advocate an association of municipalities working cooperatively to improve the way they govern individually and collectively. If this effort fails, however, a regional regulatory authority may be a practical alternative.

How will CCMP be finalized?

During the summer of 1990, the Buzzards Bay Project will solicit public comment on the draft CCMP. The Buzzards Bay Project will hold a series of informational meetings in July and August, to describe the document. During this same period, the Project will solicit comment from state and federal agencies. September 14, 1990 is the closing date for submitting comments on the CCMP. During the fall, the document will be revised and inter-agency agreements and commitments will be drafted and incorporated in the management plan. In December, the final CCMP will be submitted to the Governor and the FPA Regional Administrator for endorsement.

For Whom Is the Management Plan Being Written?

The Management Plan addresses all levels of government, including: municipal, inter-municipal, regional, state, and federal. On the local level, the Management Plan includes recommendations on how Boards of Selectmen, Boards of Health, and Conservation Commissions can use existing authorities to improve protection of the Bay's resources. Resources that are affected by the activities of more than one town require inter-municipal cooperation for protection. The plan promotes this kind of cooperation by highlighting regional models that had proven effective. The plan also examines how state and federal agencies can improve their regulatory and technical assistance programs to better protect the Bay.

What should result from implementation of the CCMP?

Recommendations in the CCMP call for action from municipal, regional, state, and federal authorities as well as citizens in the Buzzards Bay Basin. Implementation of the plan would result in:

- New or revised local bylaws that empower boards and commissions to regulate development and protect resources.
- Local management plans that address areas requiring special protection such as Areas of Critical Environmental Concern and harbor and waterfront resource areas.
- Technical assistance from regional, state, and federal agencies as well as the Buzzards Bay Project and other organizations to help local authorities better manage and protect their resources.
- Increased intergovernmental coordination among local boards, regional authorities and state and federal agencies so that all are working together in a partnership to protect the resources of Buzzards Bay.
- Increased scientific study to help municipalities solve difficult technical issues.
- Increased state and federal funding to help municipalities implement recommended actions contained in the Management Plan.

What does the Management Plan contain?

The heart of the document is the set of "action plans" that lay out specific areas or issues that need more attention. Among the issues addressed are nitrogen sensitive-embayments, shellfish protection, stormwater runoff, boat waste, on-site septic systems, oil pollution, wetlands protection, and shifting shorelines.

Recommendations included:

- Towns should manage nitrogen inputs to sensitive coastal areas to prevent nitrogen loading rates from exceeding critical limits. Municipalities can implement this program through a combined strategy of reducing zoning density, tougher permit review, land acquisition and conservation easement programs, and sewage and septage treatment technologies. The Department of Environmental Protection (DEP) should bolster local efforts by amending the state water quality standards to include embayment specific loading rate limits.
- Towns should be more protective of their wetlands.
- DEP should prohibit the issuance of permits to chronic violators of the Wetlands Protection Act.
- Towns should develop management plans for their waterfronts adopted through local bylaws. Specifically, each town should zone its entire watersheet and delineate resources protection areas and identify reduced impact areas such as dock exclusion zones, zones with reduced dock density, designated mooring area, and zones that exclude private boat channels. For this strategy to be successful, the town must first map the coastal resources and habitat they are seeking to protect with these plans.
- DEP and EPA should expand their non-point pollution source programs to better address stormwater discharges that degrade water quality such as causing the closure of swimming beaches and shellfish resource areas. Where appropriate, these agencies should require NPDES permits from the discharger.
- DEP should adopt a policy for treating stormwater by requiring oil gas traps, absorbent pads, soil infiltration, and regular catch-basin maintenance.
- Local communities should work more closely with the Division of Marine Fisheries in classifying shellfish areas. In this way, towns could expand the use of conditional closures to increase the availability of existing shellfish resources for commercial and recreational use. Local participation will also help municipalities identify and remediate violations of water quality.
- The legislature should eliminate the exemption from reviews by Conservation Commissions that the Massachusetts Department of Public Works now enjoys on bridge and road widening projects.
- Boards of Health and DEP should require boat pump-out facilities at all marinas. Municipalities and the Buzzards Bay Project should then petition EPA to designate these embayments as "no-discharge zones."
- All Boards of Health should adopt regulations that set the distance of septic systems from water courses and wetlands based on viral pathogen transport.
- Each municipality should adopt an oil spill contingency plan and ensure that it has adequate oil containment equipment to protect critical resource and habitat areas from contamination until the US Coast Guard or Department of Environmental Protection arrive to clean up the spill.
- Municipalities with fishing vessels should ensure there are adequate receptacles to accept used engine oil from these vessels.
- When wetlands are allowed to be altered or destroyed, DEP should require restoration or replication on at least a 2-to-1 ratio.

- Municipalities should collect and properly dispose of household hazardous wastes on a continuous basis.
- The City of New Bedford should continue to work cooperatively with state and federal agencies to upgrade its sewage treatment facility and combined sewage overflows (CSOs) in a timely manner.

How will the Plan be implemented?

The Buzzards Bay Project will initially coordinate efforts among municipal and state agencies. The Project will work to gain acceptance of the CCMP at all levels of government and continue to provide technical assistance throughout the region.

The Buzzards Bay Advisory Committee (BBAC), a group of Buzzards Bay town officials that advise the Project, will have a major role in implementation of the CCMP. The Buzzards Bay Project, is proposing that all communities in the Buzzards Bay basin form a compact to protect the vital resources of Buzzards Bay. The BBAC can implement this strategy by guiding local boards and by providing a regional forum for municipal decision makers.

The Coalition for Buzzards Bay, and independent citizen education organization, will work with the Project and the BBAC to involve and educate citizens on the issues, problems facing Buzzards Bay and expend the grass roots support increased environmental protection of Buzzards Bay.

Where can copies of the CCMP or more information on the Project be obtained?

We are interested in what you think of the Comprehensive Conservative and Management Plan. Copies of the Management Plan and other materials can be obtained from the Buzzards Bay Project at 2 Spring Street, Marion, MA 02738 (508) 748-3600.

Senator BREAUX. Thank you. Mr. Peterson.

STATEMENT OF MAX PETERSON, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, WASHINGTON, DC

Mr. PETERSON. Thank you, Mr. Chairman. I recall the opportunity to testify before the Merchant Marine and Fisheries Committee on the House side when you were a member. Let me suggest that my testimony be accepted for the record, and I will try to brief it in the interests of time. Let me suggest, as you just indicated, this bill is not about whether or not there is a problem somewhere, or whether Wallop-Breaux might not be an appropriate vehicle to use. The real question is whether in Washington we are going to decide that 5 percent of the Wallop-Breaux money needs to go for this specific purpose every year from now on without any question of what the local priorities are. It is also a question of whether we are going to spend that much money to serve about 2 percent of the boats.

