

S. HRG. 108-995

**THE IMPLEMENTATION OF NATIONAL STANDARDS  
IN FISHERIES MANAGEMENT**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON OCEANS, FISHERIES, AND  
COAST GUARD

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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OCTOBER 22, 2003  
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# **THE IMPLEMENTATION OF NATIONAL STANDARDS IN FISHERIES MANAGEMENT**

**WEDNESDAY, OCTOBER 22, 2003**

U.S. SENATE,  
SUBCOMMITTEE ON OCEANS, FISHERIES, AND COAST  
GUARD,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:32 a.m. in room SR-428A, Russell Senate Office Building, Hon. Olympia J. Snowe, Chairman, presiding.

## **OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE**

Senator SNOWE. The hearing will come to order.

I would first of all like to thank Dr. Hogarth for being here today to testify in today's hearing on fisheries management. The purpose of this hearing is to examine the National Marine Fisheries' implementation of the National Standards under the Magnuson-Stevens Act. I want to focus on the implementation of the act as it relates to Amendment 13 in New England and how it affects the New England groundfish industry.

I have convened this hearing today because, I have some very serious concerns with the way in which the National Marine Fisheries Service is interpreting the Act. Certainly, I believe that it is a manner which is inconsistent with Congressional intent. I think it will come as no surprise to you the depth of frustration and despair with the groundfish industry concerning this process in my state of Maine and I think throughout New England. There is no single issue today of greater significance to Maine's fishermen and it is no exaggeration to say that their livelihoods are on the line.

The National Marine Fisheries Service's management has been driven by lawsuits. It has been a litigation-centered management process that often has been erratic and I think has contributed to the depth of frustration that exists within the industry, and particularly in response to Amendment 13.

This is not what Congress intended when it enacted the Sustainable Fisheries Act of 1996. This critical legislation was based on two overarching goals. One was to end the overfishing of U.S. stocks and the other was to rebuild the fisheries that had been depleted as a result of overfishing. Most importantly, Congress also recognized that within the Sustainable Fisheries Act overfishing and rebuilding fisheries would in many cases be extremely difficult to achieve due to ecosystem complexities and the potential up-

heaval of fisheries communities. Therefore, Congress determined that the regional fisheries management councils and the Secretary of Commerce had to be provided a larger degree of flexibility in order to craft management plans appropriate for the needs of each fishery or region.

This flexibility which we deliberately and specifically incorporated into the Sustainable Fisheries Act would enable the agency and the councils to address overfishing and rebuild fisheries in ways that avoid imposing unnecessarily rigid regulatory measures upon fishermen and their communities.

When the Council and the agency began implementing the Sustainable Fisheries Act, I along with several other Members of the Congress observed that the flexibility in the Act was not being fully utilized. In making a series of policy decisions to implement the Sustainable Fisheries Act, the agency demonstrated a more rigid interpretation of the Act than was necessary, such as defining overfishing in a more restrictive way than it had been defined in previous interpretations of Federal fisheries law.

My colleagues and I made repeated efforts through hearings, regulatory comment, letters, and personal meetings to clarify Congress' intent for flexibility. Unfortunately, the agency has continued to make a series of highly questionable policy decisions related to Amendment 13 that run counter to Congressional intent.

First, National Standard 3 requires, to the extent practicable, interrelated stocks of fish be managed as a unit. The New England groundfish complex consists of over a dozen interrelated species that are often treated as a unit, except in Amendment 13, which would impose distinct management measures for different species and stocks. This could result in an overly complicated and highly restrictive regulatory regime, while the approach itself may be wholly unnecessary.

Under the Act, fisheries managers have the option of managing these stocks in the aggregate, which could result in easier to implement regulations and a wider range of options. Yet they have chosen not to do so.

Second and critically, National Standard 8 states that managers shall take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities and, to the extent practicable, minimize adverse economic impacts on such communities. Again, in Amendment 13 the agency has offered little more than a minimal cursory assessment of how stock size relates to landings and income.

Consider this: Within the 1,500 pages of analysis in the draft environmental impact statement there is only limited evidence that the agency attempted to accurately understand these effects and even less evidence of an attempt to balance fisheries rebuilding measures with the need to minimize harmful social and economic impacts. Indeed, instead of presenting comprehensive analyses on the full range of approaches for alleviating them, the environmental impact statement only outlines how much fishermen stand to lose, and with the alternatives estimated to result in anywhere from \$94 million to \$217 million in lost sales and from \$38 million to \$88 million in lost personal income, our fishing community stands to lose a great deal. In fact—and these are the agency's own

numbers—anywhere from 1,300 to 3,000 jobs in the region will be affected.

This is far from what Congress intended. To the contrary, we directed fishery managers to recognize that their actions impact the livelihoods of an untold number of fishermen. We intended for managers to fully identify and analyze the effects of regulations on the social fabric of communities and then to factor that information into their management approach, so that fishing-dependent businesses in small coastal communities would not be unnecessarily harmed by Federal fisheries management.

Due to my concern with the economic analysis, I have asked the National Marine Fisheries to have the economic data independently analyzed.

Third, the Sustainable Fisheries Act established a maximum rebuilding time that should be as short as possible and not to exceed 10 years, unless certain conditions warrant otherwise. Again, the needs of the fishing communities are supposed to factor into this decision. However, for the New England groundfish the agency originally interpreted this to mean that most species within the groundfish complex had to be rebuilt within 10 years regardless of the difficulties in rebuilding mixed stocks and the resultant severe impacts on fishing communities.

Not only was this interpretation overly restrictive, but the agency decided to make it even more limiting last year. In the midst of a court case and 3 years into a rebuilding program, incredibly, the agency's fisheries scientists determined that the rebuilding targets for some stocks should be doubled or even tripled in size. Meeting these goals in the remaining rebuilding time-frame would have led to even further reductions for our fishermen.

Last year the Senate unanimously passed my amendment to the Fisheries Conservation Act of 2002 that clarified, not amended, Congress' intent for allowing more time under specific conditions. Fortunately, the agency has since agreed to at least restart the clock when Amendment 13 is implemented. But as helpful as this is, it is still not a permanent solution to the problem in terms of minimizing the impact on fishing communities.

With Amendment 13 we are rapidly approaching the court-ordered deadlines for selecting an alternative. Yet the choices we have been offered are profoundly objectionable, offering only a 13 percent increase in landings at best, at the cost of thousands of jobs and hundreds of millions of dollars. The fact is the Council limited the four alternatives to those that the National Marine Fisheries Service would find acceptable. In the process, the agency is limiting what the final outcome may be and our fishing communities will bear the brunt.

We must remember that thousands of fishing crew, processors, ice and fuel suppliers, and other dependent businesses will be impacted by these regulations. Congress passed each National Standard for a reason and it is unacceptable to see the agency and the courts select, pick, and choose which ones they want to implement and how. These standards were intended to be taken as a whole and utilized in a manner that allows fishing stocks and the communities to prosper.

Consider what is happening in the fishing-dependent coastal communities of Maine from Port Clyde to Birch Harbor. Just a few years ago this area was buzzing with groundfish activity. The Deer Isle-Stonington area, which was once home to 50 groundfish vessels, is now home to just one. All of Down East Maine, which is thousands of miles on Maine's coastline, has merely 17 groundfishing permits. These small communities form the backbone of our coastline and they cannot weather the storm of additional and onerous fishing restrictions.

Also consider the fact that today's hearing is occurring in the shadow of the Candy B II tragedy, which cost the lives of four Maine fishermen. The Candy B II, although it was recently lost while scalloping, was originally purchased to go groundfishing. However, a month after the vessel was purchased it went from being allowed to fish 88 days to 8 days and then the owner decided to outfit the vessel for scalloping in order to stay profitable.

Although fishing is clearly one of the riskiest professions, this tragedy illustrates the tensions and the pressures fishermen are under in today's fishery management environment. We must be cognizant of these facts as we go forward and recognize that we need management to work with fishermen as well as the fish.

The bottom line is I am committed to working with my colleagues to strengthen fishery managers' abilities to achieve economic and ecological balance. I believe that we must clarify that rebuilding does not have to be done in ways that result in such drastic upheaval of fishery-dependent communities. We need a flexible, common sense, reasonable approach that preserves the fishermen as well as the fish.

Let me be clear. I fully expect at the end of this process that this fishery will return to full council control. The cost of adopting any one of the four current proposals is too high. Neither Maine, the New England groundfish industry, nor the Nation will benefit. Our groundfishermen deserve better than these four proposed alternatives. I want to convey to you the urgency of the situation and I am looking for a commitment from you, Dr. Hogarth, in the limited time that we have to implement Amendment 13 that you will do everything you can to act in accordance with the Congressional intent and to use the flexibility that Congress has granted your agency.

I thank you for being here and I am looking forward to your testimony and responses to our questions.

I see a number of my colleagues. I know Senator Sununu has to go to another hearing, so I will recognize Senator Sununu.

**STATEMENT OF HON. JOHN E. SUNUNU,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. Thank you very much, Madam Chair. Thank you very much for convening this hearing and for your excellent opening comments that I think very accurately, very succinctly, have got to the heart of the matter, the issue that we are trying to deal with today.

I ask unanimous consent that my written statement be included in full.

Senator SNOWE. Without objection, so ordered.



[The prepared statement of Senator Sununu follows:]

PREPARED STATEMENT OF HON. JOHN E. SUNUNU,  
U.S. SENATOR FROM NEW HAMPSHIRE

I thank Chairwoman Snowe for calling this hearing.

The subject of today's hearing is of vital importance to the fishing interests in the New England area. In the next few weeks, the New England Fisheries Management Council is scheduled to make critical decisions that will have a significant impact on the fishing industry in New England. To be clear, the Council's November 4th to 6th meeting and resulting decisions will have a direct impact on the future of the fishery, the livelihoods of countless fishermen, the sustainability of the fishing industry, and the economic vitality of the surrounding region. In some respects, the Members of the Council are being asked to choose the least harmful options to inflict painful consequences on their neighbors, friends, and fellow citizens.

The reason the Council is being asked to make these decisions rests squarely with the provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. Many Members of this Committee played a role in constructing the provisions of the statute and hopefully will provide insight into Congressional intent. I was not in Congress during the crafting of that statute, but I have closely followed, and have been engaged with, the implementation of law since its inception.

One of the fundamental premises of the Sustainable Fisheries Act was the need to eliminate overfishing and return fisheries stocks to healthy levels. This is a sound concept and a necessary goal. For too long, fish stocks were looked upon as an unlimited resource; fishermen focused upon maximizing their catch and profits. This produced a negative correlation: the harder the fishermen worked the less resource available. Stocks were unable to recoup from staggering catch and bycatch levels. Fortunately, this has not been the perspective of the fishermen in the New England region for many years.

Fishing is an important component of our communities and culture in many parts of New England, including the Seacoast of New Hampshire. While it is true that the New Hampshire fishing fleet is smaller than some neighboring states, fishing is historically ingrained in our seacoast communities and has a significant bearing on the character of those communities. Fishing in New Hampshire is primarily done with small boats and small crews intent on earning a sustainable income for their families. We all should recognize that fishing is not a luxury profession filled with high paying jobs and easy hours. It is a difficult livelihood filled with adversity, and it is not for the faint of heart. But fishing brings many rewards to both the New Hampshire fishermen and their communities. The small boat nature of the fishery represents an entrepreneurial identity that cannot be measured by economic analysis. Given this, it is all the more important that we not summarily dismiss or overlook the concerns of our fishermen as they face the consequences of new fishing restrictions.

By all accounts the New England fishery is slowly and steadily improving. The fishery is experiencing significant increases in the stock levels of many species. Credit should and must be given to the hard steps that have already been taken by the fishermen of that area. It is accurate that some species have not rebounded to desired levels. I agree that more work needs to be done. However, the fishermen I speak with on a regular basis recognize that a healthy fishery provides greater levels of catch, which will benefit consumers and the long-term interests of fishermen. They are willing to take the tough steps to improve and strengthen the fishery. The difficulty occurs, however, when fishery management techniques are imposed to address the depletion of the resource that occurred in the past, perhaps a generation or two ago; to rebuild the stocks to historic or perhaps prehistoric levels all in a matter of a narrow time frame; or to enact stringent requirements that effectively eliminate the ability of many fisherman to continue.

In August of this year, I visited the Portsmouth Fisherman's Cooperative and heard firsthand from the local fishermen on the potential devastating impact of the new restrictions proposed by the Council through Amendment 13. The concerns outlined significant consolidation and bankruptcies were in store for the fishing community of New Hampshire due to the impact of the newly proposed restrictions. From their perspective the end result of the restrictions would be the domination of the New England fishery by a few large fishing entities and the collapse of the fishing infrastructure and secondary industries.

Amendment 13 is an effort by the Council to bring fishing behavior or practices in line with the goals and requirements of the statute. Unfortunately, Amendment 13 is not being driven by an orderly process that recognizes or balances this effort

with the need to maintain a viable fishing community, as the statute requires. Instead, Amendment 13 is being driven by the court system and by an interpretation of the law by the Federal District Court for the District of Columbia, which seems to place some priorities of the statute at a higher value than others. In my opinion, the statute is being read without context, without a view of what the potential decisions will have on the fishermen, without a view of reality or a view of necessity. Most important, the statute is being read with complete ignorance of the obligation “to take into account the importance of fishery resource to fishing communities. . .” as required by National Standard 8. There also seems to be lack of consideration given to the phrase “to the extent practicable” which is explicitly provided in a number of the National Standards within the Act.

Significant questions have been raised regarding the underlying science and assumptions used to build Amendment 13. It has always been my position that fishing management decisions must be based on the most accurate and sound science available. Clearly, all parties involved try to use the data to reflect their position. This does not mean, however, that all the complex mathematical formulations and extrapolations used for Amendment 13 are accurate. To the extent that there are discrepancies in the data presented by different interest groups, we must take our time to determine the correct course of action. It makes no sense to proceed on a path built on faulty predictions.

This notwithstanding, the fishing industry has tried to come to agreement on how best to alter the options presented in the draft Amendment 13 document by the Council. New proposals were presented to the Council last week at the close of public comments. These proposals reflect a deep commitment by the industry to try to find a workable solution, in many instances, *within the tough parameters of Amendment 13*. In some instances, the fishing community sought revisions in the assumptions and targets that went into the draft document. I believe that the Council, and subsequently the National Marine Fisheries Service (NMFS), should give these proposals serious consideration. I do not accept the premise that the options provided in the draft document are written in stone. Accordingly, I fully support the concept that the Council is free to mix and match from the various options, and potentially others, to craft the most optimum solution. I also expect some significant flexibility by the Council and NFMS regarding consideration and potential adoption of the industry proposals. A rigid viewpoint is not helpful to their cause, will not help the fishermen, will not help the fishing resource, and will likely cause an immediate reaction from Congress.

In the coming months, I plan to examine the decisions of the Council and NFMS on Amendment 13. Clearly, the court case has placed the Council and NMFS in a difficult situation. To the extent these entities are forced to approve a plan that will have the effect of devastating the fishermen of New England or will lead to the elimination of our small boat fleet, I will consider all options. For instance, there seems to be some question as to the magical reverence provided to the 10 year time frame contained in the Act. It seems feasible to consider extending this time frame for a few years if doing so will protect the fishing communities in New England, while not undermining the goals of the Act. This may provide sufficient transition time without causing massive consolidation by the industry. There also needs to be review of the National Standard 8 as it interacts with NS 1. The testimony of Dr. Hogarth raises additional questions regarding the value or effectiveness of NS 8.

Again, I thank the Subcommittee Chairman’s leadership on this issue and look forward to working with her and other Members of the Subcommittee on this issue in the future.

Senator SUNUNU. Thank you very much, Administrator Hogarth, for being here as well.

Fisheries are tough issues, very tough issues, because they deal with an intersection of economic needs that are very sizable and very important to many of the States represented here, but really for the entire country. It is a multi-billion dollar industry. We have environmental needs and the concerns of the fisheries. There we have heard some promising news recently with the rebuilding of many of the groundfish stocks.

We have community needs and cultural needs. The social fabric of a lot of cities and towns on the Eastern Seaboard and all around the country really depend on the livelihood of these fishermen for their vibrancy and for their growth. We need to work to deal with

all of these interest groups and stakeholders, and I think it is important to recognize, to begin with the recognition, that Magnuson-Stevens does just that, tries to strike that important balance. And as we work to apply Amendment 13 we need to focus on striking a balance between these different interest groups. We need to be sure that what is being applied is consistent with Congressional intent.

If we look at the statute, if we try to be fair-minded about the statute and fair-minded about the impact that some of these proposed regulations will have on communities, I think we will see that we need to do a better job of balancing the various interests and being flexible in ensuring that we meet Congressional intent.

New Hampshire is largely a small boat community. Our fishing community, our business owners, are entrepreneurs. What they are looking for first and foremost is a little bit of consistency and fairness in dealing with the application of Amendment 13. I think they have been frustrated with some of the rigid and doctrinaire approaches to applying this Amendment 13.

I have seen recently some optimistic, encouraging statements from the Administrator and others to try to work more flexibly among the four options that are offered, to try to work out an alternative arrangement that might be more consistent in dealing with Congressional intent. We need to work together to apply whatever formulation comes out of the work of the Administrator's office and the New England Fisheries Management Council. But I think we can do a much better job in recognizing the importance of these fishing communities to their culture, to their local economy, and to the vibrancy of our national economy as well.

Again, Madam Chair, I thank you for your leadership and I appreciate the time of Mr. Hogarth here today.

Senator SNOWE. Thank you, Senator Sununu, for your statement. Senator Stevens.

**STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Thank you very much, Senator Snowe.

When Senator Magnuson and I devised the act that is named after the two of us, we envisioned that there would be differences in management throughout the country and the areas off the shores of our country because of the different circumstances. We have a different problem in the North Pacific as you have, from what you have in New England. We have an overabundance of fishery resources and you have those that have been suffering and have been shut down.

I think when we look at the two, however, the problem they both face is this overabundance of litigation from various groups that are not involved in the fishery at all. I think there is a concerted effort now by what I call the extreme environmental groups to shut down commercial fishing off our shores.

The new Pew Commission—it is called the Pew Oceans Commission Report—recommended increased Federal oversight and wants to establish a network of marine reserves or no-take zones in U.S. waters. Those would not be decided by the councils. They would be decided by the Pew Commission. When we look at it, what we have

is a situation where your fishing stocks have increased substantially, but these new regulations are being implemented and Dr. Hogarth is forced to make them even more strict because of excessive litigation where a single Federal judge decided that he or she is going to take on the management of fisheries off our shores.

I think we have to take a good look at how much we allow the courts to listen to the environmental community as opposed to Dr. Hogarth listening to the scientific community. We have listened to the scientific community off Alaska and the North Pacific and we now have, our stocks are increasing. They are increasing in substantial numbers. Yet the litigation is also increasing to try and cut back commercial fishing.

I am sure that you have your problems. We lost several boats and one crewman in the crab fishing just this last month. You lost a boat not too long ago.

Senator SNOWE. Yes, we did.

Senator STEVENS. I really think that what we need to do is to sit down with Dr. Hogarth—and I understand your feelings about it because sometimes we have sort of a tendency to blame the people who are writing the regulations rather than blaming the people that are moving the pen. The people moving the pen are the Federal judges. I really think something has to be done to make certain the Federal judges listen to the scientists too and not the environmental litigants who make money off of excessive litigation.

I do hope that as we go through this hearing everyone will realize that there are unique fishing management plans. The one for New England would not fit the North Pacific and vice versa. As a matter of fact, neither one of them would fit the area off of Senator Lott's shores or the areas off of Oregon, Washington, and California. They are designed by people in the area and by scientists who know the area and working with the National Marine Fisheries Service to find a way to achieve the objective of the Magnuson-Stevens Act, and that is to protect the reproductive capability of the fisheries off our shores, not the fishermen and not the consumer and not the environmentalists, but to protect the reproductive capability of the fisheries.

If we do that, we will have a sustainable commercial fishery off our shores forever. But the difficulty is—look at the litigation we face on the Steller sea lion. Thank God you and others and Senator Lott helped us to try and prevent that judgment going further. He wanted to shut down fishing from Cordova to the end of the Aleutian chain—that is like from Key West to Canada on the East Coast—in order to protect the Steller sea lion, based upon the assertion of the environmentalists, when the scientists have found that the problem was not what the environmentalists asserted, and that was that the fishermen were taking the food supply of the Steller sea lion.

