

Testimony of
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before the

Subcommittee on Oceans, Atmosphere and Fisheries
Commerce, Science, and Transportation Committee

U.S. Senate

Washington, D.C.
May 9, 2002

Good morning, Mr. Chairman and Members of the Committee. I am Dr. William T. Hogarth, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA). I want to thank you for the opportunity to discuss living marine resources management issues at NOAA Fisheries. In this testimony, I would like to focus on actions the Agency is undertaking to address the challenges facing us today, as well as outline some of the major issues that need to be addressed.

THE CHALLENGE OF MARINE RESOURCE MANAGEMENT

NOAA Fisheries has responsibility for the oversight of living marine resources and their habitat through a number of statutes, including the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). Resulting conservation responsibilities include fisheries, protected marine species and essential fish habitat.

Since 1976, NOAA Fisheries' mission has changed dramatically from promoting fishing in the U.S. exclusive economic zone (EEZ) to placing greater emphasis on sustainability and conservation of fishery and marine resource considerations and particularly, taking into account specific economic, social, environmental, and community issues. The SFA, which passed in 1996, included new mandates from Congress that represent fundamental changes to fishery management. As a result, a marked increase in regulatory activity has occurred. In addition to the provisions of the SFA, all of our management operations have to be assessed and disclosed to decision makers and the public under the terms of the National Environmental Policy Act (NEPA), as well as numerous other statutes and executive orders

influencing how we go about developing and implementing regulations.

According to a recent study, NOAA Fisheries, which is a relatively small federal agency, is the fourth largest source of government regulatory actions. Not surprisingly, regulatory action generates controversy. Regulations issued by NOAA Fisheries affect not just marine resources but also the people, businesses, and communities associated with these resources. Impacts on fishing communities under such a scenario are unavoidable; the monumental challenge is to keep adverse impacts to a minimum while meeting the legal requirements of current laws.

Currently, there are 104 open lawsuits against the agency. These cases pending against NOAA Fisheries can be broken into the following categories: 37 dealing with Magnuson-Stevens Act and/or SFA claims; 34 ESA claims; and 25 other cases relating to a variety of issues. The legal challenges are distributed roughly equally between commercial, recreational, and environmental constituents. Notably, there have been three cases of great significance to fisheries management that did not involve a separate or discreet Magnuson-Stevens Act or SFA challenge, but the intersection of the ESA, NEPA, and SFA processes. These cases resulted in the injunction of major Federal fisheries.

As you can see, the regulatory process is complex, requiring extensive analyses and documentation of our mandates. Overall, the complexity of the multiple mandates and their intersection have provided opportunities for litigation, have been difficult to reconcile, and challenge the agency to be responsive to the current state of fisheries and related resources. The timelines and requirements for public process, including NEPA, have challenged NOAA Fisheries to develop environmental baselines and documents that are up to speed with the actions being considered. NOAA Fisheries' implementation of this statute has not been structured to work with Magnuson-Stevens Act timelines. NOAA Fisheries is responding to these challenges, and done correctly, fishery management plans and NEPA analyses actually serve complementary purposes.

RESPONDING TO THE CHALLENGES

Several internal reviews have been done, with the goal to identify problems and develop potential solutions. In partnership with the Regional Fishery Management Councils (Councils), we are focused on ensuring full implementation of the SFA (prevent overfishing, restore overfished stocks), reducing fishing capacity, and implementing measures to monitor and reduce bycatch, and protect essential fish habitats – in order to allow long-term sustainable commercial fishing. In order to meet these goals, we will need substantial changes to the fisheries management status quo, and ensure the use of the broadest possible range of measures, including marine protected areas, individual fishing quotas, and ecosystem management. Scientific data and analyses are necessary to provide sound advice for management decisions.

NOAA Fisheries has embarked on several initiatives to begin solving these large and difficult problems, thus serving our resources and constituents better. These include the Regulatory Streamlining Project

(RSP), the SFA Five-Year Review, a study of overcapacity and buybacks, implementing budgetary recommendations from the Kammer and (interim) National Academy of Public Administration reviews, a review of fisheries science, and modernization initiative.