We will not solve the problem by simply building pumpout facilities, we are quite sure of that, because now only 2 percent of the boats have the MSD devices that can be used for pumpout. Only a very small percentage of those equipped with MSD devices actually use pumpout facilities that are available because of the lack of enforcement or education. So, I think this is a typical case where it is nice to say we solved the problem by passing a law which earmarks part of an existing funding stream.

There is no additional money provided. There is no additional grant money. There is no additional money flowing to the States. It is merely a case of saying in Washington that regardless of what other priority you have got out there we want you to spend exactly 5 percent a year for this one purpose.

Let me take on the next question, that there is somehow a windfall in Wallop-Breaux. The difference between the total amount of funds apportioned to the States through Wallop-Breaux in 1992

versus 1991 is \$6 million, not even enough to keep up with inflation. I would like to know the source of this windfall that people keep talking about.

I would also be pleased to know of any State that supports this bill, because I have letters, Mr. Chairman, I would be glad to provide for the record which indicate that States do not support this bill. Most States are approaching this problem on the basis of requiring private marina operators to provide facilities. Most of these large boats use marinas because mostly nontrailable boats have the type 3 devices. They are normally kept at marinas.

We think the only practical way to solve this problem is to require marinas to provide pumpout facilities in connection with marina construction. Providing that the public somehow will build and operate facilities could actually retard the development of adequate pumpout facilities because the marina operator will simply say we are going to wait in line until the public finances them.

There is also a serious question of whether Wallop-Breaux funds are available to help private marina operators construct them, because, as you remember, a basic principle of Wallop-Breaux is that the facilities are to be available for public use. How to make them available for public use in private marinas we do not know at this point.

We believe that the ALAB consensus, which Mr. Prosser just outlined which would allow 12.5 percent to be spent for boat access, including onshore facilities where they are needed, provides more flexibility and more potential money to use for this purpose where it is needed than does the earmarking of 5 percent.

Another factor is that requiring 5 percent a year for many States that will not be enough to run a reasonable program. In some years a State may want to spend 10 or 12 percent and in other years they may want to spend 1 or 2 percent. To require each State to spend exactly 5 percent a year unless they go through some complicated procedure and get agreement with the Secretary of the Interior that they can implement the plan without that much money seems to us to be unrealistic.

So, Mr. Chairman, although we concur with the need to be concerned with water quality, this is a typical case where we do not believe the remedy fits the situation. Thank you.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF R. MAX PETERSON

Good afternoon, Mr. Chairman. I am R. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies.

The international Association of Fish and Wildlife Agencies, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

I am pleased to be here today to testify on H.R. 1297, the Clean Vessel Act of 1991. The bill would require coastal states to use at least 5 percent of their Sport Fish Restoration program apportionment for construction, renovation and maintenance of marine sanitation device shoreside pumpout stations for Fiscal Years 1992 to 1996.

Let me first point out that the states can and do use Wallop-Breaux funds to construct boat sewage disposal facilities, usually in connection with public boat access facilities. However, the reporting system on Federal Aid projects is not detailed enough to determine how many of the public access facilities do in fact include marine pumpout stations.

Before going further, please permit me to make a few observations about the Wallop-Breaux program as it now operates. Both the Wallop-Breaux, and its wildlife counterpart the Pittman-Robertson programs, are among the most successful of the user benefit/user pay programs in existence today. These programs truly represent a unique partnership between the paying user, the industry that collects the excise tax, and the federal-state cooperative effort which puts the program in place on the ground.

There are obviously many reasons for the success of user pay/user benefit programs such as Wallop-Breaux. This program focuses on the important objectives of sport fisheries management, restoration, and enhancement; aquatic education; and providing boating access for the recreational fisherman and boater. It thus provides opportunities for public access and enjoyment of fisheries resources by boaters and anglers.

The Wallop-Breaux program also provides flexibility to each state to, over time, meet high priority needs at the local level. It is important as we look at new needs that we do not succumb to the temptation to adopt a formula, no matter how well intentioned, with the idea that "one size fits all." Strict formulas remove desirable flexibility. No matter how well intentioned, allocation formulas in the Sport Fish Restoration Program can require the expenditure of funds that do not necessarily fit the situation. This and several other areas have caused the Association concern.

As a member of the American League of Anglers and Boaters (ALAB), the Association is committed to working cooperatively with a wide range of users to ensure that the diverse beneficiaries of the Aquatic Resources Trust Fund continue to enjoy an equitable distribution of the funds that flow from this successful partnership. We also are committed to seek improvements to the program that keep pace with the growing demands on the Fund.

The International Association has been working cooperatively with the boating and fishing community to address some of the challenges which have arisen. Last May ALAB reached an agreement on a proposal to increase the Boating Safety Account over time from \$70 to \$90 million annually, and to increase the minimum spending requirement of the Boating Access Account from 10 to 12½ percent while broadening the account to include related support facilities. That agreement is outlined fully in testimony by ALAB President Norville Prosser. The Association stands by the May 1991 ALAB agreement as an equitable proposal to service a wide range of users. This agreement provides more capability and flexibility than the program mandated by H.R. 1297.

ALAB has suggested a number of changes to the program which appear to minimize disruptions, maintain an equitable balance of benefits to all contributors, and result in the creation of good projects. The Association supports these changes, and intends to work cooperatively with both ALAB and the Congress to ensure that the Program continues to provide benefits to the boaters and anglers of this country.

As the Association testified before the House Merchant Marine and Fisheries Committee last year, questions remain as to whether H.R. 1297, as proposed, will improve the quality of coastal waters by addressing overboard disposal from boaters lacking adequate pumpout facilities for the discharge of on-board sewage.

Before addressing these issues, I would like to share with you significant information which has been gathered since I testified last May before the House Subcommittee. This information addresses the adequacy of shoreside pumpouts, the need for additional pumpout construction, and the effectiveness of pumpouts being used on a voluntary basis as an indicator of expectations for reasonable use of additional pumpouts.

In August 1991, the IAFWA surveyed state fish and wildlife agencies on many of the questions regarding marine pumpouts. Of the agencies queried, 67 percent said that they believed recreational boats were not causing a significant marine pollution problem, and 41 percent of the marine agencies felt that they already had adequate pumpout facilities. Also, only 11 percent of the agencies felt that voluntary pumpout facilities were effective.