I hope that in this hearing—I have to go to the conference on the military construction appropriations bill and I do not want to take any more of your time. But I do think we have to slow down and find some way to deal with excessive litigation. I have been a lawyer now for over 50 years, but there are lawyers out there who raise money from the public, use that money to pay their own fees, and go out and file more suits against the commercial fishing in-

dustry. That is a vicious circle. Even when they lose, they get some award of attorneys from the Federal court, attorney's fees from the Federal court.

I think our problem is to deal with—by the way, incidentally, I think, left alone, Dr. Hogarth and his people would find a way to recognize the needs of New England and to allow some fishing to start in the areas where there is a substantial increase in population. But when you have the difficulty of the litigation, that holds them up. In one instance where they were issuing regulations by the year it was taking 18 months to pursue the litigation. We never did get around to regulations.

I hope that the hearing is productive from your point of view. I hope it will signify to everyone that it is time that we recognize that what we need is a balanced review of the programs and plans of regional councils from the point of view of sufficiency for their area and not how they compare to other areas in the country or how they compare to the plans that have been devised by people who have other objectives, such as the Pew Commission.

Thank you very much.

Senator SNOWE. I thank you, Senator Stevens, for your comments and for taking the time to be here today despite your busy schedule. There is no one that knows more about the fisheries as the author of the Magnuson-Stevens Act. Senator Stevens, I appreciate your comments and they are certainly legitimate and valid with respect to the extremely litigious nature that we are involved in in the environment concerning the fisheries. That is obviously something that we face in managing our fisheries. Something that we have to explore with Dr. Hogarth here today is how we can avoid that in the future in implementing the Act.

Senator Lott.

**STATEMENT OF HON. TRENT LOTT,  
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Thank you, Madam Chairman. He has left the room now, but I want to join you in thanking Senator Stevens for what he has done for the fisheries industry in America over the years. He has been a real leader, and he has looked at all aspects of it, including the need to be careful how we fish our species and that we have proper management. He has just been a great leader.

I appreciate you having this hearing. Administrator Hogarth, we appreciate your being here to give us a chance to hear from you, but a chance for you to hear from us.

I represent the other fisheries area, otherwise known as the step-child sometimes with regard to the National Marine Fisheries application of the laws and the funds. Now, I might get disagreement from the Senator from Maine or the Senator from Alaska, but as a matter of fact we have a lot of common interests and I have over the years tried very hard to get you and your predecessors to give some equal consideration to the importance of the industry in the Gulf of Mexico.

I want to work, as I have, with Senator Snowe on her needs and feelings in the Northeast, and you certainly cannot ignore whatever it is Senator Stevens wants to do up there in the Northwest. But

I do feel like sometimes we have gotten the short end of the stick when it comes to attention from the National Marine Fisheries.

I would remind you and everybody else, this is the Bush Administration, he is from Texas and he is on the Gulf of Mexico, and so it might be a good idea to pay a little more attention to the region as a matter of fact.

I have discussed a lot of my concerns here with you and I will not repeat them all, but I will just touch on them lightly. Obviously, I have become very concerned about the loss of balance in the fisheries management councils, particularly in the Gulf of Mexico. The council has just become totally dominated by sports fishermen and by so-called conservationists, and commercial fishermen and women have been pushed aside and we have had a hard time, not all your fault or the Secretary's fault. The Governors have not been giving us a good list of nominees to choose from.

But there needs to be balance. I want to make sure that sports fishermen are well represented on these management councils. I guess I am one and all my neighbors are. The problem is they do not, my neighbors do not, want the commercial fishermen out there making a living, messing up the waters where they can go out in their yachts and fish. So I do not share that point of view. I think that commercial fishermen deserve equal representation on these management councils, particularly in the Gulf.

Now, it got down to, I think, it got down to 3 in the Gulf commission out of 11 secretarial appointments. Working with you and working with the Secretary, we did add one more, so we are now up to four. But that number needs to be at least five, and I want you to continue to work with me on that. In fact, I feel very strongly that we should have legislation that ensures that the Governors in the Gulf States submit balanced council nominations, and if they do not to give the Secretary some option. I have been working with Senators Hutchison, Breaux, and Nelson to find a way to address the problem there.

When I was practicing law in that little fisheries community Pascagoula, Mississippi, in 1967, the senior partner of my law firm was also a marine surveyor and he did the marine survey work on the Oregon II. Well, 35 years later the Oregon II is still the main vessel in the Gulf of Mexico for fisheries research. I mean, are we ever going to get any help? Are we ever going to get a new vessel? I mean, it is unbelievable: in America today, as important as this industry is in the Gulf of Mexico, we are dependent on a 35-year-old fisheries vessel.

Yet when we tell the National Marine Fisheries that we have to have new fisheries research vessels and we can build them and that we need some shallow draft versions in order to get into the areas where the research has to be done in the Gulf of Mexico, you would think we were trying to steal the king's jewels. What we have seen happen is the first of the four—two of the four planned vessels, one went to Alaska, one went to New England. Ted is happy, Olympia is happy.

Senator SNOWE. It is funny how that works.

[Laughter.]

Senator LOTT. We have got two more and we are being jerked around, saying the third might go somewhere else and the fourth

might go somewhere else. I want to urge that we get the third RV while we work to get the shallow draft later on. I realize maybe being third out of three, but when you are fifth out of three it hurts a little bit. I hope that you will pay attention to this need here.

We also need to maintain the Administration's funding support for the red snapper research, seafood inspection, Gulf shrimp product quality and marketing, the Gulf oyster initiative, and other important Gulf fisheries programs. The turtle excluding device continues to be a ridiculous thing that is causing all kind of problems for our beleaguered shrimp fishermen. There is no real help offered to them to assist them with having to comply with these turtle excluding devices.

Also, we are now having serious problems from imported farm-raised shrimp that put the industry on the brink of bankruptcy. Again, we get a blank stare: Oh, really? You have a problem?

So I think that the National Marine Fisheries needs to engage actively to look at what is happening to the shrimp industry in the Gulf of Mexico. We need to get the Gulf red snapper IFQ referendum going to give the Gulf fishermen a voice in not only whether to have the IFQ program, but also a voice in what kind of program it is going to be.

Also, we need to go forward with the Atlantic billfish research. You and I have talked about that. We need to make sure that research is done by National Marine Fisheries Services to strengthen the position on these international negotiations and not allow this to get into hands that will not really do the work in a cost-effective way.

So these are just a few issues I wanted to mention to you. I hope that we can work with you and I want to support the industry, but unless we can get more help in the Gulf of Mexico I am going to have to reevaluate my whole attitude about the National Marine Fisheries department, administration.

Thank you, Madam Chairman.

Senator SNOWE. Thank you, Senator, for your outstanding statement. You make some excellent points, and certainly the fisheries in the Gulf of Mexico should get due consideration.

With respect to the research vessels, that is a fundamental issue, that we need to be appropriating more resources for the purposes of research. That would enable us to validate some of the rationale and the reasoning for the ultimate regulations that affect the industries, and that has been a serious problem. We have been extremely deficient in that regard and we need to do considerably more. So you make a great point.

Dr. Hogarth, you have heard a breadth of concerns here. I do not know where you want to begin. Your statement will be included in the record, but I think that there are a variety of concerns and a depth of concern about some of the issues that we need to address.

I appreciate your being here today. I know you were at the Council meeting yesterday in New England. I would also appreciate your comments on that and what your perspective on what they will be attempting to draft in response to Amendment 13. So welcome, Dr. Hogarth, and you may begin.

**STATEMENT OF DR. WILLIAM HOGARTH,  
ASSISTANT ADMINISTRATOR FOR FISHERIES,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
U.S. DEPARTMENT OF COMMERCE**

Dr. HOGARTH. Thank you, Madam Chairman, Senator Lott. It is always nice to come and talk fisheries. I think the U.S. has a great fishery. It adds about \$60 billion to the gross national product. I am really concerned that we do have to manage it more as a business and we are looking forward to trying to do that.

I have submitted a written statement, but I would like to take the opportunity to highlight a few points concerning Amendment 13, which was brought up. I am very much aware of the importance of this historic fishery both to the fishing communities of New England and to the Nation. I am committed to seeing it rebuilt.

The council voted in its July 2003 meeting to approve Amendment 13. The comment period ended on October 15, 2003, and we are now working with the Council to try to meet the court-ordered date of May 1. I do not think we have much choice but to meet that date. Although many of the 19 stocks of the New England ground-fish fishery have been rebuilding steadily in recent years, several stocks remain at very low levels. Overfishing is still occurring on eight of the stocks and current fishing mortality rates in some of these eight stocks are more than twice the level that defines overfishing.

I believe that there is a reasonable range of alternatives proposed in Amendment 13 and we have worked with the Council to find creative solutions to difficult problems within the scope of the law. During the development of Amendment 13 we explored with the Council such ideas as reinitiating the rebuilding times starting in 2004 for 10 years, the use of FMSY targets rather than F-rebuild targets in the beginning years of the plan. We have also assisted the Council in the development of an adaptive rebuilding strategy.

Our objective is, was, is and will be to support the Council in developing a workable management regime for this fishery that will restore it to its full potential by minimizing adverse impacts on the industry and fishing communities that depend on them.

Some critics of the four existing alternatives to the draft Amendment 13 document believe that the proposed measures were crafted solely to address National Standard 1 at the expense of other national standards, particularly National Standard 4 and National Standard 8. The analysis and alternatives on Amendment 13 do address impacts on fishing communities, as required by National Standard 8. The relative priorities of National Standard 1 and National Standard 8 have been clarified in the guidance language of the statute, the regulatory guidance, and recent litigation. We have many recent court decisions dealing with National Standard 8 challenges that have concluded that, while NOAA Fisheries is required to comply with National Standard 8 guidelines, such compliance cannot compromise the achievement of conservation requirements and goals in the fisheries management plan as required by National Standard 1.



In other words, if all things are equal we do choose the alternative that has the least economic impact, but the national standard guideline to rebuild and stop overfishing takes precedence over the economics.

All our constituents have engaged in the debate over potential economic impacts of Amendment 13. Some have suggested that the projected long-term economic benefits that will result from the rebuilt stocks do not justify the short-term sacrifices. In our view, the need for a substantial reduction of fishing efforts to achieve the rebuilding targets and timetables is indisputable. Lower levels of fishing effort are necessary to end overfishing on some stocks, to rebuild the fisheries, and to create the conditions for increased revenues and improved economic viability in future years. Only with recovered and sustainable resources can we ensure and stabilize the fisheries infrastructure and participation.

The economic benefits associated with the alternatives in Amendment 13 are substantial. Average annual revenues will be \$30 to \$40 million higher than under the no-action alternative. Projected revenues would be greater than revenues reported in 2002, as will the projected landings. Finally, sustained U.S. groundfish landings will increase threefold to over 320 million pounds.

Amendment 13 has a wide range of management alternatives that were developed over the course of several years. Four rebuilding alternatives were on the table and they included several options under each one. It may be possible for the Council to consider a new alternative during the public hearing and comment period so long as the alternative is within the information and analytical framework of the DSEIS, the draft environmental impact statement, and it meets the fisheries management and conservation goals of the fisheries Management Act.

Finally, I would suggest we all need to think more creatively about the overall direction in which we would like to see the New England groundfishery move in future years. What is our vision of this traditional fishery to look like in 10 years or 20 years? Should it be a much smaller fishery with fewer but more economically viable vessels? Or should it be a fishery in which a large number of smaller boats operate and all or most of the ports continue to participate at or near historical levels? And what are the most appropriate means for accommodating recreational and conservation interests in the fishery?

Depending on the answers to these questions and their vision of the future, long-term remedies could include a wide variety of programs, such as limited entry, IFQs, cooperatives, community-based arrangements, trading and leasing of effort quotas, and vessel buyouts. The alternatives and options under Amendment 13, while critically important, probably do not provide the complete long-term answer.

We will continue to work with the council, the States, and all of our constituents as we address these issues.

To add onto this provided testimony, because I went to the hearing yesterday, I would just like to add a statement based on that. I had a series of constituent meetings over the last few months and while I was doing this I took the opportunity to hold a special session at the request of the Northeast Region and the fishermen. In

fact, Acting Science Director John Boreman met with me and representatives of the New England groundfish fishery.

At this meeting we encouraged the industry to get together and develop an alternative of their own. We felt like that through the four alternatives that there was a lot of leeway in there and we asked them to go out and try to devise an alternative that met what they felt like met the rebuilding goal, but also would maybe be better for the industry itself.

Yesterday I attended the New England Council's special meeting and encouraged the Council to keep an open mind and consider industry proposals. I understand that there are four proposals that they looked at yesterday and I am happy to report that the Council did so and I am encouraged by the council's actions and their willingness to be flexible as we move through this difficult but important process. I know at least one of the fishermen's proposals has been sent to the PDT to be looked at further in preparation from the November meeting. So I am hoping that the flexibility built in here will maybe give us a better answer than the four alternatives that we have on the table.

Thank you.

[The prepared statement of Dr. Hogarth follows:]

PREPARED STATEMENT OF DR. WILLIAM HOGARTH, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Good morning, Madame Chair and Members of the Committee. I am Dr. William T. Hogarth, Assistant Administrator for NOAA's National Marine Fisheries Service (NOAA Fisheries). I appreciate this opportunity to discuss the Magnuson-Stevens Act National Standards and recent developments in the Federal management of New England groundfish. I am very much aware of the importance of this historic fishery, both to the fishing communities of New England and to the Nation, and I am committed to seeing it rebuilt to its full potential.

There are several issues that I will cover in my testimony, including NOAA Fisheries' overall implementation of the National Standards, as well as the application of the National Standards relative to the development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). This amendment is being developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with the Magnuson-Stevens Act, and to rebuild the groundfish stocks in New England. I will also discuss other issues that have been raised throughout the public discussion of Amendment 13.

#### **The Sustainable Fisheries Act (SFA) Amendments and the National Standards**

NOAA Fisheries has made a major and sustained effort over the last 6 years to implement all aspects of the 1996 SFA amendments to the Magnuson-Stevens Act, and I believe that we have succeeded in bringing our regulations and fishery management plans into conformity with Congressional intent. Some of the most important changes brought about by the SFA were: (1) stricter provisions relating to overfishing and rebuilding of overfished stocks; (2) requirements to reduce bycatch; (3) new requirements regarding essential fish habitat (EFH); and (4) the addition of three new National Standards.

With the passage of the SFA, there are now 10 National Standards in the Magnuson-Stevens Act, all of which must be carefully considered in the development and approval of any fishery management action taken under the authority of that Act. However, several of the National Standards—National Standard 1 (NS1), National Standard 4 (NS4), and National Standard 8 (NS8)—are of particular relevance to issues that have been raised publicly in the Council's development of Amendment 13, and I will focus my remarks on those.

During the last several years, NOAA Fisheries has expended considerable effort in reviewing and updating the guidelines for applying the National Standards to ensure that they are useful, clear, and consistent with requirements of the Magnuson-Stevens Act. NOAA Fisheries began a review of NS1 in the spring of 2003, and re-

quested public comments on the need to clarify or modify the guidelines. NS1, which addresses overfishing and optimum yield, is a critical provision that guides the development and approval of decisions in all of our fishery management actions. The February 2003 advance notice of proposed rulemaking (ANPR) that was published in the Federal Register expressed our willingness to reconsider the NS1 guidelines in several important respects, including (1) the appropriate use of minimum stock size thresholds, (2) the inclusion of environmental conditions in determining rebuilding targets, and (3) the calculation of rebuilding timeframes for overfished stocks. As noted in the ANPR, the National Standards have not changed since the passage of the SFA; we seek only to clarify, simplify, and amplify our guidelines, as appropriate. NOAA Fisheries is also studying the need for changes in the NS2 guidelines. NS2 requires the use of the “best scientific information available,” and a formal review by the National Research Council (National Academy of Sciences) is currently underway.

During the recent public hearings on Amendment 13, many comments have referred to NS8, which addresses impacts of management measures on fishing communities. This standard has also been the subject of much recent study and review, and I believe that NOAA Fisheries is in a much better position now to assess the impacts of management actions on fishing communities than we were in the years immediately after passage of the SFA. We have bolstered our social science program, improved the collection of social and economic data, and have conducted training and workshops on how best to assess the impacts of management measures on small business entities and fishing communities.

At the same time, we acknowledge that data limitations have the potential to affect the robustness of our socio-economic analyses. A general and persisting problem is the lack of adequate, up-to-date, and comprehensive information, particularly fishery and fishery dependent community economic and social data. For example, we do not have adequate information on the costs and earnings of fishing and processing operations. Statutory restrictions still protect confidential and proprietary business information and processors’ economic data. Although we have worked hard to do a better job in this area, without this information, a more thorough analyses of the socio-economic impacts on fishermen and their communities will be difficult to develop.

As evidence of the progress NOAA Fisheries and the Councils have made in implementing the SFA and complying with all of the National Standards, we now have approved rebuilding plans in place for practically all federally managed fisheries that require them. In the last several years, the overall trends in stock biomass have been positive, and overfishing has been ended for 26 stocks. Notably, some of these successes have occurred in federally managed fisheries that significantly affect fishermen in New England: Silver hake in the Gulf of Maine and northern Georges Bank have been rebuilt; Georges Bank and Mid-Atlantic scallops have recovered impressively; North Atlantic swordfish is no longer overfished; Gulf of Maine haddock is no longer being subjected to overfishing; Atlantic pollock has shown significant improvement; and the summer flounder fishery has rebounded. Over the past 6 years, the implementation of rebuilding programs, as required by the SFA, has yielded very tangible benefits to the New England region, as well as to other regions of the country. I am confident that fishery management works.

### **Background on Amendment 13**

As I am sure you are aware, NOAA Fisheries has been involved in the Conservation Law Foundation (CLF) *et al.*, v. Evans *et al.*, litigation regarding the management of the New England groundfish fishery for several years. After a ruling in favor of the Plaintiffs in December 2001, the U.S. District Court for the District of Columbia (Court) ordered the parties to engage in discussions to address issues relating to the remedial phase of the litigation. In an effort to respond to the Court’s requirements, NOAA Fisheries entered into a Settlement Agreement with a majority of the parties to the lawsuit. The Settlement Agreement, which was ordered to be implemented by the Court, requires NOAA Fisheries to implement a series of interim rules to reduce overfishing on groundfish stocks in the short term. In addition, the Settlement Agreement calls on NOAA Fisheries to work with the Council in its development of Amendment 13, for managing the New England groundfish fishery in the long term. NOAA fisheries quickly put in place the interim measures necessary to reduce overfishing while Amendment 13 was being fully developed by the Council. Through that timely action, we brought fishing mortality down and reduced latent effort in the fishery, which made good progress in stabilizing the fishery. Without such action, the measures in Amendment 13 would have had to reduce fishing mortality even more.

The Council voted at its July 2003 meeting to approve the Amendment 13 document, including the Draft Supplemental Environmental Impact Statement (DSEIS), to go out for public comment. Public hearings were completed on September 30, 2003, and the public comment period closed on October 15, 2003. The Council and NOAA Fisheries are on track to meet the May 1, 2004, Court-ordered implementation deadline. It is imperative that we continue to support the Council in its effort to complete Amendment 13, to meet the terms of the Court order and to continue the rebuilding of the New England groundfish stocks.

I am very proud of the efforts that the Council and NOAA Fisheries have made in working on this very complex and important amendment. The fact that we are still in a position to meet the deadline is a testament to the hard work that many, many people, including members of the affected public, have contributed to this process.

#### **Condition of the New England Groundfish Fishery**

Although much of the New England groundfish fishery, consisting of 19 managed stocks, has been rebuilding steadily in recent years, several stocks remain at very low levels. Overfishing is still occurring on 8 of 18 assessed stocks, and current fishing mortality rates for some of these stocks are more than twice the level that defines overfishing.

Had more effective management actions been taken in the mid-1990s to end overfishing and start the rebuilding of all of the overfished groundfish stocks as required by the SFA, the current situation would not be quite so difficult. Important progress has been made in the last several years, but that progress has been somewhat uneven. Although catches from the entire groundfish complex increased by 40 percent from 1996 to 2002, catches of the 10 stocks that are not currently overfished increased by 132 percent. In contrast, catches of the 8 stocks that are still overfished increased by only 3 percent during that time. In other words, virtually the entire increase in groundfish catches over that period was driven by improved harvests of the 10 stocks that are no longer subject to overfishing. During the same period, the aggregate biomass of these 10 stocks increased threefold, while the biomass of the stocks that were still overfished increased much more slowly.