The Management Process: RSP

NOAA Fisheries has undertaken a major regulatory streamlining project with the goal to improve the efficiency and effectiveness of regulatory operations and decrease NOAA Fisheries' vulnerability to litigation. The RSP initiative highlights the application of NEPA as a critical component of the regulatory process. NEPA provides an analytical framework or umbrella that can be used to address the requirements of many other statutes and ensure environmental compliance, consistent with all of the agency's mandates.

The primary mechanisms NOAA Fisheries will use to improve the fishery management process through the RSP are based both on past recommendations and new initiatives. These include:

- "Front-loading" the NEPA process through the active participation of all regional, science center, and Council staff in key responsibilities at the early stages of fishery management action development. Operational guidelines will be revised accordingly;
- Hiring environmental policy coordinators to ensure national and regional consistency, facilitate front-loading of the NEPA process, provide advice on integrating statutes, coordinate national and regional NEPA training programs, and remain current on national policy issues related to environmental compliance;
- Improving the administrative process by delegating signature authority, where appropriate, from headquarters to the Regional Administrators for certain activities under the ESA and, where appropriate, and eliminating headquarters review of routine actions under the Magnuson-Stevens Act. This may involve some workforce reorganization/prioritization; and
- Improving the fishery management process in cooperation with NOAA Fisheries partners such as through electronic rulemaking and electronic permit application.

The goal is to provide better analyses and regulatory documents that form the basis of our management decisions. In short, within the next few years, NOAA Fisheries should have significantly fewer litigation losses on process issues and have better relationships and service to our constituents, and more effective conservation and management of the Nation's living marine resources overall.

Management Standards and Guidance: SFA Review

Working with our Council partners, NOAA Fisheries has made considerable progress in implementing the requirements of the SFA. Nevertheless, more work needs to be done in order to fully achieve its goals. Recently, I instructed our Office of Sustainable Fisheries to lead a review of SFA implementation. The review will be conducted in cooperation with all of our regions, science centers, headquarters offices, NOAA General Counsel, and the Councils. This is an important step in identifying priority tasks over the next year. The SFA Review will include the following:

- NOAA Fisheries and the Councils will identify SFA requirements that are not yet completed, and establish a strategy and timeline to complete the work;
- Implementation of National Standards (NS) 1 and 2 and National Standard Guidelines (NSGs) on overfishing and rebuilding are being reviewed. Amendments addressing concerns raised in this review will be undertaken by the Councils and/or NOAA Fisheries;
- A few weeks ago, NOAA Fisheries, Council, and other social scientists met to discuss and exchange information on the methods and research in the area of fishing community impacts (NS 8). The workshop focused on data and analyses for social impact analysis, development of a research agenda, and compilation of a NOAA Fisheries community impacts analysis practitioners' manual; and
- NOAA Fisheries has established a Bycatch Workgroup to review implementation of NS 9. Monitoring and minimizing bycatch and bycatch mortality, and establishing standardized bycatch reporting methodology, are top priorities for the agency. NOAA Fisheries will also review the allocation of observer program funding to ensure the best possible coverage of fisheries for which bycatch monitoring is a high priority.

Addressing Overcapacity and Buybacks

One of the fundamental problems in fisheries management is overcapacity. Even fully rebuilt stocks cannot sustain the level of fishing effort associated with fleet sizes in many of the fisheries. NOAA Fisheries has prepared preliminary analyses of overcapitalization and estimated the number of vessels and costs for buyback programs in key U.S. fisheries. In addition, we are reviewing the effectiveness of previous buyback programs, such as the one in the New England groundfish fishery. NOAA Fisheries is also considering modifications to Magnuson-Stevens which would facilitate industry-funded buybacks that might be used in concert with complementary management tools, such as entry limitations and IFQs.