Data collected by the U.S. Fish and Wildlife Service, through a contract with Price Waterhouse offers additional insight on the need for and the effectiveness of marine pumpouts. The study indicates that out of the approximately 19.2 million recreational boaters, only 2.1 percent would be able to utilize pumpout stations. There were also data to suggest that even if more marine pumpouts were constructed, they would not be fully utilized if their use was only voluntary, and not mandatory.

The Association has several specific concerns regarding H.R. 1297 as proposed. Among the most pressing concerns is the statutory earmarking of a fixed percentage of Wallop-Breaux funds to achieve the objectives of H.R. 1297. H.R. 1297 reduces the funds available to the states for often higher priority projects by earmarking a fixed percentage of a marine state's apportionment to pumpout construction. There is already specific earmarking of the fund for boating access and construction, and we feel that adequate authority already exists for the states to construct pumpout facilities where needed, after consideration of the facilities already by other public or private organizations.

The majority of recreational boats are not equipped with Type III marine sanitation devices and thus would not benefit from providing additional pumpouts facilities. Thus, many users would contribute for the benefit of a relative few larger boaters. In our opinion, this would undermine the good support that currently exists for the program.

The Association agrees that overboard disposal of boat sewage is a problem in some coastal areas, we are not convinced that even wide scale pumpout construction would significantly reduce the problem, as long as there is no prohibition against overboard discharge in open waters. This needs to be considered in the committee's deliberations.

The Association is further convinced that the provision, in its current form, will not facilitate more construction, but may in fact inhibit further attention to the problem, by reducing ability to address the problem. This reduced latitude could stall successful efforts, as well as change funding priorities. Additionally, private marina operators may elect not to provide pumpout facilities if it appears that public funds for this purpose may be available in the future.

As we expressed in testimony before the House last May, we question whether the waiver as expressed in H.R. 1297 would allow adequate addressing of state concerns. The legislation provides three waiver criteria: 1) a determination that vessel sewage is not a problem; 2) a demonstration that adequate devices are available to meet state requirements; or 3) an indication that anticipated construction of pumpouts will meet the boating public's needs. The stringency of these requirements means it will be difficult, if not impossible, to obtain a waiver. Further, having Environmental Protection Agency (EPA) and the Department of Interior concur is a questionable approach. We are not convinced that in the real world a state would be able to obtain a waiver.

We also must question whether H.R. 1297, lacking any provision for enforcement, will realistically address the problem. Based on survey data, we are not convinced that significant reductions in sewage discharge will occur without some enforcement provision.

Finally, the Association is curious how H.R. 1297 relates to H.R. 3778, which would raise the Boating Safety Account to \$90 million by 1995. These two legislative changes to the program collectively would result in a significant shift of funds to the states. We urge that the committee consider both pieces of legislation in its deliberations on H.R. 1297.

Senator BREAUX. Well, let me make just a comment. Senator Kerry has gone to vote, and then he will come back and I will try to vote.

I do not differ with many of the observations from the panel, except in some areas that affect the ultimate conclusion, I guess, which is of greatest importance. There is no question there is a problem out there with regard to boats that do not have facilities on board, you say about 2 percent of the boats. Did we not pass a requirement in the clean water bill? Did we not add a requirement that boats of a certain size must have MSD-type facilities?

Mr. PETERSON. Above a certain length boats built after a certain date, but you have lots and lots of boats out there that do not have them now.

Senator BREAUX. I take it the Coast Guard is not really—it is not a high priority, apparently, for inspection and for enforcement in that area.

Mr. PETERSON. Well, most boats also still have a Y-valve to allow overboard discharge, and there are very few no-discharge zones in the United States, as you know. It requires a waiver from the EPA

to have a no-discharge zone, so there are very few places that have a no-discharge zone.

Senator BREAUX. How many States are using any of the Wallop-Breaux funds to do these type of programs for facilities for discharge?

Ms. PODLICH. I really do not know the answer to that. The only figure that I've seen was that using Wallop-Breaux discretionary funds. The States have been able to build only six pumpout stations nationwide.

Mr. PETERSON. Let me suggest the tracking information on Wallop-Breaux projects carries the number of access facilities. It does not carry separately whether access sites have onshore pumpout facilities, and so I would say that number is simply not available.

Senator BREAUX. Well, it would be good to get that information, maybe by doing a survey of the States that are using the Wallop-Breaux funds. I think that would be helpful to find out. My objection is not with using Wallop-Breaux funds to build pumpout stations. I think it is a good idea. I think it should be encouraged. It obviously affects commercial and recreational fishing.

It is something that could be done. States should be encouraged to do it. I would be happy to participate in encouraging the States to look at this as an option, but I do not support mandating a certain percentage of the funds. Some States may be doing a good job, some States may be doing no job at all. To mandate across the board that each State has to use 5 percent for that specific purpose, and they can only get out of it by jumping through a number of hoops, is not good public policy in my opinion.

I am interested, Mr. Prosser, in your recommendations for a change in the 10-percent requirement on boat access. Could you explain your recommendation for a change?

Mr. PROSSER. That is correct, Senator. The ALAB community after lengthy negotiations in terms of developing some equity in distribution of the additional gas tax money, recommended increasing the boat safety account, as I indicated, from \$70 million currently authorized to \$90 million by 1996 and then, in addition to that, as a further benefit to the boating community they recommended increasing the mandatory investment for each State from 10 percent in current law, to a minimum of 12.5 percent.

That would approximate an additional \$5 million nationally in the first year out and about \$10 million by 1996 for those facilities, if the other boating safety provisions were adopted as well.

Senator BREAUX. Mr. Luttrell, I take it from your testimony that the State of Massachusetts—and I think I have got everybody's testimony mixed up here. The Massachusetts Secretary of Environmental Affairs, Susan Tierney, stated it is a lot cheaper to try to keep the Bay clean than to fix it up later. Apparently Massachusetts really thinks this is important.

Mr. LUTTRELL. Yes, sir, and I pointed out in my testimony Wareham is one of the towns which received the designation no-discharge area from EPA, and it is fortunate that it had a disproportionate amount of pumpout facilities available. Also, as an enclosure I have a compact signed by all the representatives in the municipalities around the Bay which have all pledged to seek the no-discharge area.

What I am saying is that if these moneys are available to the communities to install these facilities they will take the extra step in declaring no-discharge area and working with EPA.