If overfishing of all groundfish stocks had been eliminated earlier, consistent with the SFA, the landings and biomass of the eight overfished stocks would have increased significantly compared to current levels. This is supported by the increases in spawning stock biomass and yield per recruit that have resulted from reduced fishing mortality rates, and from improved fishing selection patterns that have resulted from larger minimum mesh sizes and other gear modifications. Due to better management, most stocks for which overfishing was eliminated have experienced significant improvement in recruitment, which is critical for allowing them to rebuild to their full potentials. Since these are living resources that are being managed, it will take time and additional short-term reductions in fishing effort to reach these rebuilt levels. However, I am confident that once the fishery is managed consistent with the requirements of the Magnuson-Stevens Act, the expected long-term gains can be achieved. Our economic analyses clearly demonstrate that such rebuilding will be beneficial to the fishing communities that depend on the groundfish fishery.

#### **Balancing the Goals of the National Standards**

Amendment 13 is intended to achieve statutory rebuilding targets and deadlines, to reduce bycatch in the New England groundfish fishery, to consider and address any adverse impacts of fishing on EFH, and to conform with all of the other provisions of the Magnuson-Stevens Act and other applicable law. Any proposed conservation and management measures must be consistent with all 10 of the National Standards to be approvable under the Act.

I believe there is a reasonable range of alternatives proposed in Amendment 13. We have worked hard with the Council to find creative solutions to difficult fishery problems within the scope of the law. During the development of Amendment 13, we explored with the Council such ideas as establishing the start of the rebuilding periods upon implementation of Amendment 13; a uniform start date for rebuilding periods; and the use of harvest rate targets higher than Frebuild for the beginning years of the rebuilding plan. We also assisted the Council in the development of an adaptive rebuilding strategy. Our objective was, and still is, supporting the Council in developing a workable management regime for this fishery that will restore it to its full potential, simultaneously minimizing the short-term adverse impacts on the industry and fishing communities.

Some critics of the four existing alternatives in the draft Amendment 13 document believe that the proposed measures were crafted solely to address NS1 (over-

fishing and optimum yield), at the expense of consideration of the other National Standards, particularly NS4 (fair allocations) and NS8 (impacts on fishing communities). As a result, allegations have been made that the Amendment 13 alternatives would create an “imbalance” in the administration of NS1, as opposed to NS4 and NS8.

Based upon our preliminary review, the existing alternatives in Amendment 13 appear to be consistent with NS4. This standard states generally that “(c)onservation and management measures shall not discriminate between residents of different States” and, more precisely, deals with “fishing privileges,” or “allocations.” The groundfish fishery occurs off the coasts of many states but, as a practical matter, certain overfished groundfish stocks reside mainly in specific locations that are closer to some states and communities than to others. It is to be expected, then, that restrictive measures to rebuild those stocks will have the greatest impact on those nearby. Virtually any conservation and management measure designed to address overfishing must consider where and when the most benefits can be achieved (for example, to protect spawning concentrations, nursery areas, etc.). Though such measures may differentially impact fishermen from certain areas or ports, they do not constitute discrimination, but effective and necessary science-based management.

The analyses and alternatives in Amendment 13 consider impacts on fishing communities, as required by NS8. The relative priorities of NS1 and NS8 are clarified in the language of the statute, the regulatory guidance, and recent litigation. The Magnuson-Stevens Act states that implementation of NS8 must be “consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).” Even more explicitly, 50 CFR 600.345 advises that “(d)eliberations regarding the importance of fishery resources to affected fishing communities . . . must not compromise the achievement of conservation requirements and goals of the FMP.” Many recent court decisions dealing with NS8 challenges have concluded that, while NOAA Fisheries is required to comply with the NS8 guidelines, such compliance cannot compromise the achievement of conservation requirements and goals of an FMP, as required by NS1. Moreover, these courts have supported NOAA Fisheries’ position that, although the agency is required to consider the economic effects of management measures, the conservation requirements of NS1 should take precedence over the requirements of NS8. In particular, the Court of Appeals for the D.C. Circuit’s decision in the 2000 NRDC v. Daley summer flounder litigation, supports this view, stating that “the Service must give priority to conservation measures. It is only when two different plans achieve similar conservation measures that the Service takes into consideration adverse economic consequences.” The mandate of NOAA Fisheries and the Council is to comply with NS1 by preventing overfishing for the long-term production of sustainable optimum yield from the groundfish fishery, and to do so in a way that takes into account the importance of these fishery resources to fishing communities.

Taking decisive action on fishery management measures now, while minimizing negative impacts on fishing communities, is the best and most effective means to ensure that fishermen and fishing communities can function viably in the future. By contrast, any significant relaxation of the proposed management actions would risk postponing or even preventing stock recovery, thereby forgoing the benefits of a fully rebuilt fishery. The mandate of NOAA Fisheries and the Council, therefore, is to ensure that each of the National Standards is taken into consideration during the development of a fishery management action. However, NOAA Fisheries and the Council are required to do so in a way that does not compromise the achievement of conservation requirements and goals of an FMP, as required by NS1.

#### **Economic Impacts of the Amendment 13 Options**

All of our constituents, including commercial and recreational users and other interested parties, have engaged in the debate over the potential economic impacts of Amendment 13. Some have suggested that the projected longer-term economic benefits that will result from the rebuilt stocks do not justify potential short-term sacrifices. In our view, the need for substantial reductions in fishing effort to achieve the rebuilding targets and timetables is indisputable. Lower levels of fishing effort are necessary to end overfishing on some stocks, to rebuild the fisheries, and to create the conditions for increased revenues and improved economic viability in future years. Only with recovered and sustainable resources can we ensure and stabilize the fishery’s infrastructure and participation. But even with Amendment 13 measures in place, under any of the alternatives, gross revenues to the fishery are projected to increase over their present level or to essentially remain the same from 2003 to 2004.

The economic benefits associated with the alternatives in Amendment 13 are substantial. Based on our best assessments, once most of these stocks are rebuilt, the average annual revenues are estimated to be \$30 to \$40 million higher than under the No Action alternative. In fact, under all rebuilding alternatives in Amendment 13, projected revenues will be greater than revenues reported in 2002, the most recent year for which complete data is available. By 2014, sustained U.S. landings of New England groundfish will increase threefold, to over 320 million pounds. These are significant gains that will increase overall benefits to the New England fishing industry and coastal areas for years to come.

Our economic analyses, particularly the long-term projections, cannot tell us which vessels and which shore-side businesses will continue to operate in the future. However, history has shown that, in spite of significant management actions that reduced groundfish landings, such as Amendments 5 and 7 to the FMP, vessels do continue to fish, and processors continue to process fish. The groundfish fishery is only one of several important fisheries that are supported by the shoreside infrastructure. Though groundfish are very important to many vessels, it is only one source of revenue for the majority of them. Therefore, while Amendment 13 may result in temporary reductions in groundfish activity, it will not remove all business opportunities for the great majority of vessels, processors, or other fishing-related infrastructure.

We acknowledge the questions that have been raised regarding the quality of our economic analyses and projections of long-term economic impacts and are seriously considering initiating an independent peer review to examine and comment on the quality, reliability, and comprehensiveness of the economic analyses. I would be happy to report to Congress as soon as we decide how best to carry out this independent review.

#### **Another Alternative Under Amendment 13?**

Amendment 13 currently includes a wide range of management measures that were developed over the course of several years. Four rebuilding alternatives are included in the Amendment 13 public hearing document:

1. Reductions in fishing effort, *i.e.*, days-at-sea (DAS) allocated; 2. Combined reductions in fishing effort (DAS), additional restrictions on gear, and a hard Total Allowable Catch (TAC) limit; 3. Area management, focusing the most restrictive measures on specific areas (*e.g.*, inshore Gulf of Maine or Western Georges Bank), including hard TACs; and 4. Hard TACs as the primary measure.

In summary, the first alternative relies on effort management through restrictions on DAS. Alternatives two through four make use of hard quotas as either the primary management measure or as a backstop to ensure that the fishing mortality objectives are met. All four alternatives include several subsidiary options. In our judgment, these alternatives and their associated options provide a broad range of measures with a fair amount of flexibility from which the Council may choose to achieve the necessary resource management goals.

These alternatives have been developed through a public process over the course of several years, and reflect input from the industry, academics, the environmental community, and other members of the public. Many ideas were explored, and some were incorporated and modified, as necessary, to achieve the desired and necessary objectives. Other suggestions were not accepted because they were unworkable, overly burdensome, or otherwise unsuitable. Additionally, NOAA holds the view that there is still room for flexibility, provided that any new alternative meet the following two conditions:

- (1) Any new alternative must be constructed from, and fall within the scope of, alternatives that have already been assessed in the DSEIS. It would not be possible to develop and analyze an entirely new alternative (*i.e.*, one whose impacts have not been analyzed or considered by the public), and still meet the Court-ordered deadline of May 1, 2004, for implementation of Amendment 13.
- (2) The management measures in any viable new alternative would have to meet the fishery management and conservation goals of the FMP, especially with respect to rebuilding, the primary objective of Amendment 13, as well as all other provisions of the Magnuson-Stevens Act and other applicable law.

Thus, it may be possible for the Council to consider a new alternative submitted during the public comment period, as long as that alternative is within the information and analytical framework of the DSEIS. NOAA Fisheries will continue to work side-by-side with the Council, to provide as much flexibility as possible in the lim-

ited time available to meet the Court-ordered implementation deadline, and to continue rebuilding the New England groundfish fishery.

#### **Future Actions in the Fishery**

The implementation of Amendment 13 is not the end of our work. For example, I see opportunities for future changes in the management of the New England groundfish fishery through the potential of gear research. We all acknowledge the need for work to reduce bycatch and improve gear selectivity in this fishery. NOAA Fisheries believes we have a significant opportunity to address some of the problems in this fishery by working cooperatively with the fishing industry to utilize their extensive skill and expertise in developing gear that meets current and future regulatory requirements. Over the past 3 years, NOAA Fisheries has worked with the industry on 37 cooperative research projects, funded with \$5.3 million. Through this type of work, if we can develop gear that reduces bycatch and that fishes more selectively, it will be possible to increase harvests of healthy stocks while allowing the weaker stocks to continue to rebuild. To facilitate this kind of research, NOAA Fisheries is considering issuing a rule that would propose that we distinguish research that is designed to improve gear selectivity for management purposes, such as reducing bycatch, from gear testing that is simply designed to improve how the gear captures fish. Depending on the outcome of that rulemaking, gear research may be able to proceed with much less delay.

Finally, I suggest that we all need to think more creatively about the overall direction in which we would like to see the New England groundfish fishery move in future years. What is our vision of what this traditional fishery should look like in 10 years, or 20 years? Should it be a much smaller fishery, with fewer but more economically viable vessels? Or should it be a fishery in which a large number of boats operate, and all or most of the ports and communities continue to participate at or near historic levels? Additionally, what are the most appropriate means for accommodating recreational and conservation interests in these fisheries?

Depending on our answers to these questions, and our vision of the future for this fishery, long-term remedies could include a wide variety of programs, such as limited entry, individual fishing quotas, cooperatives, community-based arrangements, trading and leasing of effort quotas, and vessel buyouts. Perhaps the Council could fashion a New England groundfish rationalization plan that combines various management tools. The alternatives and options under Amendment 13, while critically important, probably do not provide the whole answer. We will continue to work with the Council, the states, and all our constituents as we address these issues. But I believe that the tools do exist to promote the recovery of the New England groundfish. Working together,

I think we can identify the right mix of programs that will get the job done. I thank you for your interest in these challenging issues, and will be happy to address your questions.

Senator SNOWE. Thank you, Dr. Hogarth.

Is it correct that you will allow a more flexible approach to the National Standards in developing this alternative? What are you thinking about in terms of what would be allowable? I think that is one of the issues. The four proposals in and of themselves would be drastic to the community, as you have heard, in Maine and throughout the New England groundfish industry.

Dr. HOGARTH. Senator, I think there is some confusion, first off, on the economic side. There is a graph up here that I put here for you to look at. Any of the four alternatives that are being proposed will have an increase in both revenues and landings immediately. In the first 2 years, they do not meet the greater revenues of no-action, but the no-action will not be approved. The no-action has already been kicked out by the courts, so that is a nonstarter, so to speak.

But all the alternatives that we have on the table do have increased revenues, do have increased landings. So it is not the dire straits that we hear.

Senator SNOWE. That is not true, Dr. Hogarth. I mean, at whose expense? Who will be left? Who can survive? That may well be true

in the aggregate. Revenues are going to go up for the industry as a whole, but it is going to be a fraction of the industry that is left that stands to gain.

You have not identified in your reports who will be benefit, what the impact will be, and what happens to the inshore businesses. The Portland Fish Exchange, for example, has already seen a 20 percent decline in catches and in their landings, as many fishermen are taking them to Gloucester because of the steaming time issue.

We are finding ourselves in difficult straits as we speak. A lot of the smaller boats are in trouble. I have heard from them, you have heard from them, and the Council has heard from them repeatedly. There is no way that they can survive. There is no identification of short-term strategies by the National Marine Fisheries Service with respect to the economic impact.

I happen to believe, talking about balance, yes. But there is no balance when the National Marine Fisheries Service has constructed this approach between the National Standard 1, which is to address the overfishing, and National Standard 8, which is to assess the economic impact. You are saying that National Standard 1 takes precedence over National Standard 8 on the economic effects, but that does not mean to say it should be to the exclusion of assessing the impact on the communities. That has not been done, other than some focus groups. And that is insufficient to address this problem, totally insufficient.

The National Marine Fisheries Service has not been as aggressive in assessing the economic effects. If you had assigned I think an equal value in terms of aggressively pursuing a strategy that helps to minimize the effects, to understand the implications and the flexibility under the law, I think it would be an entirely different scenario. But we are exacting a very high price.

At the end of the day who will be left? Who will be left that will stand to gain for whatever increases there are in revenues?

Dr. HOGARTH. Well, for each one of the alternatives the Council is looking at additional flexibility, such as access to special areas where they will be able to catch fish differently if they can show that they can not have the impact on those stocks that are fished. They are looking at the steaming time that it is taking to get to some of the fishing grounds.

Senator SNOWE. That is not accounted for. There has been no approach put forward on the steaming time issue. Going back to the Portland Fish Exchange, you are talking about steaming time that is now counted as fishing. Are you going to be including that in any approach?

Dr. HOGARTH. They will be looked at as part—they are part. Any of these alternatives, the Council is looking at the flexibility that they can add on to minimize the impacts, yes. If you have to stay so many days at sea, reduce the days at sea. There is flexibility, like restarting the clock and such. I do not know that we ever started the clock, but anyway, started it at 10 years; looking at FMSY rather than F-rebuild, which will give us some flexibility; the adaptive management approach; looking at special access programs for the special access, looking at steaming time.

All of these are things that the Council in the November 4 meeting when they adopt their final or their final version will look at



all of these sort of things that are in those alternatives to minimize the impact. It is very difficult right now to say who wins or who loses, if you want to use those words.

Senator SNOWE. Yes, but you are saying and you are using charts to say the revenues are going to go up. On the one hand you are saying that the economic analysis is sufficient to make that determination. On the other hand, you are saying we do not have enough data. The agency has not really done anything to assess and evaluate in a constructive fashion by talking to those in the community, those in the industry.

Everything is consolidated within your agency, discussing the peer review and now the regulations. These include what in the final analysis will be included in the rules and regulations governing this industry. It is all concentrated in your agency, and there has been no independent analysis outside of your agency with respect to the effects.

If you are saying that one takes precedence over the other one when it comes to standards, you are right. It does sort of say that in the law, but it does not say to the exclusion of the other standards. It may well be that we will rebuild the stocks, but at what price? Who will be left at the end of the day? And we ought to be able to know that, because my small boaters are not going to be able to do it. I mean, they are just simply not going to be able to do it. We saw that with the Candy B II. Obviously, we do not know the circumstances, but we do know that that boat was bought for one purpose and had to be used for another. It had not been in the industry, so it had to come down to 8 days after buying a boat for fishing.

We are dealing with some very strenuous circumstances here for those who are participating in the fisheries, and this Amendment 13 as it stands and how it has been applied has been very, very tough.

Dr. HOGARTH. Senator, I agree.

Senator SNOWE. We do not have answers here and we should have answers by now.

Dr. HOGARTH. Let me try to explain a little. This economic impact analysis that has been done has been probably the most thorough that has been done anywhere in the country. What it does first, biologically it looks at what will take place as far as landings and revenues biologically if you have to reduce the days at sea or whatever you have to do to meet the overfishing criteria. That is what has been done.

The first thing it says is, yes, the revenues will increase, yes, the landings will increase. The second part of it when you get into it, then as you define the alternative, then you can refine, well, does it affect the small boats more or does it affect the large boats.

We know for a fact that it will affect the fishermen who are closest to the resource, so to speak. So some of those fishermen will be greater impacted. Right now about 69 percent of the vessels in New England, 131 vessels, depend on groundfish for 69 percent of their income. Of the 808 vessels we have, about 30 percent of them depend on groundfish for their revenue, or 30 percent of their revenue. So you have 69 percent of revenues for groundfish for 131

vessels, you have 808 vessels that have 30 percent of their revenues come from groundfish.

There are many other fisheries there. In Maine you do have lobster, but that does not help you in groundfish. But all of these fishermen will have to depend on the number of fisheries they have to make a living.

Now, we are going to have this peer reviewed. You asked for it to be peer reviewed. I think we looked at all the things yesterday—

Senator SNOWE. Well, I understand you are considering it still and I hope that you have gotten past that.

Dr. HOGARTH. We I think got all the details worked out yesterday.

Senator SNOWE. Yesterday. Is that going to be in time for November?

Dr. HOGARTH. I am not sure if it is November, but we are doing our best to speed it up.

Senator SNOWE. I know, but I sent my letter on September 17. Senator Lott.

Senator LOTT. I am enjoying your questions.

Senator SNOWE. I have more.

Senator LOTT. I still am having trouble understanding why the National Marine Fisheries in this administration is not doing a better job in some of these areas, including considering economic impact on those now trying to survive, and a lot of that is happening in the Gulf, too. So we are hoping that that will change.

Let me ask you to respond to this, the makeup of the fisheries management council and its appointments. You do understand that we have had a serious problem in the Gulf. I do not know that there are similar problems in the Northeast or the Northwest, but are you going to work with us to make sure that those councils are balanced? And we can even support legislation if we have to to give the flexibility, more flexibility, where the Governors will not cooperate.

Dr. HOGARTH. Senator, we will work with you. I think we were very concerned in the last go-around in the Gulf that we were trying to find a shrimper to go on the Council because of all the shrimp issues and we ended up having to take a seat from another State to put a shrimper on it to make sure we got it.

Yes, we need to work with the councils to make sure they get full representation. The people who depend on this need to be involved in it, no doubt. And we will work with you. I have called many Governors in the last 2 years and asked them to change their list. I have not gotten a lot of success out of calling them, but that is the way it starts.

Senator LOTT. Well, we ought to change—if we cannot get cooperation, we ought to change the legislation to give the Secretary some discretion there, because you cannot have—I mean, the way it is going in the Gulf, the sports fishermen and the conservationists will exclude commercial completely if they had their way. I know because I know how aggressive they are in the Gulf. We cannot put up with that.

What are you going to do about these fisheries research vessels, which we of course build in my home county, and then they go to Alaska and——

Senator SNOWE. Maine.

Senator LOTT.—and Maine, and various and sundry other places, but none to the Gulf. It looks to me like we are entitled to one of these next two.

Dr. HOGARTH. Well, I think my understanding is there is a study that was commissioned to look at the vessels within NOAA. Out of that it came that I think we probably need four new vessels that are deep draft, so to speak, and silent, super-quiet, and then there are two shallow draft that would come. That is number five and six.

I understand that the first one does go to Alaska, the second to Maine, but the Admiral has committed the third one to the Gulf.

And I understand your concern with the shallow draft. The problem we have with this is that we now have a contract with Alta Marine for four vessels. As long as you can get Congress to fund these boom, boom, boom, boom, you can get four in the same contract without changing design. If we are going to change design in the middle to build the third one as a shallow draft, we would lose that contract. We would have to go back and redesign, sign a new contract, and go through all of that.