Budgets

NOAA Fisheries has taken steps to implement many of the resource and process recommendations included in the Kammer Report and other reviews, has acquired some of the needed resources, and has initiated management actions to improve its activities, such as RSP, as well as:

- Socio-economic analysis - NOAA Fisheries has identified steps to acquire additional data, economists, and social scientists, and is aggressively pursuing actions to improve socio-economic analyses required by the regulatory process;
- Stock assessment improvements - These are fundamental to NOAA Fisheries' success and the agency has recently approved a major improvement plan for these activities;
- Law enforcement - NOAA Fisheries is expanding cooperative enforcement efforts through new agreements with 25 states and territories and is adding staff to handle arrangements;
- Observer and Cooperative Statistics Programs - NOAA Fisheries has increased its number of observers nation-wide and has initiated greater data collection and analysis efforts with industry and regional and state authorities. These steps should help to reinforce other actions underway to improve NOAA Fisheries stock assessments, information on bycatch, and enforcement activities;
- Comprehensive Management - While recognizing that NOAA Fisheries conducts comprehensive reviews to capture the status and requirements for its science support functions, the Kammer Report recommended development of a nationally coordinated plan (status and requirements) for its management functions, i.e., fisheries, protected species, habitat conservation and enforcement. NOAA Fisheries has recently piloted an automated Annual Operating Plan system which will assist management in determining future program requirements and supporting budget requests. This system should be fully operational for FY 2003, and will be capable of determining individual program performance in NOAA Fisheries' regional offices and science centers, as well as provide agency wide crosscuts for national program activities.
- Adjustments-to Base - In recent years, NOAA has been successful in obtaining budget adjustments for inflationary cost increases which have seriously eroded core-mission program operations in the past.

Science: NOAA Fisheries Science Modernization

Several internal and external studies and reviews of NOAA Fisheries have concluded that much of fisheries controversy stems from the lack of information necessary in regulations to ensure long-term sustainability of living marine resources. Particularly now that so many stocks are overfished, implementation of such measures is often challenged on the basis that the scientific information supporting management is inadequate or lacking. While NOAA Fisheries scientists are world leaders at the forefront of developing stock assessment models and methodologies, the agency's science is

sometimes hampered by the lack of adequate data on which to base stock assessments, the lack of adequate sampling platforms, and the lack of sufficient staff to collect, process, manage, and analyze data; to evaluate the implications of the assessments; and to effectively communicate the results to managers and stakeholders. Widening gaps between public expectation and agency resources required to satisfy such expectations have fueled numerous and increasing numbers of lawsuits on the policy choices, and have resulted in the agency operating in a continual state of crisis management.

NOAA Fisheries is evaluating a long-term Science Modernization Initiative to create the holistic and integrated science infrastructure, that when added to the RSP, will begin to move NOAA Fisheries out of crisis management. Components of this initiative will represent the implementation of recommendations by external reviews, such as the National Academy of Sciences, as well as internal reviews, such as the Data Acquisition Plan and the Marine Fisheries Stock Assessment Plan. Highlights of the Modernization needs include:

- Improve and expand living marine resource stock assessments, including cooperative research; a national observer program; enhanced protected species stock assessment capabilities; a national, web-enabled, state-federal data collection program; increased charter vessel days at sea; and modern acoustically quiet fisheries research vessels;
- Improve forecasting of living marine resource stock status and environmental impacts through advanced assessment technology, applied fisheries oceanography, and advanced conservation engineering technology for bycatch reduction and habitat protection;
- Adequately assessing the human dimension of fisheries by conducting expanded analyses of the socioeconomic impacts of our fishery management programs.

CONCLUSION

Mr. Chairman, these are exciting and challenging times in the history of the conservation and management of the Nation's valuable marine resources. It is natural for many to look at the negative. But I think we also have a lot that gives us reason to accentuate the positive. Our recent Status of the Stocks report to the Congress showed that the number of fisheries listed as overfished is beginning to decline. For many of our stocks that are still depressed, we have at least been able to eliminate overfishing, giving them the opportunity to recover. We are getting better information on our fisheries. NOAA Fisheries staff are hard working, talented, and dedicated individuals. We are addressing our challenges by working directly with the Councils, regions, headquarters offices, and NOAA General Counsel to review our SFA implementation, improve the regulatory process, and ensure adequate science and administrative support for these efforts. I plan to share my vision for NOAA Fisheries with our constituents in a series of workshops to be held in key locations around the country later this year.

This will also provide an opportunity for me to hear from our varied constituents about their views for the agency over the next five to ten years.

We in NOAA Fisheries look forward to working with the Committee, with your staff, with the Councils, the states, and the commercial fishing, recreational fishing, environmental, scientific and other marine fisheries communities to continue to improve our operations and our effectiveness in meeting the mandates that you have provided.

Thank you, Mr. Chairman. I would be glad to answer any questions.