Senator BREAU. How much is the State of Massachusetts using from Wallop-Breaux for these type programs?

Mr. LUTTRELL. I am not aware of any.

Senator BREAU. Well, if they think it is so important, why are they not using the money to do the job?

Mr. LUTTRELL. That is to be determined by them.

Senator BREAU. Well, that is part of the problem. You are telling me the State of Massachusetts thinks this is a high priority, but yet they are not using \$1 from Wallop-Breaux to do what the law says they can do. That tells me it is either not a high priority for them or they do not understand that they can use the funds for that purpose. I am not sure which one it is, but it has got to be one of them.

Mr. LUTTRELL. I think it may be a combination of both, sir.

Senator BREAU. Well, somebody ought to sit down and say "Look, all of these citizens have done such a wonderful job," I mean that sincerely, of pointing out the need for these type of facilities. Somebody in the State office somewhere ought to say, "Let us use a portion of our funds for these type of facilities because it is the right thing to do."

They can do that. They can use all of their money for that. If they feel they have enough boat launch ramp facilities, they can in 1992 say that we are going to use—how much money do they get in Massachusetts under Wallop-Breaux?

Mr. LUTTRELL. I believe it is approximately \$2.5 million.

Senator BREAU. Well, they could use \$2.5 million to do all of it. They have that authority. I mean, and my point is, that each State determines their priorities under this. Some States may think they could use it all for this or one-half, or maybe they do not think it is a problem. That is my only concern, telling them that they have to do it.

I will say this, I think we are at the point for everybody who is interested in this problem as well as the overall water quality problem, and not problem, really, but the opportunity really of Wallop-Breaux and the funding mechanism. It is a classic user fee.

We worked for years to get this program adopted. It is an example of people willing to put up dollars for the benefits that they know they are going to get directly back, unlike the user fee on recreational boats, which does not go to the users who are paying.

This is something that anglers and people who buy rods and reels, fishing equipment, lures, et cetera, line, are willing to pay and have paid to get a direct benefit back. It is over \$200 million a year now. I remember when we started talking about this we had no concept there was going to be this much money.

I think it is probably appropriate for Congress at this point to consider some rather in-depth hearings on Wallop-Breaux to do a survey, really, on how it has been spent, and how it has been working and what, if any, defects are out there. Perhaps we would then better envision the future of Wallop-Breaux and what may be an expanded use of those funds.

But I do not want to open it up for projects that are unrelated to the people who are paying the tax. I mean, the protection of it as a user fee in the classic sense is extremely important. We would be breaking faith with those who were paying that fee if we were to open it up to things that are not directly related to the purpose of the tax.

I would state that what you are suggesting is a legitimate purpose. We just might have problems with the mandating of it, and perhaps we may be able to get together and work on something that would be a strong encouragement for the various States to take a look at this as a methodology and an appropriate way of using some of these funds.

But I certainly want to work with the chairman and Senator Kerry, who has talked to us about it because of his concern for Buzzards Bay and that area. I have been up there and I know it is a very beautiful area, and one that needs to be protected.

So, with that I would thank the panel, and Senator Kerry is going to step up here in a moment, and I will just hold the mike open while I vote and he comes in and resumes his position.

Senator KERRY [presiding]. Thank you all very much. I appreciate your patience. I obviously will not try to go over everything, but on the other hand I do want to educate myself a little bit on this, which is the purpose of today. I gather Senator Breaux has made it clear that while he thinks the purpose is a bona fide one he objects, obviously, to the mandate. A number of questions obviously arise around that.

Mr. Luttrell, let me begin with you, if I can. Just give me a sense that if the opponents are saying that they are already eligible under the fund, why are States not using the fund? Is it because of the pressure, that it just competes because of other programs within that particular category, or is there some other reason?

Mr. LUTTRELL. I believe that is correct. It is a question of priorities, of course.

Senator KERRY. Well, if it is such a priority, for instance why has not our own State used it?

Mr. LUTTRELL. Well, to begin with, Massachusetts arbitrarily takes one-half of the funds and puts them to coastal and salt water concerns and the other one-half goes to inlands, and I do not know if that is a proper percentage right there. I do not sit on their Commission. I have not been to many of the debates there, and so I cannot really adequately comment on that, but I think that there may be a misunderstanding that they have the ability to do this, and this may be an action to spend these funds that would be appropriate under the guidelines.

Senator KERRY. Well, do you think that—you say you are raising the question as to whether or not it is appropriate.

Mr. LUTTRELL. No, I believe it is, but I do not believe they have discussed it.

Senator KERRY. Well, could the argument be made by an opponent that that represents a lack of real demand or does it simply represent that nobody has focused on the sport fund as an appropriate fund?

Mr. LUTTRELL. I believe the latter is more correct.

Senator KERRY. What is the manifestation of the demand that you could cite for the committee?

Mr. LUTTRELL. Well, I went back statistically and looked, as you did, at the cost of not having these with the tripling of the closures of shellfish beds, \$7.5 million lost seafood coming from Buzzards Bay, \$18.8 million from Massachusetts. There are—I quoted some figures earlier in my testimony from the various estuaries and bays around the country. Narragansett Bay I believe needs 20 facilities. They only have 2 private facilities today to service 30,000 boats.

Senator KERRY. Two facilities for 30,000 boats?

Mr. LUTTRELL. Two private facilities.

Senator KERRY. Do you happen to know the tonnage or gallons of those?

Mr. LUTTRELL. No, I do not.

Senator KERRY. Is there any member of the panel who—just as sort of a threshold series of questions here, is there any member of the panel who disagrees that this is a priority?

Mr. PETERSON. No, but I think you have raised the issue in the State of Massachusetts, and they are looking at priorities. In the first place, there are 30,000 boats. Only about 2 percent of them even have marine sanitation devices on board. So, you are talking about serving a very small percentage of them. And most of those are large boats that are housed in marinas which should have pumpout facilities.

Senator KERRY. Well that is part of the problem here, they do not.

Mr. PETERSON. We think the private marina builder who builds a marina ought to include a pumpout facility.

Senator KERRY. How do they get them if they do not?

Mr. PETERSON. I think State law ought to require that. That is what most States are doing now, is to require marinas to have a pumpout facility.

Senator KERRY. And should they just do it on a fee for service basis?

Mr. PETERSON. Yes, just like they provide a gas station or anything else. And if you start saying the public sector is going to do this, you have got a tremendous number of years for the public sector to even begin to catch up.