So our goal was hopefully to get the four built under this contract. They cut the steel for the second one last week. They launched the first one last week. But the third one my understanding is goes to the Gulf. It may not suit the overall needs——

Senator LOTT. Well, we will take the deep draft provided—I realize that it is a monumental problem trying to design a shallow draft. I could probably do it this afternoon on a piece of paper. But we are going to get fair treatment or we are going to legally impound the next vessel.

[Laughter.]

Dr. HOGARTH. In Mississippi you could do that, could you not?

Senator LOTT. We sure could.

Now, let us see here. You are aware that the shrimp industry is really in distress in the Gulf with the turtle excluder device, the imported shrimp, and it is causing a real problem. Are you looking at anything? I am going to be meeting with the leaders of the industry next month to hear them out. I guess some of them will say, we want a cotton subsidy. And I would tell them, well, it has not done the cotton industry a lot of good, so are you sure that is what you want?

But they are in a lot of hurt and we need to try to figure out some way to help.

Dr. HOGARTH. Senator, I am extremely concerned about the shrimp industry in the Gulf and in the South Atlantic. They are both suffering the same thing. There are a lot of imports coming into this country. Imports are up 300 percent. The aquaculture prices I would say are really low. They are having a hard time competing. We are harvesting now the same number of shrimps we harvested in 1998. We do have too much effort in the shrimp fisheries, no doubt about it.

We just got a permit last year for the first time. We are importing now about 90 percent of the shrimp utilized in the U.S. We import 75 percent of all the seafood utilized in the U.S., which is of great concern to me.

We had a summit with SeaGrant to talk about the shrimp industry. They asked us to put together business plans. We have been working on that. You know now they have taken a different approach. They want to go to the imports, the lawsuit on imports. I understand yesterday that the Texas—that Commerce is going to look at some of the pricing from imports, competition.

The TED issue is an issue, but it is not causing the problem in the shrimp industry. We are working with them. We gave out 90 research permits to the industry and I found out yesterday that I think the industry has done a great job on modifying the TED that we had to make it even work better.

I just do not know. I think the industry is somewhat divided right now. I guess NFI and the shrimp industry had sort of a fall-out last weekend. I am really concerned about it because we need our industries together. I do not know what to do. We do not control imports, we do not control aquaculture prices. I am concerned that the U.S. is not sampling the imports as well as we should for the antibiotics and I sometimes wonder if we are getting some of those shrimp into our system.

We have just signed or are in the process of signing two MOUs with the FDA to let us do the initial testing of some of these imports to see if we can speed up the process and make sure it is getting done.

But I am extremely concerned. That is one of our oldest, biggest industries. Right now it is the number one seafood in the country. It has replaced tuna. But it is coming from imports, and I am extremely concerned that the U.S. is not—we are not more self-reliant for a healthy food like seafood. I will do anything I can. I have told the industry, I will facilitate, I will work with them any way I can do it to try to work together.

But it is not regulations. There is no poundage limits, there is no quotas. There is some seasons and some of the States try to regulate time of year to get bigger shrimp. I think our industry does have to look at quality control a little bit more and that niche in the market, and I am hoping that some of the money that Congress made available to the States is now taken to look at the safety aspects, the quality control, and develop that niche.

We will have—we are sponsoring, by the way, a National Seafood Cookoff for U.S. seafood that is going to start next year. We want to try to emphasize American seafood or all seafood, and we will be working with industries all over to try to do that. But if you have any suggestions, to be honest with you, I am sort of at a loss. I think we know what the concerns are and the issues are, but I do not think the industry is ready now for some of them, like limited entry or buybacks. But some of that stuff, IFQs and all, will have to be looked at. We are going to have to rationalize that fishery to make it competitive for the future.

Senator LOTT. Two other quick questions. The 1994 amendments to the Marine Mammal Protection Act clearly gave responsibility for overseeing public display of marine mammals to USDA's Ani-

mal and Plant Health Inspection Service. Yet your agency has proposed regulations that would impose new burdens on the display at these marine mammal facilities. Again, it seems like there is duplication in regulation, in effect I guess two different agencies saying two different things.

The law is clear, though, that USDA has this responsibility. How do you respond to that?

Dr. HOGARTH. We are all working with the industry. There have been some concerns that have come up with the law. We have from the Endangered Species Act and the Marine Mammal Protection Act, we have several responsibilities. But for the display there are some concerns how we are getting involved. That is under advisement right now. We are looking back at what we proposed.

Senator LOTT. I think your regulations exceed your authority. So I hope you will take a closer look at it.

Also, your agency received \$12 million during the past 3 years for the Prescott marine mammal stranding program. The legislation for that program requires you to balance the expenditure of those funds regionally and take into consideration the location of the marine mammal populations. We have a huge population in the central Gulf of Mexico and we have a highly experienced research facility in Gulfport, Mississippi. However, we do not seem to be receiving much funding out of this \$12 million.

Can you give us some assurances of some balance in that regard, too?

Dr. HOGARTH. Definitely. I have talked to a couple people in Mississippi recently. We have had meetings with them. We are looking at the Prescott.

Senator LOTT. One of the premier experts in the country in that area is Mobi Solange. He has got a wealth of experience and knowledge and we ought to take advantage of it.

Dr. HOGARTH. He was in a couple of weeks ago, Senator.

Senator LOTT. Thank you, Madam Chair.

Senator SNOWE. Thank you, Senator Lott, for your questions.

Again the question that Senator Lott raised about research vessels is instrumental, because we need to receive that type of research in order to make some of these management decisions. I know you mentioned in your testimony about using strategies regarding cooperative gear research, days at sea leasing, or buyout and so on, but were these strategies ever employed in the development of Amendment 13?

Dr. HOGARTH. They are being considered, yes.

Senator SNOWE. They are being considered.

Dr. HOGARTH. The leasing of days at sea is one of the options that the Council is looking at.

Senator SNOWE. Was it considered in the past? Was it considered in the past by the Council?

Dr. HOGARTH. Senator Snowe, I do not know the answer to that, but I will get you the answer.

Senator SNOWE. I know it is important to incorporate these ideas, because it gets back to the whole issue of assessing the economic effects. It is one thing if the National Marine Fisheries Service is determining with certainty certain conclusions about the economics. In this case, the service believes that revenues will go up

and the industry will benefit, but is unable to identify who will benefit. But on the other hand we do not have enough information and the agency is using this as relevant data to ultimately reach the conclusions incorporated in Amendment 13. That is going to be disastrous.

I have testimony here submitted for the record from Dr. Ilene Kaplan of the Woods Hole Oceanographic Institution, Union College, and it raises a number of issues with respect to the socioeconomic impact of Amendment 13. One of the issues she raises, is that she and the other members of the Social Sciences Advisory Committee were never consulted for official comments or review by the National Marine Fisheries Service in the development of Amendment 13. Why would they not have been consulted on this?

Dr. HOGARTH. Well, I do not know exactly why they were not. Socioeconomic is part of the draft environmental impact statement that went out for public comment also, so everyone had an opportunity to comment. I do not know why specifically this person was not.

Senator SNOWE. This advisory committee was not consulted. A member of the Committee was not. Why would not this committee be engaged in this process early on?

She raises a number of issues that are I think are disturbing. Again, there were no checks and balances in the process implemented by the National Marine Fisheries Service. There are many stakeholders involved here—the industry is diverse and they have not been asked to participate in the process. Many types of harvesters, processors, dealers, marine services, families, and social groups were not asked to participate in this process. So there was a rush, as she indicated, for these new proposals that on the surface do not appear to be fair and appropriate because there was no input. NMFS has just not assessed the community stability that really is a requirement under National Standard 8.

Dr. HOGARTH. There is a social science component to the council. That is a council committee.

Senator SNOWE. Right, there is, but they were not involved in this process. Dr. Kaplan was Co-Chair, but her committee has never been asked to officially review or comment on Amendment 13's draft environmental impact statement.

Dr. HOGARTH. We had 100 public meetings. I can find the details on it—

Senator SNOWE. But you see that there is not a standard. That is the problem here. When we are talking about balancing goals, there clearly was not—the economic effects were not ever essentially included. I mean, we just have no specifics with respect to who will be affected, who will be able to survive this, who will not, who will gain, who will not, and what can we do to minimize the effects on the community.

I mean, fishermen are being decimated. When you talk about Down East Maine, we are down to 17 permits. What we are talking about is serious. This is serious. This has a reverberating effect throughout all of these communities.

It was not considered in any shape or form as far as I can discern from the information that has been given to us. It is erratic at best, and there has not been an in-depth exploration.

Did the lawyers argue, as Dr. Kaplan indicated, before Judge Kessler that the biological assessment deadlines are in conflict with the requirements to meet social and economic assessments and maintain stable conditions? It would seem to me, if you have a lot of valid data it would help our case in court. But if you do not, you cannot make a case. You cannot make a case without data, and that is obviously what has happened in this instance.

So to balance things out in some way and I do not say they have to be totally equal. But clearly due consideration should be given to the economic effects to the multiple communities that will be affected by this in Maine and throughout New England.

Dr. HOGARTH. Senator, we do have all—we have looked at all the participation in groundfish since back in the 1980s. We have it by counties in Maine and numbers. The question today is when the Council decides on the alternative we will have to go back, once they finalize that. We do look at where does this have the impact.

Right now we know for a fact that those States, those people that are closest to some of these resources like cod will probably pay a bigger price. So you would have to look at what the alternative that the Council chooses. The latest one that the industry put forward, we have not had a chance to look at that at all. The council yesterday sent it back and said: Take a good look at this and make sure that it meets the standard. So then you look at these alternatives, and if they are all equal then the Council should take the one that has the least economic impact, and we will have to look at it from that standpoint.

Senator SNOWE. You look at these biomass targets. I gather you are still looking to maintain these levels. When I mentioned in my opening statement about the fact in the midst of the court case, 3 years into the rebuilding timeframe, the agency came out with new biomass targets. I wish I had blown this up into a big chart, because the difference between the original target in this bottom yellow line and the top yellow line reflects the new biomass target. That is a dramatic change. It is a dramatic change, to have to move this entire bottom line all the way up to this new target.

Additionally, our fishermen do not have any confidence in how these new targets were established. Even some of the peer review questioned the validity of these targets and on what basis they were determined. Basically what we have here is that you are using these new targets as a way of gutting the process, but there is still a lot of uncertainty. There is no confidence in these targets, and they are absolutely dramatic, particularly when you see the major difference between the original and the new targets that you proposed midstream.

Dr. HOGARTH. Senator, a couple things I think could explain that. We used the same model that was used with the groundfish work, the scallop work. What has happened is that these fisheries have really been overfished for such a long time that it has had an impact. The harvest of juveniles—the biomass has never really been seen because we have kept fishing so hard and so long that it has been overfished.

Magnuson says that we should rebuild the stocks to levels that are capable of producing on a continued basis maximum sustainable yield. That to us is what it is capable of. You look at scallops.

Everyone said we would never reach the level that we said would be the biomass of scallops. We have exceeded that. Through management we have exceeded it, and the fishermen are making more money and doing better.

What we are saying under these is that these are what it appears that we are capable of producing if we manage. We have not managed the stock in over 20 years. It has been overfished, severely overfished. And now, if you look at management it seems very practical to us that you will reach this level. We think that you can harvest in 10 years 320 million pounds of groundfish. That is a lot of fish. That is three times what we are harvesting now, and that is strictly from managing and meeting the law.

You gave us a good law in Magnuson-Stevens, we think. We may not have interpreted it exactly the way you want. By the way, we are looking back at National Standard 1. It is out for comment. We are looking at that. We are having a best available science peer review by the National Research Council.

I am taking these things one by one and trying to address the concerns I have heard. I do not think that the peer review—personally, we could argue about the peer review, I guess. I do not think we got a large—it did not give us really definite answers on a lot of things. But I think they did not question the validity of the targets. They have some concerns about uncertainty. That is why we are doing the adaptive approach. There is uncertainty and that is why we ought to use the adaptive approach.

These biomass targets for the first 5 years on the adaptive approach really have very little, if any, impact because we are going to manage to FMSY.

Senator SNOWE. Do you think it will be different than where we are today?

Dr. HOGARTH. I think if we manage properly at the end of 5 years I think that you will see, if we are right, that there will be very little impact on the fishermen at the end of this 5-year period.

Senator SNOWE. Are you including the adaptive approach in Amendment 13?

Dr. HOGARTH. Yes, ma'am.

Senator SNOWE. You are?

Dr. HOGARTH. Yes, ma'am.

Senator SNOWE. So you expect there will be something different than where we are right now?

Dr. HOGARTH. Yes.

Senator SNOWE. Will it be better in 5 years of the rebuilding?

Dr. HOGARTH. Yes, ma'am. Yes, ma'am.

Senator SNOWE. You can understand how this would erode confidence. In midstream, all of a sudden the agency is saying: not only did we make a mistake, we really made a major mistake, and here is the difference. I mean, that erodes confidence in the industry. You naturally would question whether they really know what they are talking about. At one point agreeing and then disagreeing and then saying: It was not only bad, it was really bad that we were off target.

That is the problem here.

Dr. HOGARTH. Senator, we used some new approaches, I think the better approaches, the same ones we used in scallops. I under-



stand quite a bit fishermen. I know they have a concern. You look at—you can take part of the socioeconomic data and you can make it very dramatic and I think it would be very concerning.

Change is also very concerning to fishermen. Amendment 5 and Amendment 7, they were very concerned that this was the end of the industry. The industry has not been ended. We have to work with industry through this process.

I have tried my best, working with the councils, to use everything that we have possible from a flexibility standpoint, adaptive, phasing in, because we know—we are the only country right now, by the way, Senator, that still has COLEC. I do not know if you have been reading all the controversy lately about COLEC. We have COLEC. I was at a meeting last week with international countries and they talked about that the U.S. management is head and shoulders above any other country in managing; indeed, that is why we think we have COLEC.

Now, we want fishermen. We want the industry. There is no way the National Marine Fisheries Service does not want a stable, long-term commercial industry and recreational industry. I think to meet National Standard Guideline 8, by the way, I do not know how you do it, because it really says that you have to—what are the words—you have to have a healthy fishing community, and if we do not comply with the National Standard 1 then we cannot have healthy fishing communities either.

So I can assure you that this agency is going to do everything it can to stabilize this fishery and to work with the council.

Senator SNOWE. The National Standard 8, says “minimize adverse consequences.” I just do not see where National Marine Fisheries Service has minimized that. So on the one hand, as I said earlier, you are saying that you did not have sufficient economic data from fishermen in order to make those decisions, and then yet on the other hand you are saying that, irrespective of that incomplete data, the economic information is not relevant to developing Amendment 13.

Dr. HOGARTH. And it is relevant, I think, because when we get through with these, when we look at these alternatives, we are going to have to choose the one that, if they all meet the Magnuson standard, the rebuilding, then we have to choose the one with the least economic impact.

There are some problems, by the way, with economic impact that we need to talk to Congress about. There are so many confidentiality clauses that it is very difficult to get the information on processes and communities. They do not have to provide that data due to the confidentiality.

Senator SNOWE. There are ways in which to go about getting that data. I just do not see that there has been an aggressive outreach on the part of the agency to go out there and do that, by all accounts. That has generally been the characterization of the agency toward these economic issues. Everybody has said the agency has not done its job when it comes to accurately evaluating how this amendment will affect the fishing industry and the fishing communities.

I mean, there are ways you could go about getting better information such as reaching out and soliciting input in terms of the ef-

fects. I just do not think that there has been any effort to do that, and each of the proposed alternatives have wide-ranging impacts.

Dr. HOGARTH. We do have a socioeconomic plan internally and we are implementing that now, and we are trying to work with the councils. Of the 1800-page document, I think you will find most of it is devoted to socioeconomic analysis, and we are able to compare between alternatives.

One thing I wanted to thank you, the Congress, for, and I am sorry it went so far before I did that, is the cooperative research. We have had 37 projects in research in the New England area of over \$5 million over the last 3 years, and that has helped us in Amendment 13, some of the gear stuff and all. The cooperative research has made a big difference.

Senator SNOWE. The point I am making on this is that I just have not seen the empirical statistical data that would validate the conclusions reached with respect to the economic and social impact of these four alternatives. That is the point.

Dr. HOGARTH. And I take the point, Senator.

Senator SNOWE. And I think it has really been to the exclusion of everything else. I do not want to gloss over these issues. Because in the short run, given what we know today, and given the effects of these four proposals, if we do not do something entirely different in the sense of how we approach this people are going to go out of business. This new approach could include a mix of the alternatives or adjustments made as a result of the council's decision. I hope it will be something you can approve, as well. I mean, that is the bottom line here.

I believe that there has got to be a better way of doing it. I want to make sure that we are clear on that, because the New England fishermen stand to lose and more specifically, my fishermen in Maine are going to lose dramatically. They already have. We are not satisfied with the approach that has been taken with respect to National Standard 8. This is documented by Dr. Kaplan's testimony as well.

I am saying that we really have to look at the socio-economic effects very carefully, and we cannot do it to their exclusion. The fishermen are interested in rebuilding their particular species for fishing. They are. It is in their interest. And the question is how can we best do that in a rational approach that does not devastate everyone who is participating in the fishery. That means having conclusive data. It means doing outreach. It means doing a lot of things that just simply are not being done right now.

I would like to ask you a few questions regarding multi-species management versus single species management. This is another dimension, related to being able to flexibly interpret the Act. Right now managers are regulating for the least common denominator and as a result a great deal of surplus biomass in healthy stocks cannot be harvested. That is another important issue.

Why are you implementing Amendment 13 on a species by species basis, rather than as a unit? Because again, looking at these targets, that is what we are dealing with here. This has exacted a huge price on the industry as well in terms of how you have approached it. I think there is no question you have chosen to interpret that standard very differently than I think could have.

Dr. HOGARTH. Well, first off, the Council did discuss it yesterday and I think they will discuss it again at their November meeting. We probably did in Amendment 7—we do somewhat of a mixed species approach there. We established five key stocks, and then with the remaining grouped into one group. The results of that have not been very good. In fact, those stocks that were overfished are even more overfished at the present time.

Looking at the national standard guidelines under CFR 600, it gives us I think it is about three or four standards that you have to meet, three standards that you have to meet. It is very difficult to meet those. I will not read them to you because you probably know them as well as I do. But the Council is going to look at it. It is probably something we will continue to look at.

We are concerned that those stocks, such as cod and yellowtail, that are severely overfished, will only be worse off if you go this route. But it is an option that is still on the table. It is an option that the Council will be looking at again in November.

Senator SNOWE. Is that something that you would accept, particularly if it is implemented differently? Because I think it is clear from the Act that it is possible to address it as a unit in the aggregate as opposed to doing it based on the lowest common denominator and the most severely depleted stocks. I think that is really an almost impossible threshold to meet.

Dr. HOGARTH. Yes, we will look at it very carefully. I think for yellowtail it may be something that would help particularly. Personally, if I would be honest with you, I think that the mixed stock exception, I am not sure that it does what we need to do in the long term. I am concerned that those stocks that are overfished will continue to go downhill.

Senator SNOWE. Why would you say that?

Dr. HOGARTH. My personal opinion does not count. It is what meets the law. I want to tell you that.

Senator SNOWE. But why would you say that?

Dr. HOGARTH. I am just saying that if you are not careful those stocks that are severely overfished right now, if you do not give them any protection, the protection they need, that they are going to continue to drop, and those stocks are also important in the fishery. So we are concerned that for three or four stocks—I mean, for some stocks there may be improvement, but the others will have more of a devastating impact. That is my opinion. I think the Council is going to look at it in November. If they meet the standards we will approve it. My personal opinion does not count.

Senator SNOWE. But again on this particular issue, why were not these issues previously examined so we could avoid the drastic situation that we are in today?

Dr. HOGARTH. I think the Council had discussed it. We think it is very difficult to meet the standards. Legally, we think they have a tough time meeting the standards. But they did talk some more about the yellowtail in particular, the yellowtail flounder. They want to discuss it again in November and we do think it is worth them continuing to discuss.

Senator SNOWE. I honestly think it depends how you argue it in court. If you have enough data, you are interpreting it correctly, and are making a very aggressive, forceful case in the court, I

think that it could have ultimately different results. Obviously, we would like to avoid this litigation. That is what we are facing time and time again. This is this whole litigious nature that Senator Stevens mentioned in his opening statement.

But the question is the National Marine Fisheries Service is grounded in all the independent data and scientific data and a valid empirical basis for the decisions it makes and interpreting the law, because the law does provide some flexibility, and I think the record speaks to that. In addition to the statute, I think the record, the legislative record, speaks to that, on the specific standard. So it could be a very different outcome than where we are today.