Senator KERRY. Is there a suggestion that the public service sector do it, or is it not more a suggestion that the public service sector mandate it?

Mr. PETERSON. Well if you provide these funds earmarked for that purpose, I think you will find marina developers waiting in line for this public money, if they think it is going to be available for that purpose. So, I think it could retard solving the problem.

Senator KERRY. Well how do you deal with the argument, then, that we target a certain amount of money that people pay under the excise tax and sales tax, et cetera, for boating purposes, to public efforts for the public good. I mean whether it is coastal zone management or fishing, restocking and so forth, that is what puts money in the fund; correct?

Mr. PETERSON. Yes, but I think—

Senator KERRY. Let me just finish the thought here. Why, then, if we have already adopted the principle that public money goes to

gain a public social goal through the revenues that come from boating purchases, should you not also include the pumping portion of that?

Mr. PETERSON. A basic premise of Wallop-Breaux funds is that they are to broadly serve the user paying community, and facilities are to be available to the public. If you provide public facilities at a private marina, we are not sure how you make them available to the public.

Senator KERRY. Do you want to answer that, Mr. Luttrell?

Mr. LUTTRELL. Yes. Just a couple of comments I would make. The estimates we have are one-third of the boaters in Buzzards Bay have these tanks.

Senator KERRY. Well, let us assume it is one-third. What do you do, in the context of the public argument that is being made? Is the argument that the public is accessed because clams and mussels and fish and swimming holes and so forth are then clean and available to the public, so while the boat is not, per se, the public, the effect is to the public?

Mr. PETERSON. I think you are misunderstanding me. We are not arguing that these funds should not be available to help solve these kind of problems. What we are arguing is that it is appropriate for the State to make that priority decision. And they can use any amount of the Wallop-Breaux funds that are available to them now for that purpose if they decide it is a priority, rather than spending exactly 5 percent a year.

Senator KERRY. There is a question above that issue. And the up above question is not unlike superfund questions and other cleanup questions, which is whether or not we, because of the lack of State response on these, should not create the mandate. Particularly in view of the fact that, Mr. Peterson, the amount of money—I mean I gather one of your principal arguments against it is the fact that there is a huge number of statutory requirements on the fund today; correct?

Mr. PETERSON. Well, yes.

Senator KERRY. And you do not want to see the additional money taken away for this.

Mr. PETERSON. In the ALAB consensus, and I guess you were not here when Mr. Prosser outlined it, we had recommended the boat access fund be increased from 10 to 12.5 percent, and that that entire 12.5 percent be available for boat access, including support facilities which could include pumpout facilities. And so we are not unsympathetic to this need, but we are concerned about creating additional earmarked categories.

Five percent is a small amount of money in some States, and you are saying every year we want you to spend 5 percent on pumpout facilities regardless of whether it builds a reasonable size facility, or regardless of whether it is responsive to the problem. We think the States ought to have a lot more leeway on how much they might spend. Maybe some year they need to spend 15 percent.

Senator KERRY. Well ALAB has recommended that it goes up to the 12.5 percent. Is that correct?

Mr. PROSSER. Correct.

Senator KERRY. Well given that it has recommended that, what is the guarantee that with a changed minimum spending requirement you are going to get them to put it into pumping stations?

Mr. PETERSON. I think it is going to depend upon the sense of priority. If this is a big priority in Massachusetts.

Senator KERRY. Well what if we decide that it is not. I mean, for instance, it is not unlike civil rights. I mean we sat here and waited for people to decide. It was a sense of priority, they would not be voting in certain parts of the country.

Mr. PETERSON. If you want to be philosophical about it, having headed a major Federal agency for a long time, I think one of the principal problems is Washington deciding one size fits all, and to mandate a percentage of something going for some specific purpose out there. We are mandating—

Senator KERRY. What if we were to mandate a goal? Rather than a percentage, what if we were to mandate that by a certain period in time there must be, per boating population x number of stations, or some formula that we put in? What about that, and leave it up to the States as to how they want to meet that within the period of time and for eligibility from this fund?

Mr. PETERSON. That would certainly make a lot more sense, and the States would have to address more than just recreational boaters. I have not mentioned that before, but in these harbors we seem to ascribe all the problems to recreational boaters. In many of these harbors there are a large number of fishing boats who may have no devices now, and may be dumping all kinds of things overboard, including chewed up fish, in these waters. And so we have to attack pollution on a broad base looking at everything that is there. You cannot just single out the recreational boater and say we are going to solve the water quality problem by addressing just the recreational boater.

Senator KERRY. Mr. Prosser, what about the mandate issue with respect to the ALAB increase?

Mr. PROSSER. The organizations, as I have indicated in my testimony, have not reached a consensus on the mandate. There are members within our coalition who support 1297, and there are members such as Mr. Peterson represents who are vitally opposed to that set-aside. We have recommended several strengthening amendments to the statute which would create greater opportunities for the States to invest moneys in these particular kinds of facilities, if they chose to do so.

We noted that Mr. Breaux made comments relative to working with the community and providing strong encouragement to the States. We believe that the ALAB community would be more than anxious to assist in developing those kinds of encouragements with you through the regulation process and congressional advisements. But, again, we would repeat that our coalition does not endorse the legislation, nor oppose it.

Senator KERRY. Would not endorse it and would not oppose it. The waiver requirement that is in it, does that not make it more attractive to you?

Mr. PROSSER. Yes, sir. Among a number of our members that does. Among other individuals who make up the coalition, they are

concerned whether it is adequate to really truly allow the EPA certification process that is written into the legislation.

Senator KERRY. Now right now there is no guarantee that some States are going to actually survey their facilities and make a judgment about the adequacy of pumpout; correct?

Mr. PROSSER. I believe that is correct.

Senator KERRY. There is a provision in this legislation that calls for States to make a survey in order to determine. Do you think that kind of—is that a beneficial exercise?

Mr. PROSSER. I believe I should defer on that until such time as we have a particular decision among our coalition on that question. I do not know that we have addressed that specific point, whether a survey should be conducted. If I might get back to you.

Senator KERRY. Well would you please, I would appreciate it. And also maybe you could tell me whether or not at this point in time your member organizations have voiced concern over the shortage of pumpout facilities. Has that been expressed to you?

Mr. PROSSER. They have. Among the membership of the coalition they certainly have expressed that concern.