Dr. HOGARTH. Could I address one thing you mentioned?

Senator SNOWE. Yes.

Dr. HOGARTH. Just for the record, I would like to do this because we keep talking about litigation and we are also very concerned. But if you look at—we are all making progress in the agency. In 1999 we had 60 new cases filed. We had in 2001 36. In 2003 we have only had 16.

Senator SNOWE. Unfortunately, one is ours.

Dr. HOGARTH. Ma'am?

Senator SNOWE. I said, unfortunately one is ours.

Dr. HOGARTH. In 2003, 16.

But of the last 36 cases that have been resolved in 2003, 24 of them have either been we have won, been dismissed, or a settlement. So we have only lost 12. A lot of them have been in the NEPA arena, which we are getting much better on the process. We do not lose very often on science. We lose on NEPA. So I am very, very interested.

Senator SNOWE. I am sorry; you lose on what?

Dr. HOGARTH. The NEPA analysis, the process. So we have a list of them, but we now have less than 100 cases.

Senator SNOWE. What have you learned from that process that you could apply to Amendment 13 so we could avoid this type of court cases in the future?

Dr. HOGARTH. I think we will. I think we have learned quite a bit in the process.

Senator SNOWE. We are exacting a toll on the whole industry and devastating it. The key here is how we go about doing it and accomplishing our mutual goal.

Dr. HOGARTH. But to go back to the mixed stocks, there are three things we have to meet and I think it is very difficult, but I think that it is open, it is not a closed case. That is a flexibility that is there.

Senator SNOWE. Do you think they are utilized with the development of Amendment 13?

Dr. HOGARTH. I do not know. I do not know.

Senator SNOWE. I do not know either. You see, I do not understand why it was not used the last time. That is what is bothering me, because it could have been used last time. I believe the Council will use it this time, but I am not understanding the process enough to determine why they did not believe they had this kind of flexibility in the past when developing these alternatives.

Dr. HOGARTH. Well, like I say, I think they tried it in Amendment 7 and I think the result of that was that those that were not protected had such a devastating as far as overfishing is concerned. We are trying to look at those 18 stocks, and they all are important and we want to rebuild them. We have got stocks that are overfished as we regroup them. The yellowtail seems to be more in grouping.

Senator SNOWE. Now, you mentioned the Council addressed the issue of steaming time be counted as days at sea. Do you think that will be incorporated?

Dr. HOGARTH. The council is discussing that.

Senator SNOWE. To do otherwise is really going to affect the ports in Maine and certainly the Portland Fish Exchange. Also, with regards to the flexibility in the 10-year rebuilding rule, will you be reviewing that? I know that you have agreed to restart the clock in this instance, but is there not enough flexibility in the law? I mean, it says "to the extent practicable."

Dr. HOGARTH. I do not know how we get past the 10 years unless it physically cannot be done and then we can use half-time mean generation, in which you can extend some. Those that can be rebuilt and continued, we have no choice in my opinion, the way the courts have ruled.

Senator SNOWE. How do you view it in terms of what is justified to warrant changing the 10-year rebuilding timeframe?

Dr. HOGARTH. It is due to the biology of the species and whether it can actually rebuild or not, the generation time, maturation, generation time. With some of these groundfish we are dealing with, it is going to take 80 years. It depends on the stocks. I do not know the exact one of each one of them. If you want to, I can probably tell you; we can get to you those that can be rebuilt, we think, and those that cannot.

Senator SNOWE. Is it your understanding that this is a tool that can be utilized?

Dr. HOGARTH. Yes, ma'am.

Senator SNOWE. That you can?

Dr. HOGARTH. Depending on the biology of the species, you can utilize it, yes. But if it can be rebuilt in 10 years, we have no choice but to use 10 years.

Senator SNOWE. I appreciate your restarting the clock in this instance because of the changes in the biomass targets. But again, my question is why this flexibility has not been utilized previously. Obviously, it had to be something that we had to prod you on.

Dr. HOGARTH. May I ask John Boreman a question?

Senator SNOWE. Yes, go right ahead.

[Pause.]

Dr. HOGARTH. Senator, there are several species, like cod and redfish, that we do use a longer time-frame than 10 years based on the biology. I just did not know which ones they were, but there are some that we are using—

Senator SNOWE. OK, so we can expect that to be used? And do you interpret that it is permissible under the law, because that is also a critical issue?

Dr. HOGARTH. Yes, ma'am.

Senator SNOWE. The agency published a proposed rule on National Standard 1 and the definition of overfishing. And it was issued back in February?

Dr. HOGARTH. That is correct.

Senator SNOWE. So what is its status?

Dr. HOGARTH. It is now in the final stages of going through all the comments. It created lots of comments. It has been certainly one of the—I am very proud of the agency, how they worked with that. It has been a very controversial one to work with internally. It has taken a lot of time, a lot of effort. Their final recommendations right now are on my desk and I hope this week to move that forward.

The next thing I would like to do is discuss it with the councils, and then it will go out to the public for comment. So the earliest you will probably see something on that would be next spring, just the way the process works.

But we are seriously—I think it is an issue that I have heard from you and I have heard from others on the Hill on how we may have interpreted it. So we are taking a very hard, serious look at this. It is something we cannot rush. But we are looking at environmental conditions, mixed stocks, a whole gamut of things, overfishing definitions. We are taking a very serious look and we have had our best people internally working on it, and we had a meeting with all of our leadership to go over it. It is interesting.

Senator SNOWE. Well, I think one of the issues in terms of overfishing and what contributes to a decline of a stock or a species, there are other factors aside from fishing. It could be environmental factors, other non-fishing factors. How would that work into what you are planning to do on these proposals?

Dr. HOGARTH. One of the concerns was about environmental conditions, what happens with clamming regimes, with sieves. Like this year we had cold water on the East Coast and it looked like the haddock were doing great; you look at the West Coast, we had some ocean currents very different and great salmon populations. You have to look at that and how that factors in. That has been one of the big issues in how you do that.

Also, we have got to learn how to predict that and how you take that in. We plan on having some workshops this spring on environmental conditions and how you measure those and how you take them into management aspects.

Senator SNOWE. One final question, on National Standard 10, which pertains to the safety of human life at sea. As I mentioned previously about the Candy B II that disappeared tragically a little more than a week ago, we have a legal as well as a moral obligation to ensure that fishermen's safety is not unnecessarily compromised by fishing regulations and certainly not by Amendment 13.

How has the draft environmental impact statement accounted for the impact of the four alternatives on safety? The pressures do exist for fishermen to shift to other species of fishing, such as we heard in the description of the Candy B II. Do you think that enough information was factored into the environmental impact statement on this issue, just in general on safety?

Dr. HOGARTH. I think probably in general it is an issue that I am still concerned about. By the way, we did have I think it was the IG looked at the Council process and that is one of the questions that they have come back to us with, is safety aspects, enforcement, inputting into the rules, and that is under consideration right now, is how we get more input from enforcement and Coast Guard as we develop rules. It is something we will be discussing with the council.

I think one of the real concerns is how do you provide this? The days of sea sort of lets the fishermen fish when they want to. It is not a hard tack that says we are going to shut the fishing down. But somehow or another, safety is—we have the worst safety record of any industry, I think, the fishing industry. It is a concern.

People have talked about do IFQs do a better job so people can fish when they want to, go to their markets when they want to. I think it is somewhat of the nature of fishermen to fish and the fact that regulations probably do not help them in that aspect. I am concerned about the safety aspects of fishing and I am concerned because the second step is a lot of our industry is not making money. They are on a shoestring, there is no doubt about it. You go across the country, the shrimp fishery, some in New England, some in the West, if you look at the vessels they are not being maintained even from a safety standpoint. You talk to the Coast Guard and the Coast Guard says: They will not come to us to get the safety inspections because they know they have not really had the money to put into maintaining it.

So this is sort of—it is a big picture issue that is very concerning to us.

Senator SNOWE. The pressures they face in making those types of decisions, in this regulatory environment that they are confronting forces them to make some very difficult choices. These include switching over, buying a boat, and then all of a sudden the regulations change the requirements. You cannot predict it. It is a different proposition for these fishermen and there they are holding a mortgage to a boat.

Dr. HOGARTH. I would love to see it come to the point where they had more control over when they fish, and that is one of our goals, for you to sign up when you are going to fish.

Senator SNOWE. Obviously we have a number of issues here. Before I conclude, I want to ask you another question. You mentioned IFQs and you had an issue with IPQs. Does the administration have a position on individual processing quotas?

Dr. HOGARTH. Individual processing quotas?

Senator SNOWE. Yes, that is correct.

Dr. HOGARTH. The administration has said that presently they are not allowed, that they are not eligible to participate because it is not in the law. But in the Magnuson reauthorization we did send, transmitted to Congress that included language for councils to allow them to participate in that IFQ process, because we think that if a council wanted to, because again we believe that if you are going to look at IFQs you have to look at the social and economic impact. that includes the processors, it includes all sectors, the communities, the processors, the fishermen. So that is our position.

Senator SNOWE. It should be determined by the councils?

Dr. HOGARTH. Right.

Senator SNOWE. So you would like to have legislation that would govern these issues on a national basis in terms of the regional councils make the decisions, but within a certain process?

Dr. HOGARTH. Senator, I would love to see Congress move on the IFQs. We need them in some areas, not all of them. I would say two, but we really need them in some areas very badly. I think our shrimp industry right now needs them. But I would encourage the Congress working with us and trying to put some criteria on those IFQs.

Senator SNOWE. Right. I think it is essential that we have criteria that is going to dictate a process.

Dr. HOGARTH. I would love to work with you. I would love to work with you.

Senator SNOWE. Dr. Hogarth, I appreciate you being here today. I think you know the dire circumstances that the groundfish industry in New England and certainly my state of Maine is facing with these four proposed alternatives. I just encourage you, urge you, to do everything within the capacity of your position as Administrator, to utilize the flexibility that is in the law to devise a different proposal that would not exact such a drastic price and toll on the fishing industry, their families, and their communities.

We have to find a better way, not only in this instance but in the future, because there is no question that this has been a wrenching process from start to finish. At the very least, I hope in this particular chapter of Amendment 13 that we can find a way to minimize the impact on the industry and come up with a better proposal. I know that the State is working with the industry and I know yesterday's council meeting was crucial in that process. I appreciate you being there.

We are going to do everything that we can to find a better solution than each of those alternatives because I think they would devastate the industry. If not, we will have very few fishermen left. There may be some left that will enjoy those revenue increases you testified, but they will be few and far between.

For those who continue, this form of livelihood, handed down from generation to generation, they want to go out there and they want to fish. That is what they want to do. And they are just hampered by this onerous, restrictive regulatory environment and the litigious circumstances that we continue to find ourselves in. We have to find a better solution to the way we implement this Act.

Here is another issue. If there are specifics within this Act that you do not think help, I want to know. We have to begin to decide where they are, because they are different interpretations with respect to the flexibility and the ability to interpret some of these national standards. We also must improve the means by which we assess the economic impact.

Dr. Kaplan I think provided some very good examples as to how socio-economic analysis could be done better. We really have to, because I want to preserve this industry. I know you do. It is a real way. These are not mutually exclusive goals in terms of preserving the fish and preserving fishermen in the industry.



So again, I want to thank you for your time and consideration, and I will be working with you in the remaining upcoming days to do what we need to do specifically with respect to Amendment 13.

Dr. HOGARTH. Thank you for taking the time. We need to discuss these issues. We need to manage this and get it out of the court system. I am determined to meet May 1 with something that minimizes the impacts to the fishermen and is in compliance with the act. I think that there is hopefully one proposal that I looked at that shows promise and I am hoping that the Council as it looks forward will do something with that proposal.

Senator SNOWE. I appreciate that and the fishermen will appreciate that. So thank you very much.

Dr. HOGARTH. Thank you.

Senator SNOWE. Thank you. The hearing is adjourned.

[Whereupon, at 11:09 a.m., the Subcommittee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. JOHN F. KERRY,  
U.S. SENATOR FROM MASSACHUSETTS

Good morning. I want to thank Chairman Snowe for holding today's very timely oversight hearing on NMFS' implementation of the National Standards of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Following passage of the 1996 amendments to the Magnuson-Stevens Act, NMFS issued revised National Standard Guidelines to provide technical guidance to the Councils in developing fishery management plans. However, implementation of these National Standards has been inefficient and a number of problems have been identified. The primary concern is that the Guidelines have not allowed for the management flexibility intended by Congress. In particular, we need to take a hard look at how NMFS and the Councils have implemented two of the National Standards:

- National Standard 1, under which overfishing and rebuilding standards are set;
- National Standard 8, under which socio-economic effects on fishing communities are addressed.

These implementation issues have come to light in ports around the nation, but no where are they more acute than in New England, where NMFS and the New England Fisheries Management Council are under court order to develop a Magnuson-compliant management plan known as Amendment 13.

The development of Amendment 13 has been plagued by conflict, scientific controversy, delays, and overly-stringent and inconsistent interpretations of the 1996 law.

Throughout this time, New England has had to cope with significant environmental and economic instability. Overfishing has continued on certain stocks, and fishing communities have experienced an ever-changing set of management decisions that have contributed to economic stresses on fishermen and fishing-dependent communities. In real terms, that means commercial fishermen cannot implement even a two-year business plan because they do not know how, when or where they will be allowed to work in the fishery. This uncertainty extends to the multi-million dollar shore-side infrastructure and local economies. In these difficult economic times it is imperative that NMFS bring about a reasonable and stable management plan that will allow businesses—from the small boat entrepreneur to the national seafood processor the opportunity to compete in the American and world marketplaces.

The Magnuson-Stevens Act (MSA) calls for a balanced approach to fisheries management which is designed to sustain and grow this Nation's fishing industry through necessary conservation and reasonable management measures. That means we must reduce fishing mortality to end overfishing and restore stocks to sustainable levels, but such reductions must be technically justified and effects on communities minimized to the greatest extent possible. Consistent with the conservation requirement to end overfishing, National Standard 8 mandates that management plans developed by the Councils and approved by NMFS take measures to provide for the sustained participation of fishing communities and minimize the adverse economic impacts of management measures on these cities and towns.

Nevertheless, NMFS' Draft Economic Impact Statement analyzing the four alternatives under consideration for Amendment 13 demonstrates that economic losses to vulnerable New England fishing communities were not specifically identified in the document—and thus, no mitigation measures are proposed. The analysis simply projected that, on a regional basis, each of the four alternatives before the Council would result in short-term economic and job losses, with surprisingly little economic or environmental net benefit over the long term. Massachusetts alone is expected to shoulder between 55 and 68 percent of all expected losses in income, revenues, and jobs in the region. Commercial fishing is an important economic engine in cities like New Bedford and Gloucester, where hundreds of jobs stand to be lost. Analyses

provided by NMFS suggest that the “no action alternative” (representing 2001 fishing effort) could achieve more than 85 percent of the economic and biological benefits of any of the four alternatives. Analyses of 2002 fishing effort are expected to demonstrate even greater strides.

If this course is followed to its conclusion, Amendment 13 could require significant economic losses in certain communities with little future economic and conservation benefit today or tomorrow.

The 1996 revisions to the Act were not intended to result in a paper exercise plagued with unworkable rules; it was intended to result in better management and better decisions to benefit real people. We believed that successful management would involve measurable increases in biomass, smarter management, modem techniques, and increasing opportunities for our coastal communities. However, it is my view that NMFS is not fully taking advantage of the flexibility in the law, and that, in part, is the cause of our current problems in New England.

The MSA allows NMFS and the Councils sufficient flexibility to create a workable management plan for New England, so long as we ensure there will be an end to overfishing and return to sustainable stocks. I believe there is plenty of room for establishing common-sense rules under the Act. For example, the Senate unanimously approved my amendment to H.R. 1989 last Congress, which clarifies that the agency has the discretion to extend existing rebuilding timelines when new assessment information increases targets well above the previous goals. This is a rational interpretation of the Act that an expert agency can make, and we are glad to see that this approach is reflected in the Amendment 13 alternatives.

The MSA also provides plenty of room for Councils and the agency to develop a range and combination of reasonable management approaches that can both end overfishing and provide benefits to the fishery. These include multispecies management approaches that provide incentives for harvesting of plentiful stocks and avoiding vulnerable stocks, adaptive management rules to accommodate new information, community-based sector approaches, real-time reporting that will improve timeliness of stock information, and cooperative research to improve the quality and quantity of scientific information on our stocks.

The agency must work with the Councils to use the discretion afforded to it to meet the requirements of the law to both end overfishing and keep fishing communities strong. Any management plan must take account of the good work already done in New England, and target mitigation measures to the port communities at greatest risk of economic downturn as a result of NMFS' actions. In addition, I am concerned that fishermen have complained that NMFS has failed to provide oversight to ensure Council designed management plans meet other National Standards (4 and 5). These standards require that management measures not discriminate among residents of different states; not have economic allocation as their sole purpose; and, if they result in allocation, that such allocation be fair and equitable. I believe this is an area that needs additional attention, or the future of the entire management and Council system will be called into question.

I thank Dr. Bill Hogarth for joining us today in order to help us better understand NMFS' implementation of the MSA and to guide the agency in meeting its obligations to create a fair and responsible management plan for New England, and for fishing communities around the United States.

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PREPARED STATEMENT OF HON. SUSAN M. COLLINS, U.S. SENATOR FROM MAINE

I want to thank my colleague, Chairman Snowe, for holding a hearing on this issue, which is of great importance throughout the Northeast but particularly to our home state of Maine.

No one issue weighs more heavily on the minds of New England's fishermen than the future of our groundfish industry. Currently, the New England Fishery Management Council is crafting a fishery management plan that will regulate the Northeast Multispecies Fishery. Unfortunately, the New England Council has little room to create a reasonable plan due to excessive litigation and the improper interpretation of the Magnuson-Stevens Act by the National Marine Fisheries Service.

Although I was not a Senator when the Sustainable Fisheries Act became law in 1996, I know that this legislation is not being interpreted as Congress intended. Fisheries management does not mean that we protect fish stocks without consideration of our fishermen and our traditional fishing communities. Fisheries management is only successful when it ensures the survival of both the fish and the fishermen.

The northeast groundfish fishery is not in crisis. Fish stocks are, in fact, rebounding at a tremendous rate. Still, the New England Council is saddled with alter-

natives that will jeopardize the livelihood of thousands of fishermen and related businesses.

I have continued to urge the National Marine Fisheries Service to provide the flexibility the industry needs when developing amendment 13. This what Congress envisioned with the passage of the Sustainable Fisheries Act.

There are further avenues of flexibility that must be explored by the National Marine Fisheries Service. Industry members and members of the New England Council itself have advocated the use of the mixed-stock exception, a concept developed by the National Marine Fisheries Service itself. Unfortunately, the National Marine Fisheries Service has been reluctant to explore this management tool.

Further, many industry members are troubled by the rebuilding targets established by the National Marine Fisheries Service. These targets stand well above any biomass numbers that have been recorded for groundfish. Nevertheless, more realistic targets have been rejected by the National Marine Fisheries Service. At a time when the trend of ecosystem-based management is gaining favor, the Service is insisting on goals that do not take into account predator and prey relationships, climatology, the effects of pollutants, and other factors that influence ecosystems.

While I am encouraged that the industry has been given the challenge to create its own alternative to Amendment 13, this challenge was issued with a number of constraints. Most notably, this alternative must be comprised of components found within the current Amendment 13 document. This only guarantees "more of the same." I encourage the National Marine Fisheries Service to be more open to true alternatives and to accommodate any proposal that the industry may develop.

Again, I would like to thank the Committee for holding this hearing. A unique way of life is hanging in the balance.

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PREPARED STATEMENT OF U.S. REPRESENTATIVE BARNEY FRANK,  
HOUSE OF REPRESENTATIVES

Thank you, Chairwoman Snowe, for convening this hearing on fishery management issues. I appreciate having the opportunity to submit my comments on changes that I believe are needed in the Sustainable Fisheries Act (SFA), as well as my thoughts on the current progress toward developing Amendment 13 to the Northeast Multi-species Fishery Management Plan.

The commercial fishing industry in Massachusetts and throughout New England is currently facing the prospect of potentially devastating restrictions on fishing. All four Amendment 13 options that are formally under consideration by the New England Fisheries Management Council at this time are projected to have extremely negative economic impacts, on the fishing industry directly, and also on the other sectors of the region's economy that benefit indirectly from commercial fishing activity. Indeed, estimates prepared by the National Marine Fisheries Service suggest that job losses as a result of Amendment 13 could run as high as 3,000.