Senator KERRY. For instance, staff points out to me that out of 250 marinas in the State of North Carolina, only 10 have pumpout stations. Now that raises an interesting question. Let us assume that many more of them had pumpout stations. The question then arises, will they be used. How do you deal with that, and maybe all of you would want to comment on that? Can you document the fact? Is there a way without getting burdensome here with paperwork and monitoring and all that, to know that in fact x number of loads have been unloaded, that people are using them, et cetera? And I am sorry, I interrupted you.

Mr. PROSSER. That has been the subject of considerable discussion within the coalition relative to the parallel needs for enforcement as well as education, and an education component is now in H.R. 1297. But those are crucial.

Senator KERRY. Do you think that addresses the need I just articulated?

Mr. PROSSER. In part.

Senator KERRY. Mr. Luttrell, you wanted to comment?

Mr. LUTTRELL. Yes, sir. A couple of points. Nowhere in Buzzards Bay does the EPA allow a discharge. There is nowhere in Buzzards Bay, that is considered 3 miles offshore. Also, a point I made earlier was that Wareham has received a no-discharge area designation, the first on the entire east coast. The communities around Buzzards Bay have pledged to pursue the no-discharge designation for their communities, if they can get the funds to put these facilities in. They will take it a step further, to ensure that the water quality improves. And I think more municipalities, nationally, would follow this trend.

Senator KERRY. So, you are convinced of the capacity of the community to know that this is working, without a lot of administrative burden?

Mr. LUTTRELL. Well if you make it a requirement, first of all to make it available. It will be used. There are things you can do.

Senator KERRY. Why will they be used? I mean if it costs you \$5 or \$10 every time you pump out and you can go outside the harbor

and pull a switch and punch your emergency overload switch or whatever and pump out. Is not this \$10 savings an incentive, plus the time it takes and the hassle it takes and so forth?

Mr. LUTTRELL. We think the boating community is a responsible group if they know that what they are doing is harmful to the environment and to the fisheries and the habitat.

Senator KERRY. So, some people will abuse it and many will not.

Mr. LUTTRELL. That is correct. But if you put dye tablets and so forth in—one of the things Marian has done is to go to a mobile facility that is a town facility. And also they will put one in the dock next year. This has been working, and I am just very keen on this moving forward. I think it is very important.

Senator KERRY. Now where, what is the dumping site for the marina?

Mr. LUTTRELL. Which marina?

Senator KERRY. Where does the marina offload?

Mr. LUTTRELL. Well I will speak generally around the bay. Some have to dump into a holding tank which is then pumped and then transferred by truck to the city of New Bedford, for instance. Some go directly into sewer lines for the town, where they have them. Many towns in Massachusetts do not have a central sewer on the coastline, which is a real problem. This then would have to be pumped off of a boat into a holding tank and then transferred to a truck to a receiving station that would be able to treat the effluent.

Senator KERRY. Now in my reading up until recently, and in fact yesterday when I sat with the staff and we talked about this issue at bit, I have not been aware of the certitude of boat causation of local pollution versus the runoff or other pollution. And I was informed by staff that there are some studies that, in fact, isolate it with respect to boats. I was struck by that. Is there, in fact, a certitude as to the degree of pollution caused by boats versus other forms of pollution?

Mr. LUTTRELL. The National Estuary Program has been working primarily on nonpoint sources. To say with certitude that it is 90 percent coming from boats versus 20 percent coming from agriculture versus 15 percent coming from road runoff, I do not think there has been too much that I have seen which really breaks it out. You have to look at it embayment by embayment to define those characteristics adequately.

Senator KERRY. Let me ask you, Ms. Podlich, if I can. In the issues and actions paper on the Bay Commission you make one of those statements of certitude, and I wonder if there is a way that you can share with the committee how that correlation was drawn? And perhaps can you give us any figures on the tonnage of sewage discharged into Chesapeake Bay that comes from recreational boats?

Ms. PODLICH. As far as I know, we never found the figures about how much raw sewage comes from boats in the Chesapeake Bay. There are many different pollutants going into the Chesapeake Bay. Within the context of the pollutants that are going into the bay, discharge from vessels is relatively minor. The Governors of the bay States who wrote the Chesapeake Bay agreement and signed it agreed that recreational boat pollution was of some harm

to the bay. The Chesapeake Bay agreement sought to address all types of harm, whether they were creating 40 percent of the pollutant loadings or 3 or 5 percent of the loadings. And so they agreed that boat pollution does create some negative impacts to the Chesapeake Bay, and therefore it should be addressed. They never addressed exactly how many pollutants were coming from vessel waste.

Senator KERRY. So, it was not clear what the total amount is, but nevertheless they have drawn the correlation?

Mr. PETERSON. Yes. And it was big enough that they put together a work group to address it and try to find some solutions for the bay area.

Senator KERRY. Was that more of a visceral conclusion, or was it supported somehow by data?

Ms. PODLICH. I think it was a little bit more visceral for the Chesapeake Bay. However, we had much data from other areas which supported the fact that there is a connection between boat sewage and local water quality.

Senator KERRY. Can you perhaps share with the committee, and we could find some on our own, but I would just be curious for the record?

Ms. PODLICH. I will find that for you.

Senator KERRY. Also, you support the basics of the legislation. And I know that a State like Maryland has been particularly good with respect to the question of pumpout facilities and encouraging them. But therefore the question is begged, why would it be necessary to mandate that you take a specific percentage of the sport fish restoration money fund in order to do more pumpout stations?

Ms. PODLICH. I think that Maryland is one of the few States that is tackling this problem on their own. One of the interesting things to note is that before Maryland had this grants program, pumpout fees ranged from \$5 on up to \$50. And as a boater, \$50 is going to impact you a lot more than \$5, and you are probably going to go outside the harbor and pump your sewage into the water when it is expensive to use legal pumpout. With Maryland's public grants program, the cost of grant program pumpout facilities has a cap of \$5. And so the public grants program has certainly lowered the cost of pumpout in the State, which ultimately benefits the boaters because they will go use it, and it helps improve water quality.

Maryland, like several other States, is having some financial problems at this time. Therefore, the future of that grants program may be in jeopardy, in which case Federal funds to continue the program's efforts would be very beneficial.

Senator KERRY. Now you folks are seeking to have the whole Chesapeake Bay declared a no-discharge zone.

Ms. PODLICH. That was as a result of that work group, that was the recommendation. Or excuse me, parts of it, I believe was the recommendation, parts of the Chesapeake Bay should be designated.

Senator KERRY. The concept being nothing goes in.

Ms. PODLICH. The concept of a no-discharge area is that no vessel waste should go overboard whether it is treated as through a type I, type II, or untreated as a type III.

Senator KERRY. The EPA formally designates that?

Ms. PODLICH. Yes, you have to go through an EPA process to have that designated.

Senator KERRY. And the benefit, then, is the enforcement capacity, or is there any other benefit?

Ms. PODLICH. The primary benefit is the enforcement capacity.

Senator KERRY. How does that relate to pumpout stations?

Ms. PODLICH. In terms of the no-discharge area?

Senator KERRY. Right.

Ms. PODLICH. In order to have a no-discharge area designated by the EPA, the State must show that it has adequate pumpout facilities available for all boats in that particular area.

Senator KERRY. So, if a State were seeking to gain that designation, it would be to the State's benefit to have some kind of mandate passed at the Federal level with respect to the pumpout stations; would it not?

Ms. PODLICH. Yes.

Senator KERRY. That would be advantageous. Let me try and come back, I mean let us bring this down to sort of raw, hard, simple talk. The basic opposition to this is that you are worried about the competition against other projects, or you do not like the concept of the mandate. I mean where do you really come out on this?

Mr. PETERSON. Well I think, Mr. Chairman, if our Federal-State system of Government is broken down at times, it is because the Federal Government likes to mandate things that to be done there that do not fit everywhere. And I think that is a real practical problem.

Senator KERRY. Do pumping stations fit?

Mr. PETERSON. I think they do.

Senator KERRY. Is there any coastal State where a pumping station does not fit a need?

Mr. PETERSON. No. I am not questioning whether it might fit some need. I am suggesting to mandate it be done so much per year, every year without fail, is not an appropriate way to go.

Senator KERRY. What if it is a different mandate? Would you and others support this if the mandate were more open and there was a final goal and you decide how you get there and how many you build and what year you build them, and by x year you have got to have them built?

Mr. PETERSON. Yes, we would support some different approaches. Let me suggest one that we did talk about. We said first, before you decide on a solution to a problem we ought to have a better definition of what the problem is out there in terms of discharge from boats—all kinds of boats.

Senator KERRY. Well is there any question in your mind that swimming around in a mass of boats that dump—have you ever been in a small harbor with a lot of boats and been swimming? It can be pretty ugly sometimes.

Mr. PETERSON. Yes. I have even spent some time in Massachusetts, Mr. Chairman, and I know where Buzzards Bay is. But let me point out that a lot of these areas—Maryland for example adopted a comprehensive approach in which they looked at things like houses along the shore that were essentially dumping sewage directly into the bay.

It is not enough to have an onshore facility, the sewage has got to go somewhere from there. So, we need a comprehensive approach that must address all of the things that are polluting a harbor, and it needs to address all the boats that are out there, not just recreational boats.

Senator KERRY. Well, we tried to do a lot of that with the Coastal Zone Management Act.

Mr. PETERSON. And I think the Coastal Zone Management Act is one of the vehicles being used now, and being used well. For example, the State of Alabama just recently passed a requirement that says that all marinas that are being built must include pumpout stations. And they are coming up with a plan of how they clean up their area through a comprehensive approach, which Maryland did, which included some bonding and so on, as I believe, to do this. But I think to suggest that this little amount of Wallop-Breaux money that might be available is somehow going to solve this problem—

Senator KERRY. The Wallop-Breaux money is going to increase. It is going to go up by, what, \$19 million or something?

Mr. PETERSON. Well right now the latest numbers are that Wallop-Breaux went up between 1991 and 1992, apportioned to States, by \$6 million.

Senator KERRY. I understand—someone else believes it has gone up \$25 million. Is that correct?

Mr. PETERSON. I do not know where they got those numbers because these are the official numbers that came from Treasury of what has happened between 1991 and 1992. That is the money that was actually apportioned between 1991 and 1992.

Senator KERRY. Our calculations lead us to \$19 million and Chairman Jones' calculations get to \$25 million.

Mr. PETERSON. Well he may have been using some earlier projections from Treasury, because we have—I am using the actual numbers that now have been apportioned for 1992. They are not guesses, these are actual numbers.

Senator KERRY. If they were \$19 million, does that not answer the question of resources?

Mr. PETERSON. I do not think it, again, says we should mandate 5 percent of that. I think using a 12.5 percent, which we suggested in the ALAB consensus, which we have agreed to, which would raise the boat access from 10 to 12.5 percent, would provide actually more flexibility to make progress on this, and would provide a way to build different size projects in different years to meet the need over time. Mr. Chairman, we are not against making progress on this, we are just against a single solution.

That is our problem, of earmarking and coming up with a single solution that we have decided here with precious little evidence. There has been some reference to studies here that show this is a major problem. We have asked for studies, we know of no study that has been scientifically done that shows a significant problem from just recreational boats.

Senator KERRY. Let me ask—if you go State to State to State, you have North Carolina, you have 10 marinas with pumpout stations for a total of 250 marinas, and you go to Massachusetts with 2 marinas and pumpout stations for 30,000 boats. Even if you dis-

count the percentage, you have 30,000 boats. Is that distinguishing or is that all kinds of boats?

Mr. LUTTRELL. 30,000 total recreational boats.

Senator KERRY. Well that is a lot of boats, there are a lot of little Boston Whalers out there.

Mr. PETERSON. It probably includes canoes.

Mr. LUTTRELL. We estimate 30 percent of those would be eligible.

Mr. PETERSON. Well you know you may have a case like Buzzards Bay. With that many boats, it may be that the State of Massachusetts ought to be spending money for that purpose, but I am saying we should not secondguess that here.

Senator KERRY. Well on the contrary, the Federal Government creates this fund.

Mr. PETERSON. No, the users create this fund by paying a specific tax, an excise tax.

Senator KERRY. The Federal Government created the structure which creates the fund. I mean you are benefiting now from the Federal mandate.

Mr. PETERSON. No. If you recall, the users came in and said we are willing to pay additional money, an excise tax, on rods and reels, and so forth, providing it is spent to improve the resource and to improve access to it. That is one of those historic agreements where the users agreed to be taxed for this specific purpose.

Senator KERRY. Certainly in fresh water bodies, it is very clear there is a relationship between the diminishment of refuse, raw sewage from boats, and the availability and the quality of fish you are going to get. I mean that helps fisherman.

Mr. PETERSON. Are you aware of a study that indicates that?

Senator KERRY. I think that all of the evidence about pollution and the ecosystem cycle with respect to oxygen and closed environments supports that concept.