While it is essential that we do everything possible to prevent that kind of economic loss, the difficulties we are facing with Amendment 13 underline the need to change the SFA, the law that is partly responsible for where we are now in this process. In particular, the law needs more flexibility and improved science. It stretches the bounds of logic for the government, during a period when most New England stocks are rebuilding at a healthy pace, to require fishermen to make deep additional reductions in their fishing efforts. Yet, that is precisely what New England's commercial fishermen are facing, largely because the law lacks necessary flexibility.

The SFA should permit longer rebuilding periods when appropriate, particularly in cases where biomass targets have been substantially increased (an extension was recently permitted by NMFS after New England biomass targets were increased, but this was done on an ad hoc basis). We also need to consider changes to the definitions of overfishing that will allow for greater flexibility in rebuilding. And, we need to develop procedures for ensuring that the science used to establish biomass targets and measure fish stocks involves greater levels of independent peer review, and more cooperative research that includes fishermen in the data gathering process. Finally, we should try to find new methods for helping species that are not doing as well when others are rebuilding, and continue to explore ways of reducing capacity in the industry.

If we can develop a consensus on these and other fishery management issues there is a good chance that in the future we can avoid the sort of contentious situation we now face with Amendment 13. I was pleased with the initial progress we made in the House in the last Congress on reauthorization of the SFA, and I am hopeful that we will be able to complete the reauthorization process in this Con-

gress. Indeed, if we can enact a new version of the law that addresses some of the concerns I have outlined above, I would expect to see changes to whatever version of Amendment 13 is put in place for next year.

Regardless of what form Amendment 13 takes initially, I will of course be doing all that I can—working with my colleagues in Congress who share representation of New England and others active in the industry—to try to mitigate any negative economic effects that may occur. In that connection, I am submitting with this statement a copy of a letter sent on September 15 by Senator Edward Kennedy, Congressman John Tierney and myself to Commerce Secretary Evans and NMFS Director Hogarth urging them to allow alternatives to the four Amendment 13 plans that are under consideration. I am pleased that Dr. Hogarth indicated his willingness to have such alternatives considered as the process for developing Amendment 13 moves forward.

A number of organizations representing various segments of the fishing industry in New England have now submitted their own Amendment 13 proposals, and I am hopeful that components of these alternative plans will be able to be incorporated into the ultimate Amendment 13 plan that is adopted. I believe it is essential that the process by which these alternatives are considered is as broad and flexible as possible, so that new elements—not expressly within the four options, but included within the overall range of analyses prepared by the Council—are given fair consideration. I submit a second letter which I sent to Or. Hogarth on October 14 recommending that a flexible approach be taken on this point.

Again, I appreciate having the opportunity to submit testimony to the Subcommittee on this important matter, and I look forward to working with you, Chairwoman Snowe, Ranking Democrat John Kerry; and others who are concerned about these issues in the attempt to develop appropriate fishery management legislation.

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CONGRESS OF THE UNITED STATES  
*Washington, DC, September 15, 2003*

Hon. DONALD L. EVANS,  
Secretary of Commerce,  
Washington, DC.

Dear Secretary Evans:

Because of our serious concern over the projected disastrous economic impact of the groundfish management options that are currently under consideration by the New England Fisheries Management Council, we urge you to take the necessary steps to ensure that additional scientific and economic analysis is conducted before the Amendment 13 process moves forward.

Specifically, before any further decisions are made on management options, we believe it is essential to: (1) conduct a more detailed comparison of the potential benefits of the options currently under consideration by the Council and options involving the restrictions that have been adopted under the terms of the settlement in CONSERVATION LAW FOUNDATION ET. AL. VS. DONALD EVANS ET. AL.; and (2) incorporate alternative scientific models including the Age-Structured Production Model (ASPM), into the scientific analysis that is undertaken as part of the process for developing Amendment 13.

As you are aware, each of the options before the Council is projected to have a devastating impact on the New England fishing industry, with job loss estimates running as high as 1,300–3,000, with more than half of those potentially in Massachusetts alone. In addition, it is likely that, at the conclusion of the rebuilding process envisioned under these options, the industry itself would look very different, with a much greater level of consolidation.

While some have argued that these harsh economic effects are necessary to ensure the long-term viability of New England's groundfish stocks, the resource population and health gains that are projected to result from the draconian restrictions under the various options are likely to be relatively modest when compared with options that are considerably less severe from an economic point of view. For example, NMFS's own estimates suggest that the "benefit" at the end of the options' rebuilding periods will be somewhere in the range of a 10 percent improvement when compared with the pre-settlement restrictions (the "no action" option).

In other words, under the no action model, the rebuilding of New England stocks could end up at a level close to 90 percent of what it would be under the current options, meaning that implementation of any of the options is likely to impose great pain for relatively minimal gain. We understand that the no action model does not fall within the Sustainable Fisheries Act (SFA) guidelines. However, we are not con-

vinced that sufficient analysis has been conducted on the comparison between the current options and the existing, post-settlement restrictions (the “status quo”). While the differences are projected to be still less, it is possible that a more modest modification of the status quo, with less severe economic impact, could reduce the differences even further, and be consistent with the SFA. Accordingly, before we move forward with a set of restrictions that are widely expected to have a ruinous economic impact on the industry, we believe it is essential that this more detailed comparative analysis be completed.

Furthermore, we believe the scientific analysis associated with the Amendment 13 process should draw from the widest possible range of models. The ASPM approach has been shown to be useful for some species and, with the stakes as high as they are, we do not believe that a potentially valuable approach should be removed from the debate, simply because there are some questions about its application to certain species. There are legitimate differences of opinion within the scientific community about how to measure the population and health of the relevant fish stocks and over what may be the best management approaches for achieving an appropriate level of rebuilding, and responsible alternatives should continue to be part of the debate.

We understand that, given the Federal Court ruling, the Amendment 13 process cannot simply be stopped, and we are not proposing that. Rather, we urge you to work with the Council and the relevant stakeholders to see that the sort of additional analyses and models discussed above are incorporated into the Amendment 13 process as soon as possible. We recognize that there is a limited amount of time, but that is no reason to adopt the wrong plan. In fact, with the SFA up for reauthorization next year, we are likely to see additional changes in the fairly near future in the way New England’s fishery will be managed, regardless of which management option is selected by the Council and the Department.

We believe a logical approach is to have in place on May 1, 2004 a management plan that will allow us to consider the SFA reauthorization without having already imposed unnecessarily harsh restrictions that will devastate the New England fishing industry in the near term. This will give us the opportunity to amend the law to allow for the development of an appropriate long-term management plan that includes the proper balance between economic growth and resource protection. Again, we urge you to do whatever is necessary to ensure that these additional steps are undertaken before the Amendment 13 process moves ahead any further.

Thank for your attention to this request. We look forward to your response.

Sen. Edward M. Kennedy    Rep. Barney Frank    Rep. John F. Tierney

cc: William T. Hogarth; Assistant Administrator for Fisheries, NOAA

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TESTIMONY ON BEHALF OF THE TRAWLER’S SURVIVAL FUND

The Trawler’s Survival Fund (TSF) would like to thank Senators Olympia Snowe and John Kerry for holding this hearing and for the opportunity to submit testimony for the record. We sincerely hope that this hearing will provide a mechanism to call for common sense and balance in the process for approving new regulations for the New England groundfish fishery.

The Trawler’s Survival Fund represents over 100 boats, both large and small, as well as local shore side businesses including fuel companies, fish wholesalers and gear suppliers, all of whom depend on groundfish to make a living for their families. Our members range from Provincetown, MA to Point Judith, RI, with the majority docked in the Nation’s largest fishing port—New Bedford, MA. We have worked diligently throughout the process, at all levels, to influence Amendment 13 to the Multispecies (Groundfish) Fisheries Management Plan. We have attended and testified at New England Fisheries Management Council (the Council) meetings, worked with our Congressional delegation, met with the National Marine Fisheries Service (NMFS), and offered alternative scientific approaches, all in the hope of avoiding the situation we now find ourselves in a proposed Amendment 13 that creates economic devastation while providing no significant payoff in the future.

It is important to note that the deep cuts proposed in Amendment 13 come at a time when groundfish stocks are increasing dramatically, having tripled in biomass overall in just the last eight years. Fishermen have already made significant sacrifices under the current suite of restrictions put in place by the court settlement. The question before the Council, NMFS, and ultimately Congress, is not IF the stocks will recover, but what will be the cost to industry to reach never-before-seen biomass targets by the ten year timeframe required for most stocks by the Magnuson Stevens Fishery Conservation and Management Act.

The release of the economic analysis of Amendment 13 by NMFS and the Council has validated the fears and predictions of the fishing industry. In its current form, Amendment 13 offers economic devastation, a loss of up to 3,100 jobs and over \$200 million, while resulting in only about a 10 percent increase in landings and revenues 10 to 15 years down the road. The initial loss of fishing infrastructure makes it highly unlikely that the industry will exist in its current form by the time the predicted "benefits" are realized.

Faced with the harsh economic realities, the fishing industry across New England has come together in an unprecedented way. While there is not complete unanimity in position, there is tremendous agreement on broad themes and suggested approaches.

*Biomass Targets*—The New England Fisheries Science Center (NEFSC) has developed new biomass targets for each species within the groundfish complex using new and untested science. The new targets are in some cases double or even triple the size of the previous targets, and in many cases are significantly higher than any observed biomass level. Concerns about these new targets have been raised by the Peer Review and by an alternative scientific model, the age structure production model (ASPM), which has yielded significantly different results. Dr. Douglas Butterworth, an internationally known and respected fisheries scientist, has offered to assist NMFS and NEFSC in applying ASPM to the groundfish stocks. This model is used around the world, including for Alaska Pollock, our Nation's largest fishery. In response to requests from Senators Olympia Snowe, John Kerry, Susan Collins, and Edward Kennedy; Representatives Barney Frank, Tom Allen and Michael Michaud; TSF and Associated Fisheries of Maine; and two requests from the Council; Dr. Hogarth responded "Age-structured population models will routinely be considered, as appropriate, when future benchmark assessments of groundfish resources are considered." Despite this recognition that ASPM is clearly a useful model and may be used in the future, NMFS and NEFSC have refused to explore ASPM as a viable alternative for the current drafting of Amendment 13, instead insisting on science that is unproven and will have devastating effects on the fishing industry.

*Fishing Effort*—It is generally agreed within the fishing industry that any significant cut in the Days at Sea (DAS) will have an irreparable impact on the nature of the fishing industry in New England. We acknowledge that some stocks need further protection, but generally believe that rather than significantly cut DAS, fishing effort can and should be shifted from weaker to stronger stocks. For instance, while Georges' Bank cod may need further restriction such as a lower trip limit, George's Bank haddock and yellowtail have sufficiently rebounded to allow higher fishing mortality.

*Mixed Stock Approach*—For some time, TSF and others have asked NMFS to investigate a "mixed stock" approach to managing the groundfish complex, recognizing that each of the 15 species (19 stocks) contained within the groundfish complex are not independent of each other, and that it may not be ecologically possible to rebuild each individual stock to its maximum biomass. This approach would mean the development of a single biomass target, overfishing definition, and other reference points that apply to all the groundfish in aggregate. Since NMFS has refused to investigate this approach at this time, there is agreement within the industry to push for this analysis at the earliest possible opportunity after completion of Amendment 13.

*Flexibility*—Given the limited options in the Amendment 13 document and the strict deadlines imposed by the court, TSF joins with others in the fishing industry, and in Congress, in strongly encouraging NMFS to allow the Council great flexibility, particularly in choosing biomass targets and fishing mortality rate reduction strategies. It will only be through creative and cooperative efforts that the end result will be a plan that the fishing industry will survive.

TSF again thanks the Committee for its interests and efforts in this matter and looks forward to working for a common sense solution that BOTH rebuilds the stock and allows New England's heritage of fishing to survive.

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PREPARED STATEMENT OF COREY R. LEWANDOWSKI, EXECUTIVE DIRECTOR,  
NEW ENGLAND SEAFOOD PRODUCERS ASSOCIATION

Madam Chairwoman. Thank you for the opportunity to offer my testimony here today regarding Amendment 13 and the economic ramifications that any of the pending four options would have on the New England economy. For the record, my name is Corey R. Lewandowski and I am the Executive Director of the New England Seafood Producers Association (NESPA).



To provide you with background on our organization, the New England Seafood Producers Association (NESPA) is a non-profit organization representing the interests of New England's shore-side seafood industry. Formed in 2002, we seek to sustain the seafood industry by defending and promoting the historical right to harvest and process seafood in New England by educate consumers on the benefits that come from consuming seafood.

NESPA is comprised of shore-side professionals in the seafood industry including, processors, distributors, wholesalers, importers, exporters, packagers and specialists in serving, selling and preparing seafood.

NESPA's is here to submit to you that throughout the New England area, if Amendment 13 were implemented, just how detrimental it would be to the economic livelihood of the region and the overall fishing industry of New England.

As the Executive Director of NESPA, I would like to share with you on behalf of our members, some statistics that support the economic impact that will be felt on shore side facilities. Madam Chairwoman, a study conducted covering the period 1992-1998, by the University of Massachusetts-Dartmouth indicated that the New England shore side industry has already lost 40 percent of capacity. Since that study was conducted, specifically, in the state of Maine, the number of Wholesale Seafood Dealers' licenses, excluding lobster licenses, from 2000 to 2003 has dropped from 210 to 173. That is an additional decrease of 17.6 percent in issuances of licenses alone. If Amendment 13 is implemented, we can expect a much more dramatic decrease over the next five years.

The socioeconomic effects of Amendment 13, if implemented would decimate the New England economy. Decreases in gross sales were calculated on each port as well as on the overall impact on the economy and here's what was determined.

Port by port industry sales would be affected as well as sales on Non-Maritime businesses. For example, Non-Maritime businesses in New England would witness sales decreases of 9.5 percent, the Upper Mid-Coast of Maine would see decreases of 1.9 percent, the lower Mid-Coast of Maine 11.4 percent, Southern Maine, because of its strong economy, would witness only 1 percent decrease. The New Hampshire seacoast would witness sales losses of 5.1 percent. Gloucester Massachusetts would be hit with 13 percent decreases, Boston with a massive 20 percent decrease, on Cape Cod and the Islands we would see a decrease of 3.6 percent. The New Bedford economy might not be able to survive with expected losses of 19.1 percent. The state of Rhode Island would see a decrease in sales of 5.8 percent, and the Connecticut Seacoast would see 9.1 percent decline.

As you know, there is a direct correlation between sales and jobs in any industry and the fishing industry is no different. As you can tell from the aforementioned statistics, with the expected sales decrease as a result of the implementation of Amendment 13, there will also be job loss due to cut backs and layoffs. The employment impacts on Massachusetts Fishing ports will be a decrease of 58.5 percent and the personal income impacts, meaning the amount of wages lost, in the Massachusetts fishing ports alone, will be 58.1 percent of all industry wages.

There is no doubt that Massachusetts will be hardest hit if Amendment 13 is implemented under any of the current options but, all states will feel the impact. Maine will see decrease in jobs in the lower Mid-Coast of 14.8 percent, Rhode Island will see job losses at a rate of 5.4 percent and Connecticut will feel a 5.8 percent employment impact. But, perhaps most importantly is the Non-Maritime impact that will be felt. The current estimate stands at 8 percent in New England. How many more statistics do we need to cite to demonstrate the importance of the fishing industry on the New England economy?

While these numbers are staggering, I am not here today to advocate for one alternative or another regarding Amendment 13 because currently no fair alternatives have been set forth. More importantly, I am here today to help educate you, the Subcommittee, the New England Fisheries Management Council (NEFMC), the National Marine Fisheries Service (NMFS) and others in attendance as to the overall economic ramifications that *ALL* four proposed alternatives will have on the New England seafood industry. The fact remains Madam Chairwoman the current regulations are working. Stocks are rebuilding. And the small gain projected by NMFS opposed to no new action is not worth the real economic impact that will be incurred at the onset.

Like all other industries, the fishing industry has evolved to become more professional, run by business minded individuals. Gone are the days when the market was dominated by small supermarket chains, old-fashioned fish markets and independent restaurants that could react quickly to significant fluctuations in supply and pricing. Today, people have to write business plans and work with the food service industry which is dominated by larger corporate end-users and professional managers who value planning and predictability and have a wealth of options to

choose from. We no longer work on a day-by-day or week-by-week basis, customers require us to forecast our sales plans months ahead of time. Any further disruption in our supply will force these corporate giants to find other, non-local products to provide their customers.

It is critical to realize that the proposed new regulations reach beyond the ocean and affect thousands of shore side individuals that have worked in this industry for generations. Many of us have heard the statistic that for each job on a fishing boat, there are seven jobs on land.

With that in mind, last year, NESPA commissioned an economic report on the seafood industry in New England. The report aggregated information on company size, the number of full time employees and the wages generated by these entities. Some of those findings are included in my testimony today.

According to the National Marine Fisheries Service, the seafood industry in the U.S. accounts for 250,000 jobs and contributes \$27 billion to the U.S. GNP. According to NESPA's own study, there are approximately 488 seafood companies in New England with combined annual sales of over \$5.7 Billion. Sales from the New England industry alone are four times greater than the annual operating budget of the City of Phoenix, AZ (\$1.4 Billion).

The New England seafood industry plays a pivotal and important economic role both in our region and throughout the world. Hundreds of fishery products are produced from New England waters, from eels to lobsters, and have been sought by retailers and restaurant operators both nationally and internationally for over 200 years. The fishing ports of New Bedford, MA; Point Judith, RI; Portland, ME; and Gloucester, MA have consistently ranked in the top 15 ports in the United States. Perhaps most importantly, the seafood industry in New England employs almost 14,000 full-time workers and generates annual wages totaling almost \$430 million. Where will these individuals go if Amendment 13 is implemented? People will lose their jobs, become reliant on state assistance and have to be retooled after spending most of their lives in the only industry they have known.

Our shore side industry doesn't have the ability to look elsewhere to supplement its business. Supplementing business began 8 years ago and now they have exhausted all the opportunities available to them. When times were tough, processors became more reliant on frozen at sea whole fish. But, because we are in a truly global economy, and we have witnessed a strong rise in the value of the Euro, more product is landing in Europe leaving less supply for domestic shore side facilities to process. Where else can these processors go?

I hope what I have conveyed to you Madam Chairwoman through these staggering economic figures is that the seafood industry is much more than just the boats. It is critical to keep in mind just how large in scope the New England seafood industry is and remember how the fish on your dinner plate came to be.

Amendment 13 will not just affect those of us working in the New England region; it will have global economic implications. It is attributed to the harvesters, the processors, packagers, distributors, buyers and retailers that people around the world are able to enjoy our healthy, locally product. People's lives will be profoundly and irrevocably changed forever if the National Fisheries Management Council advocates or implements any of the four alternatives in Amendment 13.

Our own government studies acknowledge that we will lose 2,100 jobs in the first year alone. I would like to be on the record stating that this number is grossly understated. The fact is, no one knows precisely how many jobs will be lost but I can assure you of one thing, many of these jobs will come from the shore side community. As you may know, shore side facilities operate on increasingly small margins and any interruption in the supply of fish will devastate these margins. Moreover, the disruption caused by the implementation of Amendment 13 will increase operating costs and will force processors to reduce the number of skilled workers they employ. Once these individuals are gone, and the fish are harvested again, there will be massive costs to retrain unskilled workers. Candidly, our shore side facilities cannot sustain the impact that Amendment 13 will have on their markets for fresh fish and many will be forced out of business.

As a former Congressional staffer who was involved in the Sustainable Fisheries Act of 1996 and professional staff member of the U.S. Senate Environment and Public Works Committee (EPW), I would like to clarify the intent of the Sustainable Fisheries Act. I submit that the management options under Amendment 13 as currently proposed do not satisfy the requirements of the Sustainable Fisheries Act. They may indeed satisfy the NMFS guidelines but they do not, in any logical interpretation of the SFA, satisfy the law itself.

Because such conflicting advice has been presented to the NEFMC, their role should be as arbiter of "best available science" and, I believe, it has a statutory responsibility to recommend reasonable biological goals and understand that the bio-

mass targets are within the realm of historic observation. It is also incumbent upon NEFMC to take into account the needs of the fishing communities and the socio-economic effect when attempting to make their recommendations to the National Marine Fisheries Service. The fact remains the current management plan is working and will allow the core industry to survive. This option will satisfy the Sustainable Fisheries Act.

In conclusion, I have heard from shore side employers all over New England and they have informed me that they cannot support any of the current alternatives in Amendment 13. We must take a long hard look at the economic impact that these alternatives will have on our present and future infrastructure, our dependence on foreign product and our own livelihoods. The National Marine Fisheries Service (NMFS) must be made aware of what will happen to shore side facilities and their employees should any of these options be implemented. Madam Chairwoman, I asked you to relay these messages to NMFS on behalf of the shore side industry, on behalf of the harvesting industry and on behalf of the men and women who have risked their lives in order to allow us to consume a healthy, sustainable and local product.

Lastly, I would like to reiterate four recommendations to the Subcommittee. First, the Sustainable Fisheries Act (SFA) clearly states that the Council must balance all national guidelines; it is our contention this is not be followed. Second, the SFA grants a multi-species exemption to single stock Maximum Sustainable Yield (MSY) management. Third, the SFA requires we take optimum yield from the fishery-MSY not 75 percent of MSY. And lastly, the Subcommittee should encourage the Council to choose the three highest average methods of setting rebuilding goals. Thank You.

*New Bedford, MA, October 17, 2003*

To the respected Americans who may have any impact on Amendment 13:

I am here today to address a serious concern. I am concerned about the families that will be affected by Amendment 13, and especially the children of those families. I am concerned about the children with visions and dreams. I want those children to feel secure that the opportunity to accomplish their dreams does exist. I can say this because I have accomplished my goals and I am continuing to conquer my dreams that I had as a child. I would not be able to succeed without the support of my family, a family that is supported by the industry that we are fighting for, here today.

Growing up I knew that my father was not a doctor, nor a lawyer, nor did he have any form of higher education. This did not concern me. As long as I knew that this industry could stay alive, he could provide sufficient money to raise our family. Knowing this, I felt secure and my mind could remain focused on my education.

I am graduating this May, from Northeastern University as a mechanical engineer. I will graduate as a cum laude student. I have already started a business, and pursue a career as a pure entrepreneur. I could not say this without the existence of this industry. I am here today as a product of the industry that has supported my family and helped me to accomplish my dreams.

I am very proud to live in this land of opportunity where dreams may be explored. However, there has existed many moments throughout the history of this country that has made the United States of America what it is today. I must say that today is one of those moments.

Amendment 13 is an amendment made by critics. Amendment 13 is a plan, developed by a regime that wants to take control of the fishing industry. By cutting more days and limiting more areas, only the vessel owners with many vessels will survive. More restrictions will eliminate the large majority of fishing contributors, hence making the industry easy to control. In order to study the behavior of fish growth, extensive research is required, which the regime that have developed Amendment 13 have failed to do. Scientists in Iceland and Greenland have heavily studied ground fish reproduction and they say that ground fish will not reach extinction. Ground fish have a survival instinct to spread evenly across the ocean floor during their reproduction period. Even with these studies, man still cannot predict fish growth.

Man cannot predict, man can only prevent. Man only wins when he does what is right to benefit the people of his surroundings. The Soviet Union was a regime. A regime with a plan that did not benefit the people . . . they failed. Hitler was the master of all critics. He also had a regime with a plan. A plan that did not benefit the people . . . it failed. Saddam Hussein also had a regime with many plans. Plans that did not benefit his people and only hurt our people. Thanks to President Bush, Saddam's plans are now failing.

Man only wins when he does what is right. Right is not developing a plan that controls and limits the lives of the people. Right is to do whatever it takes to benefit and protect the people of our surroundings. Right is realizing that man cannot predict. I can proudly say that The United States of America is the strongest nation in this world because we have decided not to predict, not to be critics and not to develop regimes. Instead we do what is written on every piece of currency made in the United States of America, "In God We Trust." With this in mind we do not feel the need to be critics, instead we do what benefits and protects the people of our country.

As Franklin Delano Roosevelt said on April 23, 1910

"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worse, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

It is not the critics who have developed Amendment 13 who count. The credit belongs to the fisherman, true Americans whose faces are marred by dust and sweat and blood, so that their children may enjoy the fruits of their labor and live up to their dreams. We Americans have this opportunity because we live in a country that protect and benefit the people, not one man or regime. Amendment 13 is simply a plan made by a regime that wants to control the fishing industry. This plan predicts that we are losing fish. I cannot predict, but I can prevent our country from losing pride in what it takes to say "I am an American."

ROBERT NUNES.  
New Bedford, MA.

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PORTLAND FISH EXCHANGE., INC.  
*Portland, ME, October 18, 2003*

Hon. OLYMPIA SNOWE,  
Chair,  
Subcommittee on Oceans, Fisheries, and Coast Guard,  
Washington, DC.

Dear Senator Snowe,

The Portland Fish Exchange is Maine's primary offloader of groundfish, handling nearly 90 percent of all product landed in the state. We respectfully submit these comments as the Portland Fish Exchange's testimony for the Senate's Subcommittee on Oceans, Fisheries, and Coast Guard hearing of October 22 regarding the National Marine Fisheries Service's (NMFS) interpretation of the Magnuson Stevens Fishery Conservation and Management Act (MSA).

There appears to be general consensus that NMFS' interpretation of the law, as most recently expressed in the development of Amendment 13, is often at odds with Congressional intent. We note that as far back as 1998, Senator Snowe, you were expressing concern over that interpretation, and emphasizing the importance of exercising flexibility and common sense in management of a multispecies complex. You have periodically reiterated those principles in the years since. To be blunt, your concerns have not been addressed. Had they been, we would not be here today.

The MSA is fundamentally a well crafted piece of legislation, and is in fact widely supported by fishing interests in Maine. The National Standards are sound. The decision to delegate responsibility for attaining them to regional Councils is a very logical method of utilizing regional expertise to address regional issues. The MSA emphasizes the importance of resource conservation but ensures that responsible use of the resource for the Nation's benefit is a prominent part of the equation. Balancing these competing interests is indeed difficult, but Congress never thought it would be otherwise. Thus the MSA very deliberately and explicitly grants the NMFS the ability to exercise flexibility in achieving that balance. This is a good law.

Regrettably, a barrage of litigation from the environmental lobby has resulted in a very narrow interpretation of the MSA by NMFS and the courts. In New England's groundfishery, the NMFS appears to be focused almost exclusively on National Standard 1. A quick comparison of Amendment 13 to the MSA suggests that

Standards 2, 4, 5, 6, 8, and 10 are receiving scant attention. The result of this imbalanced interpretation is shown in the economic analysis of Amendment 13: Thousands of lost jobs and tens of millions in lost wages, for a negligible gain in resource productivity 20 years hence. Senator Snowe, we respectfully submit that just as surely as the MSA's vision was not being realized 15 years ago when harvesting effort was virtually unlimited and the groundfish resource was in decline, it is not being realized again when the resource is skyrocketing but the majority of Maine's fleet will be put out of business. The NMFS is overcorrecting for a course error made long ago. It needs some navigational guidance, and a more deft touch at the helm.

The NMFS has consistently ignored your reminders to balance all of the National Standards. It has refused to develop a New England multispecies stock biomass model and associated overfishing definition. It has declined to analyze specific conservation measures brought forward by industry—*measures more restrictive than those currently in place*—to alleviate fishing effort on species such as Georges Bank codfish. It presses for unrealistic and possibly unattainable biomass targets even in the face of independent scientific skepticism. And its courtroom capitulation in defense of balancing the National Standards in the Northeast multispecies fishery is frankly shameful.

The news is not all bad. We have made remarkable progress in restoring populations of fish. Our scientific understanding of the resource, though still inadequate, is improving. We are now proactive, rather than reactive, in addressing conservation issues.

But the course the NMFS has set does not include restoration of our fishing communities along with the fish. In fact, it won't even retain them. And we believe Congress must oversee the helmsman to ensure that the course Congress plotted is the course that is followed.

There is precious little time before the NMFS' continuing misinterpretation of the Magnuson Act results in irrevocable harm to Maine's fishing communities. The time has come for clear instruction. We hope you will provide it.

Sincerely,

HANK SOULE,  
General Manager,  
Portland Fish Exchange.

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To: Senator OLYMPIA SNOWE  
From: Dr. ILENE M. KAPLAN  
Woods Hole Oceanographic Institution and  
Union College

October 19, 2003

Re: Amendment 13/Social and Socio-economic impacts

My research program focuses on socio-economic trends in the New England commercial fishing industry (my cv is attached) and I am writing to you concerning the problems with Amendment 13. For purposes of clarity for the upcoming hearing with Dr. Hogarth, I will keep my assessments of the issues short and in list form:

1. Amendment 13 does not use the best social science available; the social impacts that it discusses suggest only "the tip of the iceberg." Proper social and economic impacts should be based on representative, random sampling techniques of the diverse groups in the commercial fishing industry. Such methodological sampling was not done for this important amendment. The focus groups referred to are not representative and only "suggest" the concerns of the people who are able to attend such meetings. This should be unacceptable for such an important regulation.
2. There does not seem to be any checks and balances regarding the role of the National Marine Fisheries Service in this process. NMFS makes the final judgment regarding what research is conducted, NMFS carries out the research, NMFS has the final decision in picking who reviews their research, and NMFS, in the current organization of the Council system, has a major influential, and ultimate role, in what regulations are accepted.
3. The diverse commercial fishing industry with many types of harvesters, processors/dealers, marine services and family/social groups has not been fully asked to participate in the process. The "last minute" rush for new proposals is not a fair or appropriate way to ask for input—comanagement, the basis for the Council system, has not been used reasonably or fairly in this process.

4. Congressional Acts such as Magnuson (including National Standard 8), NEPA, RFA and various Executive Orders call for socio-economic assessments and/or sensitivity to community stability, yet NMFS has not given such assessments priority. It is rare for the New England region of NMFS to allocate time or resources for its social science staff to go into the communities to conduct research for most fisheries management questions. Such social and socio-economic assessments *must* include surveying people—the Social Science Advisory Committee to NEFMC has officially stated and written this to the Council.
5. The short term problems created by Amendment 13 alternatives are not “efficient” from a social perspective—they increase unemployment with a snowballing negative effect on family life and community economic status.
6. Did the NOAA lawyers argue, before Judge Kessler and in other court cases with resulting biological assessment deadlines, their intention and requirements to meet social and economic assessments and maintain stable conditions—if not, why not?
7. In particular, the Regulatory Flexibility Act protects small businesses. The problems that are already red-flagged in the DSEIS Amendment 13 make it obvious that the alternatives are not the appropriate ones to reach conservation goals. Why weren’t other alternatives pursued, in a more timely fashion, that did not have such significant social and economic problems?
8. I am currently the co-chair of the Social Science Advisory Committee to NEFMC but our committee has never been asked to officially review or comment on Amendment 13 DSEIS. This committee, consisting of expert social scientists, should have been consulted early in the process.

Thank you for the opportunity to write to you and your community. I hope that these issues can be addressed at the upcoming hearing. I would be happy to meet with you to work on improving the role of social science in the fisheries management process.

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ASSOCIATED FISHERIES OF MAINE  
*South Berwick, ME, October 20, 2003*

Hon. OLYMPIA SNOWE,  
Chair,  
Subcommittee on Oceans, Fisheries, and Coast Guard,  
Washington, DC.

Dear Senator Snowe:

Associated Fisheries of Maine is a trade organization of fishing and fishing dependent businesses including harvesters, processors, fuel, gear and ice dealers, and other individuals and businesses with an interest in commercial fishing. The majority of our members are principally or solely dependent on the New England groundfish fishery for business and personal income.

Associated Fisheries of Maine would like to thank you for your recent visit to Portland, ME and for the extraordinary amount of time you spent listening to members of Maine’s groundfish industry about the pending Amendment 13 to the groundfish plan. We appreciate your commitment to help minimize the unnecessary but certain economic disaster that will occur if any one of the proposals in Amendment 13 is approved.

We understand that you have scheduled a hearing before the Commerce Subcommittee on Oceans, Fisheries and Coast Guard on October 22, 2003 for the purpose of questioning the National Marine Fisheries Service (NMFS) regarding Amendment 13, as well as that agency’s interpretation/implementation of the Magnuson Stevens Fishery Conservation and Management Act (MSA). I respectfully request you enter this letter into the record as my testimony on these matters on behalf of Associated Fisheries of Maine.

As you are well aware, the New England groundfish fishery has operated for many years under a highly restrictive suite of management measures. This management system has resulted in significant reductions in capacity and fishing effort, as well as dramatic increases in biomass levels for many species. The groundfish resource, as a whole, has tripled in the last eight years, and all indications are that it will continue to grow, and double again during the next 10 to 20 years, even if no additional restrictions are put in place. Some species in the groundfish complex, like Georges Bank haddock and Georges Bank yellowtail, are at the highest levels seen in 30 years. Others species such as Gulf of Maine cod, Georges Bank winter flounder and witch flounder are at the highest levels seen in 20 years.

New England groundfishermen, and especially those in our home state of Maine, have sacrificed to achieve these remarkable results. Associated Fisheries of Maine has a longstanding and positive record of cooperation with fisheries managers to craft regulations that achieve conservation objectives, allow for economic stability, and minimize threat to human safety.

The Maine groundfish industry, including the supporting infrastructure, is now at a critically low level. Additional losses of boats, processors, or support businesses will jeopardize Maine's ability to participate in the fishery both today and in the future. We share with you the goal of seeing the resource continue to grow and for our fishing communities to flourish. All of that, however, is at stake.

The pending economic crisis in the New England groundfish fishery is not a result of stock decline or environmental disaster, but rather the result of a very narrow and rigid interpretation of the MSA by the NMFS and the courts. In fact, if not for the lawsuit brought by the Conservation Law Foundation and others, the New England groundfish management plan would be considered a model conservation plan. Sadly, it appears that unrelenting litigation has reduced the NMFS to a new level of incapacitation for which we all will suffer.

Associated Fisheries of Maine offers personal and professional thanks to you, Senator Snowe, for your many letters to the NMFS detailing your expectations that the agency must take into account and balance all of the National Standards, and especially National Standard 8, which directs the agency to consider and mitigate the social and economic impacts of fishing regulations on fishing communities. It has become clear to all, however, that not only is balance not being achieved, balance is not even being attempted. Our hope is that the New England groundfish situation will now crystallize the obvious need for amending legislation that clarifies that balance must be achieved.

In the shorter term, we hope that the Subcommittee will give the NMFS clear direction regarding the goals of Amendment 13. As you know, the Northeast Fisheries Science Center recently recommended significant changes to previously approved groundfish reference points, changes that resulted in the doubling of biomass targets for some species. Some of these new targets are at levels higher than ever observed.

An international peer review panel examined these new targets, raised serious doubts about their validity and practicability, and recommended proceeding with caution. We, therefore, ask that you and members of the Subcommittee direct the NMFS to exercise the greatest flexibility possible in approving more realistic biomass targets, ones that are much closer to population levels that have actually been observed. In addition, we hope the Committee will instruct the NMFS to approve the scientifically justified "phased" fishing mortality reduction strategy. This approach will provide New England fishermen with the best chance of surviving any additional cutbacks.

Thank you for the opportunity to share our fear that Amendment 13, as written, may bring the end to New England fishing communities. As such, we remain hopeful that you and the members of your Subcommittee will provide clear direction to the NMFS that commonsense, good science and flexibility shall be the order of the day.

Sincerely,

MAGGIE RAYMOND,  
Associated Fisheries of Maine.

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PORTLAND CITY COUNCIL  
*Portland, ME, October 21, 2003*

Hon. OLYMPIA SNOWE,  
Chair,  
Subcommittee on Oceans, Fisheries, and Coast Guard,  
Washington, DC.

VIA FACSIMILE

Dear Senator Snowe:

Thank you again for your recent visit to Portland, to personally hear members of Maine's groundfish industry discuss the Amendment 13 proposal. It is plain to me that your personal involvement has finally focused some badly needed attention on the flaws in this plan. Portland recently joined many others in making a comprehensive proposal in substitution for Amendment 13.

I am glad to learn that you have scheduled a hearing before the Subcommittee on Oceans, Fisheries and Coast Guard to review the National Marine Fisheries Service (NMFS) approach to Amendment 13, and their interpretation of the Magnuson Stevens Fishery Conservation and Management Act (MSA).

We see two issues of great importance.

First, the Council has described that its cannot function outside the new fisheries targets by order of the Fisheries Service. The state of Maine, after fully detailing all the flaws in this approach, actually acknowledges that the Council should use some elements of them because otherwise, the Fisheries Service will simply overturn the Council's action.

This is the worst form of bureaucratic mismanagement.

I hope you will press the Fisheries Service and the Commerce Department to re-introduce some common sense and judgment into this issue. The "instructions" to the Fisheries Council—these may be found in the public information documentation—are outrageous.

Outside of the cocoon of the process leading to the fish target calculations, it is obvious that stock rebuilding that projects population levels higher than have ever existed is somewhat off.

Use of the new targets will undermine the confidence and assent of the public and the industry in fisheries regulation. This is no small feat because, to date, the public and the industry, at great short term loss and pain, has supported the most stringent, and one of the most successful fisheries conservation programs in the world. Worst of all, use of those targets without far better validation of their presumptions will undoubtedly be viewed by many as an abject capitulation to any result from a rote process. The convenience of officialdom in seeking to avoid the discomforts of making an informed judgment and thereafter, possibly, defending it in litigation is not basis for proceeding differently than in the radical manner of Amendment 13.

Second, the tenuous basis for these targets surely means that a flexible fishing mortality strategy, like a "phased reduction" strategy, is a prudent approach. I hope you will press the Fisheries Service to acknowledge this management tool, and others which will focus on the problem species instead of a broad brush approach.

Very truly yours,

JAMES F. CLOUTIER,  
*Mayor.*

JFC:dps

Hon. OLYMPIA SNOWE,  
Chair,  
Subcommittee on Oceans, Fisheries, and Coast Guard,  
Washington, DC.

Dear Senator Snowe:

I join with the commercial fishing industry in Maine, in the other New England States, and on both coasts of the U.S. in thanking you for the interest you have shown in and the support you have extended to the New England groundfish industry. The severe problems in that fishery are a reflection of the shortcomings in the Sustainable Fisheries Act and in how it is being administered, and while other fisheries might not be affected as severely, they are all suffering from these shortcomings, and virtually every member of the fishing industry as applauding your and your colleagues' efforts to put things right.

With the support of a number of commercial fishing businesses and organizations, I write and distribute a publication titled FishNet USA in which I examine various topical fisheries issues. Last month the issue was, not surprisingly, devoted to the groundfish situation in New England. It provides some background information which might be relevant to the hearing you are holding on October 22, so I have included it below.

Thank you again for your efforts on behalf of the commercial fishing industry.

Sincerely,

NILS STOLPE,  
FishNet USA.

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Is it really about saving the fish?  
At this point, thanks to a successful PR campaign by anti-fishing interests, anyone with a superficial knowledge of the New England groundfish fishery who lacks either the resources or the curiosity to find out what's really going on has been con-



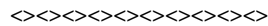


Projected percentage change in groundfish landings relative to the “No Action” alternative

Year F—Rebuild Phased F Adaptive

2004	-30%	-16%	-19%
2005	-31%	-23%	-20%
2006	-30%	-26%	-17%
2007	-28%	-26%	-14%
2008	-26%	-26%	-12%
2009	-22%	-20%	-15%
2010	6%	4%	-12%
2011	6%	5%	-7%
2012	5%	2%	-6%
2013	5%	2%	-3%
2014	5%	4%	-1%
2015	10%	6%	12%
2016	9%	6%	11%
2017	9%	5%	11%
2018	9%	5%	10%
2019	9%	6%	10%
2020	9%	4%	10%
2021	10%	3%	10%
2022	10%	4%	10%
2023	10%	5%	11%
2024	11%	7%	11%
2025	11%	7%	11%
2026	11%	8%	11%
Total	1%	-1%	2%

In the three alternatives the cutbacks in the first 6 to 11 years will force landings lower than they would be with the “no action” alternative. By year 2026 one alternative would yield a decrease of 1 percent in cumulative landings, the others increases of 1 or 2 percent.