— Mr. PETERSON. Well, you see many of these boats we are talking about on these inland lakes have little port-a-potties on them. And it is very easy to bring those in, and so I am not aware that there is any scientific study that shows that boats on inland waters are a significant problem to the fish.

Senator KERRY. Well, what about—I can give you specific examples of harbors and estuaries that are relatively shallow with relatively little current flowing, where you have boat traffic in the harbor, and their overflow reaches, unfortunately, the shores and the clam beds and so forth are shut down. I mean that is a direct relationship. Should we not be addressing that relationship?

Mr. PETERSON. Do you think you know enough about that problem to decide to put 5 percent of Wallop-Breaux money into it? Is that enough, is it too much, is it twice enough, is it one-half enough? I mean that is our problem, designating a specific amount of money to be spent each year for this purpose in more than 30 States. Coastal States include more than 30 States.

Senator KERRY. So, you would have no objection to a permissive percentage.

Mr. PETERSON. No, right now the States can spend any percentage they want.

Senator KERRY. Well let us say we were to articulate for the purposes of trying to focus people on this. Rather than mandate a spe-

cific percentage per year et cetera, supposing in the interest of heightening people's awareness and getting them moving on this, we were to say up to x amount of percentage may be used from this fund, and States must meet a requirement of x number of facilities with pump stations by the year 1996, or 1998, 2000, whatever it is going to be. Is that objectionable?

Mr. PETERSON. No. I think some approach like that would make sense. We are not against a reasoned approach to the problem, we never have been. And something like you are talking about seems to me to make some intuitive sense. And then you would leave it up to the States. The States might do this by requiring private marina operators to build facilities, or they might do some with public funds.

Senator KERRY. Does anybody want to comment on that before we wrap up here? Anybody else or any other subject that has been raised where you felt you have not had a chance to answer?

Ms. PODLICH. I have two clarifications. The first is having looked at our Chesapeake Bay document, we recommended that sensitive areas, particularly sensitive areas in the estuary, be identified, and that those be targeted for no-discharge zones, not the whole bay.

And the second is, as an example of what pumpout can do for a particular area, I would like to cite the case of the great salt pond in Block Island, RI, which is a very popular cruising area for all kinds of boats. It has up to 2,000 boats on a weekend in this very pretty small area of 750 acres of water in that pond. The opening to the ocean is very small and shoaling all the time. It is about 100 feet wide. It takes about 2 weeks for the water in that pond to flush.

In 1986 the State and the FDA closed the pond to shellfishing during the summertime when all these visitors were on their boats. In 1989 Block Island had its first year of a pumpout, very strong pumpout campaign, and they pumped 19,000 gallons of sewage from boats in their harbor that year. Since that time they have pumped more than 30,000 gallons additional. And my understanding is that the shellfish beds are now at least partially opened, reopened. So, I think that is a fairly direct correlation between the health of our shellfish and our economies and pumpout facilities.

Senator KERRY. Fair enough, that is a good comment, I appreciate that. That is helpful. We are also going to try, obviously, to document and search for as much information here, so that we can be very specific about the problems. And I think it is fair that people ask what is the correlation here and what is the expense versus the effect. And we basically ought to be asking those questions. Did somebody else have a comment?

Mr. LUTTRELL. Yes, sir, on whether it is enough or not. In my testimony earlier I commented on that. Well let me say this, that up to 1996 if these revenues were to come in, and it would be safe to say New England would not be able to construct and have available enough facilities to handle the boats using the current 5 percent recommended.

Senator KERRY. Understood. Yes, Mr. Prosser.

Mr. PROSSER. Again, the American League of Anglers and Boaters does represent some 38 organizations that represent the industry that has evolved in the boating and fishing industries, rep-

resents the angling and boating public. We have always taken great pride in our capability to engage in negotiation on resolving these thorny issues, and we certainly want to put that organization at your disposal to address this problem.

Senator KERRY. Well, we are going to need your help. I mean, I hope this is not going to be one of those things where we all get process gridlock and people kind of stake out their position and so nothing happens. I think we all recognize that there is a relationship here, at least, in certain bodies in water. And we do not want to let the situation somehow drift, or not lend the impression to people that this is not serious enough to deal with.

It is part of the coastal mosaic, and it is clearly a critical problem in areas such as Ms. Podlich has mentioned in Block Island. I know that the issue is a problem in Massachusetts, and I am sure in Connecticut, New York, New Jersey, and all the way down the coast. And we all know that. So, we really need to encourage a solution and be responsible about it. Responsible fishing and responsible boating demand that we do that.

On the other hand, I can understand that we do not want to create mandates that do not have a relationship to the cause and effect. We have got to try to balance that out, and the committee staff is going to have to work at that one. Any other last comments? Yes, Mr. Peterson.

Mr. PETERSON. Let me make a comment that if you look carefully at the ALAB consensus about raising the boat safety account from \$70 to \$80 to \$90 million, and increase the boat access account to 12.5 percent and broaden its use, one thing that might make sense, and I am not saying at this moment we would agree with it, but I think it holds some promise, is to say within a certain length of time certain additional study and analyses and preliminary plans be made of how States are going to approach this.

In other words, until we can get some real understanding of how this looks State by State and the actions the States are already taking—because you see some States do not use Wallop-Breaux funds for this, but they use other funds for the same purpose. So, I think we need a complete picture and we will be glad to work with you on that type of an approach.

Senator KERRY. I appreciate everybody's testimony. And again, thank you for your understanding and indulgence with respect to my having to go back and forth to the floor. And I am particularly appreciative to Senator Breaux and to his staff. I know it is hard for another Senator to give up an unexpected half an hour in the course of the day, and I am very appreciative to him to being able to do that.

And finally, this is the last hearing at which a staff member of mine, Ms. Sally Yossell, who has been with me now for almost 8 years and who has done all these issues and done an absolutely extraordinary job over the years she has been here. And I just want the record to reflect the gratitude of the committee and my personal gratitude to her for a really remarkable commitment to all of these natural resources and to the environmental issues that come in front of this committee, and to her great accomplishments on the Coastal Zone Management Act, on the Magnuson Act reau-

thorization, on the fisheries industries of Massachusetts, and everything that she has done.

We are very appreciative for that kind of public service at a time when public service is under great scrutiny and criticism. And we wish her well as she goes back to Massachusetts to a small place called the Kennedy School at Harvard and tries to learn some public administration, which obviously she could not learn here in Washington. Thank you very much. [Applause.]

We stand adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

○

56-184 (48)

ISBN 0-16-039484-8



9 780160 394843