Total groundfish landings by 2026 will be a maximum of 13 percent—certainly not the 300 percent projected by Mr. Bilsky—greater with the most stringent management measures being forced by Judge Kessler’s decision than they would be with the continuation of the existing management program (the alternative somewhat misleadingly labeled “No Action” in the proposed amendment and supporting materials). The rigorous requirements of the management program that is now in place have already demonstrated they will rebuild the groundfish stocks while allowing New England’s fishing communities to remain at least somewhat intact and fishing and support businesses—at least some of them—to remain economically viable. They just won’t rebuild them as rapidly as Mr. Bilsky et al have decided they should be rebuilt<sup>4</sup>.

And what do the New England economy, New England’s fishing businesses and New England’s fishing communities pay for this accelerated increase? The various alternative regimes would cost fishing and related/dependent businesses in the New England states from \$94 million to \$217 million in lost sales, \$38 million to \$88 million in lost personal income and from 1,300 to 3,000 lost jobs.<sup>5</sup>

Obviously, the cutbacks proposed in any of the alternatives would force additional numbers of waterfront businesses into bankruptcy. These businesses, including those providing vessel and crew support and fish processing, handling and marketing services, are all necessary to viable commercial fishing communities. The idea that those businesses will reappear after eight or ten or more years, when stocks have “rebuilt” to adequate levels, represents wishful thinking (or purposeful

misdirection) of the most egregious sort. Considering waterfront development pressures in virtually every coastal community from New Jersey to Maine, what was a packing house or a chandlery today will be another tee shirt shop or condominium development next week. And that's a development trend that's only going in one direction.

(It's important to note here what appears to be a significant fault in the economic analyses of the proposed alternatives. In each the assumption is made that the "complexion" of the groundfish industry will remain the same; that is, a fleet of vessels of various sizes will continue to supply primarily fresh products to a large number of New England ports, commanding a fairly high price per pound. When, however, the cutbacks force many vessels out of business, there is going to be a significant level of consolidation, both in harvesting and in on-shore activities. This could lead to a fleet composed of a much smaller number of larger vessels, some or all of which would be doing on-board processing and freezing. Were that the case, the overall revenues generated per pound of fish landed could be reduced significantly below that for equivalent production levels supplying the fresh market. It doesn't appear as if this scenario was considered in the economic impact analyses.)

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Annual groundfish landings (in pounds) for "No Action" and other Amendment 13 Alternatives

	No Action F-Rebuild Phased F Adaptive
2003	127,804,289 136,122,934 136,016,419 136,107,358
2004	171,357,040 120,783,934 143,581,433 139,108,546
2005	194,340,342 133,286,969 149,266,262 156,083,764
2006	212,107,481 147,960,545 157,666,202 175,898,965
2007	225,025,685 162,081,824 167,207,764 193,457,853
2008	237,947,702 175,725,247 175,911,042 209,612,463
2009	242,300,813 188,742,778 194,337,866 205,554,960
2010	249,212,086 264,344,897 259,349,802 219,187,800
2011	247,846,760 261,562,918 260,401,626 231,487,370
2012	258,184,021 269,992,449 262,465,170 243,009,582
2013	262,057,974 273,992,704 267,879,269 253,552,639
2014	265,465,591 279,174,949 275,964,679 263,118,177
2015	268,850,613 294,926,671 286,244,837 301,954,127
2016	272,056,805 297,310,203 288,700,132 302,574,913
2017	274,974,226 300,109,840 288,368,560 303,878,564
2018	277,409,640 302,725,153 291,908,857 305,696,991
2019	280,043,836 305,663,323 295,498,105 307,932,161
2020	281,677,263 308,349,134 294,143,640 310,146,927
2021	283,731,290 310,989,626 293,186,731 312,482,020
2022	285,073,016 313,182,799 297,000,077 314,647,981
2023	286,248,624 315,356,458 300,552,886 316,739,394
2024	287,450,500 319,393,177 306,227,377 318,575,116
2025	288,361,400 320,743,054 308,998,417 320,237,697
2026	289,315,950 321,848,493 311,309,289 321,652,892
Total	6,068,842,947 6,124,370,079 6,012,186,442 6,162,698,260
Difference plus	55,527,132 less 56,656,505 plus 93,855,314

Note that in the 3 alternative measures being projected total landings will not exceed those of the "no action" alternative until 2010 at the earliest. Also note that there is at "best" less than a 2 percent difference in the cumulative landings between the "no action" alternative and the others.

And all of this for some predicted economic benefits that won't begin to accrue until 2018 or 2021 and will have a probably negligible—and statistically insignificant—impact on annual and cumulative landings once the "break even" point is reached.

Given a careful examination of the statistics underlying the alternative management measures offered in Amendment 13, it's impossible to see how such minor potential benefits so far in the future can offset what everyone agrees will be immediate and significant pain spread throughout New England's coastal communities

and beyond. Yet the anti-fishing groups, still standing behind claims of immense future benefits, continue, and continue to expand, their well-financed campaign to punish the commercial fishing industry. The data provided in support of Amendment 13 shows that they're not going to be helping the fish and they're definitely not going to be helping the fishermen. That being the case, the questions need to be asked: who are they doing it for and why are they doing it?

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<sup>1</sup> See the FishNet issue "Of Blood and Turnips" at <http://www.fishingnj.org/netusa20.htm> and visit Barbara Stevenson's website at <http://www.bdssr.com>.

<sup>2</sup> In 2000, 2001 and 2002 Oceana received \$4,032,000, \$5,035,000 and \$4,500,000 respectively from the Pew Charitable Trusts (See [http://www.pewtrusts.com/search/search\\_item.cfm?grant\\_id=4488](http://www.pewtrusts.com/search/search_item.cfm?grant_id=4488), [http://www.pewtrusts.com/search/search\\_item.cfm?grant\\_id=4854](http://www.pewtrusts.com/search/search_item.cfm?grant_id=4854), and [http://www.pewtrusts.com/search/search\\_item.cfm?grant\\_id=5159](http://www.pewtrusts.com/search/search_item.cfm?grant_id=5159))

<sup>3</sup> Northeast Multispecies Draft Amendment 13, 1–xvi.

<sup>4</sup> While the so-called "conservationists" will argue that they have only intervened in ground-fish management because the Secretary of Commerce wasn't effectively implementing the provisions of the Sustainable Fisheries Act, they were in fact responsible (with the concurrence of a very few token fishing organizations) for those rigid provisions.

<sup>5</sup> *Ibid.*, 1–666

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
DR. WILLIAM HOGARTH

*Question 1.* NMFS has tremendous power in determining the course of action for moving forward—your agency determines what research to do, selects peer reviewers, decides what to do with research findings, and has final say in what the regulations will be. Is this concentration of powers appropriate? Should NMFS have greater separation between the processes of fisheries science and allocation—why or why not?

Answer. While it is true that NOAA Fisheries fishery scientists are heavily involved in the stock assessments that are used in federally-managed fisheries, we do not believe that this constitutes "tremendous power" or an excessive "concentration of powers." NOAA Fisheries conducts stock assessment surveys in fulfillment of Magnuson-Stevens Act regulatory requirements, and coordinates the planning of such research activities with the Regional Fishery Management Councils (Councils). The New England Fishery Management Council has the Stock Assessment Workshop process that provides for the review and approval of all stock assessment reports by independent scientists before they are presented to the Council. In addition, and this is particularly true of New England, we are relying increasingly on cooperative research programs in which NOAA Fisheries scientists work with fishermen in the collection of data. Peer review is often handled by the non-government Center for Independent Experts, a University of Miami-affiliated entity that provides impartial reviews. It is worth noting, too, that NOAA Fisheries has, through a recent reorganization, enhanced the independence of its scientific functions by establishing a headquarters science coordinator who reports directly to the Assistant Administrator for Fisheries.

Regarding the issue of the concentration of power, NOAA Fisheries and the Councils manage in concert to achieve the goals established by the Magnuson-Stevens Act. The Councils are mandated to develop management plans and regulations, while the Secretary is directed to review, approve and implement the regulations. It is particularly important to note that the Secretary only has the authority to approve the actions submitted by the Council, or disapprove an action if it violates the Magnuson-Stevens Act or other applicable law. This shared responsibility for management, with the checks and balances established by the Magnuson-Stevens Act, and the process of peer reviews and organization of science within the Agency effectively limits the possibility of an excessive concentration of power. It also places the responsibility for compliance with the Magnuson-Stevens Act on both the Councils and the Agency. We believe, therefore, that no further action is necessary to address this issue.

Additionally, we do not believe that science and allocation processes should be further separated. NOAA Fisheries science supports the Councils' conservation decisions, while allocations are, by and large, decided through the Council-driven public process.

*Question 2.* It appears that NMFS has not taken full advantage of the flexibility available to it under the Magnuson-Stevens Act, and that your agency acts on some important issues—like requesting court delays, using independent peer reviewers, and granting timeline extensions—only after Congress weighs in. What prevents

NMFS from making these types of policy decisions, consistent with the law, on its own? What is NMFS doing to be more pro-active on fisheries policy decisions?

Answer. It has been NOAA Fisheries' policy to take advantage of the flexibility of the Magnuson-Stevens Act. The development of Amendment 13 to the Fishery Management Plan for the Northeast Multispecies Fishery presents a good example of NOAA Fisheries' utilizing such flexibility. NOAA Fisheries invited the public to submit additional management options to the New England Fishery Management Council (Council) for consideration during development of Amendment 13, which resulted in a revised version of the Amendment being approved by the Council for submission to the Secretary of Commerce. Mitigating measures were included, consistent with the law, to minimize the impacts on fishermen. Also, alternative approaches for rebuilding were explored. The amendment development process made full use of the Council system to develop these measures and, the public was instrumental in shaping the course of the document. These aspects of Amendment 13 reflect NOAA Fisheries' willingness to use any flexibility that exists within the Magnuson-Stevens Act to ensure that conservation and rebuilding of fish stocks are achieved while meeting the needs of fishermen and their communities.

In the *CLF v. Evans* litigation, NOAA Fisheries was pro-active in seeking a Settlement Agreement with a number of parties to the lawsuit and gained consensus from some of the parties to the point that the Judge adopted the Settlement Agreement. In the *AOC v. Daley* case, we have also asked for extensions to complete several EISs related to Court Orders to better describe Essential Fish Habitat (EFH) and the need, or lack of a need, to implement new measures to protect that EFH. NOAA Fisheries often uses the Center for Independent Experts (CIE) to conduct peer reviews on controversial issues in fishery management and fishery science. In 2003, members of the CIE participated in peer review projects (1) on New England groundfish, (2) Gulf of Alaska pollock, (3) Southeast Data Assessment review, (4) review of several stock assessments for Pacific Coast groundfish, (5) bycatch modeling for Pacific groundfish, and (6) trawl protocols.

Please note response in Question #3.

*Question 3.* Please tell me, in as much detail as you can, how NMFS interprets its ability to amend the rebuilding timeline. For example, NMFS must consider the biology of fish and the needs of fishing communities in setting timelines—what does this mean as NMFS goes forward with rebuilding the New England groundfishery and learns more about the biological and social constraints of the fishery? Under what circumstances might additional changes to the rebuilding timeline be warranted?

Answer. In terms of Amendment 13 to the Fishery Management Plan for the Northeast Multispecies Fishery, the Council considered a rebuilding option with an ending date of 2009 for most stocks, and another option with a starting date of 2004 and an ending date of 2014 for most stocks. The Council chose the option with 2014 as an ending date for most stocks, after hearing public testimony and reviewing written comments on draft versions of Amendment 13. The Council chose the later end date (2014), for a number of reasons, including the need to conduct additional scientific work on the status determination criteria that have considerably changed the understanding of the biology of the groundfish complex and because rebuilding measures were not implemented pursuant to NOAA Fisheries' National Standard 1 Guidelines in 1999. In addition, with respect to the length of the rebuilding time periods, the Council, where appropriate and consistent with the Magnuson-Stevens Act, utilized the shortest period of time for ending overfishing and rebuilding, while taking into consideration the social and economic needs of fishing communities and fishing participants. The Council also chose ending dates later than 2014 for three stocks given their recent stock condition (abundance of various age groups) and the biology of those stocks (years it takes for that species to produce mature reproducing individuals). The three stocks with ending date goals for rebuilding that go beyond 2014 are Georges Bank cod (2026), Cape Cod/Gulf of Maine yellowtail flounder (2023), and Acadian redfish (2051). The Council believes that its management strategy for rebuilding this mixed stock fishery takes into account the Magnuson-Stevens Act's requirements to rebuild fish stocks, while taking into account the needs of fishing communities.

Please note that NOAA Fisheries is drafting a proposed rule for possible revisions to the guidelines for National Standard 1. As noted in the NOAA Fisheries NSG1 Working Group report, that rule would explore in part various aspects of rebuilding timelines. Factors being evaluated include: how often rebuilding plans need to be revised, based on new scientific information, what parameter(s) would have to be revised when a rebuilding plan is changed, and how to comply with the objectives for rebuilding as currently described in the Magnuson-Stevens Act. NOAA Fisheries

expects to publish the proposed rule in the *Federal Register* for comment in early 2004.

*Question 4.* NMFS Review of Amendment 13—How can you assure me that Maine fishermen will be able to access the rebuilt fishery in the future, in the near term and the long term? What kind of access will they have, and upon what factors will this access be based?

Answer. Maine fishermen, like other participants in the groundfish fishery, will benefit from rebuilding the groundfish stocks. The rebuilding alternative selected by the New England Fishery Management Council in Amendment 13 would establish several categories of days-at-sea (DAS)—Category A DAS would be available to fish on all groundfish stocks and Category B DAS would enable the fishery to target healthy stocks, while keeping effort at levels necessary to protect those stocks that require rebuilding. Additional Category B DAS would be available to fish on other stocks, once the stocks rebuild to levels that could allow effort to be increased. Category C DAS may be available in the future, as well. This appears to be a flexible and responsible approach that would allow the fishery to be prosecuted at a reasonable level in the short-term, while protecting the ability of participants to increase their effort as the stocks improve. Amendment 13 also proposes implementation of several Special Access Programs (SAPs) and would establish a process for the Council to identify and implement additional SAPs in the future. This would expand the opportunities for fishing with selective gear types and in areas that would focus effort on the healthiest stocks. In addition, Amendment 13 would establish a Sector Allocation Program, which would allow special sectors to be formed. Participants in these sectors could make their own management and business decisions, within certain constraints; they would have the flexibility to make the decisions on management and deployment of capital and effort they deem to be most efficient for their businesses. Finally, the DAS Leasing Program and DAS Transfer provisions proposed in Amendment 13 would also provide fishermen more flexibility in making decisions as to whether to fish their DAS themselves, or to derive economic benefits from leasing away or selling their DAS to another vessel. The DAS Leasing Program would allow the vessel leasing away its DAS to retain the participation history of those DAS, should that vessel decide to fish those days in the future. Vessels in Maine or elsewhere would also be able to acquire DAS through leasing or permit transfers, if they determined that such action was beneficial to their businesses.

*Question 5.* Social and Economic Impacts—What did NMFS do to ensure that proper social science methods, techniques, and data were utilized for the draft EIS for Amendment 13? Do you think that just using focus groups constitutes the “best social science” that could have been done?

Answer. The methods, techniques, and data used by the New England Fishery Management Council in conducting and preparing the social impact analysis included in the Amendment 13 draft SEIS were selected after extensive consultation with the Council’s Social Science Advisory Committee, whose members include both sociologists and anthropologists. The NEFSC fisheries anthropologist monitored and reviewed this work throughout the process, along with an anthropologist at NOAA Fisheries Headquarters.

Focus groups were just one of the sources of information about communities and individuals used in the analyses of Amendment 13 alternatives. Socially-based data and information obtained from focus groups (or *via* participant-observation techniques) are indeed meaningful when considered in the proper context and interpreted in appropriate terms. The Council’s Social Impact Informational Meetings were designed and conducted using scientifically-based methodologies, and the data and information obtained were analyzed using validated research techniques. In terms of their value to social impact assessments, focus groups are considered an appropriate and useful tool for understanding how widespread ideas and values are in a given group (Bernard, H. Russell. 1988. *Research Methods in Cultural Anthropology*, Newbury Park: Sage).

*Question 6.* Overall, does NMFS’ social science meet the scientific standards of the social science discipline—specifically, does it collect adequate social science data from representative stakeholders and undertake rigorous, systematic qualitative and quantitative analyses? If so, why have analyses for Amendment 13 proven to be so inadequate for understanding, identifying, and minimizing social impacts? If not, why not?

Answer. NOAA Fisheries’ Northeast Region has been expanding its ability to develop qualitative and quantitative social science databases that equitably represent the various stakeholder interest groups within the Region. However, what is required to detect and understand social impacts can be quite different from what is required to minimize or mitigate these impacts. NOAA Fisheries believes that the

social impact analyses conducted for Amendment 13 are adequate for identifying and understanding the social impacts expected to arise from the proposed management measures.

The DEIS includes several hundred pages of analyses, in geographic detail, on the cumulative and expected impacts of the alternative measures considered in Amendment 13. These analyses used several sources of data, including the information gathered during the Social Impact Informational Meetings. Records of individual vessel activity over time were also examined and considered. Research conducted by NOAA Fisheries academic partners (MIT and WHOI) funded by NOAA MARFIN grants provided the updated picture of New England fishing communities and their dependence on fishing, as well as providing the Nation's first Marine Economy Input/Output models. To further assist in FMP development, NOAA Fisheries also funded continuing reports on the processing sector (Georgianna, D. and J. Dirlam. 1994. Recent adjustments in New England groundfish processing. *Marine Resource Economics*, 9:375–384), and underwrote (through S–K and Northeast Consortium funds), recent fisheries social science research efforts using Community Panels, conducted by MIT, Rutgers University, the Massachusetts Fishermen's Partnership ("Institutionalizing Social Sciences Data Collection: A Pilot Project.")

With regard to mitigating impacts, the current provisions of Amendment 13 include several ways, new in this plan, for fishing businesses and communities to adapt to rule changes. Among these are provisions for days-at-sea leasing, permanent transfer of days-at-sea in some situations, allocation of annual harvest to sectors devised by industry members, a transboundary sharing agreement with Canada for some stock components, special access programs for targeting stocks that are performing well, extension of rebuilding timeframes for some stocks, as well as phased reductions in fishing mortality for some stocks.

*Question 7.* In your written testimony, you say that NMFS' economic analysis is limited by a lack of data from fishermen. Specifically, what economic data are lacking? If these data were provided by fishermen, what would NMFS do with this information? How would it be utilized in a meaningful way and improve the lot of fishermen and their communities?

*Answer.* Although I did indicate that a lack of economic data was a problem, I did not mean to imply that we have not been able to conduct impact analyses as called for by the Magnuson-Stevens Act, NEPA, E.O. 12866 and the Regulatory Flexibility Act. Rather, I believe we have met all the requirements of these laws, but our intent is to improve the information and analyses provided to managers as the basis for fully informed decisions. NOAA Fisheries and the Councils have consistently prepared economic analyses that provided information to decision makers on the effects of alternate management programs under consideration. My comments were intended to indicate that the analyses are somewhat limited by a lack of certain data, including data on vessel revenue, variable costs (e.g., fuel, bait, crew costs, etc.), and fixed costs (repair and maintenance, vessel insurance, etc.). In addition, we are precluded by the Magnuson-Stevens Act from obtaining economic information from processors. We have had some limited success in efforts to collect necessary cost and earning information; however, these data are still not sufficient to conduct comprehensive impact analyses for the many fisheries.

We would note that these data are useful for a wide variety of issues and actions. The data would support a wide range of fishery economic models that may be used to analyze the economic impacts on fishermen from both environmental events (hypoxia, red tide, oil spills, etc.) and proposed management options, including gear restrictions, catch restrictions, TACs, ITQs, and area closures. These economic data may also be used to improve the robustness of our analyses, and could be used to provide an important metric of the economic health of the fishery and its participants. In addition, NOAA Fisheries also uses these data to conduct community impact analyses, which provide both a baseline assessment of the economic contribution of fishing to the local economy, as well as the effect of proposed management options.

*Question 8.* Over the last decade, much of the academic community has embraced the concept that people and communities are part of the fisheries ecosystem. Does NMFS share this view? If so, as NMFS moves toward ecosystem-based management, what is NMFS doing to actually incorporate social systems in ecosystem modeling? If not, why?

*Answer.* NOAA Fisheries does embrace the concept that people and communities are part of the fisheries ecosystem. Through its Economics & Social Sciences Program, NOAA Fisheries has undertaken commercial fisheries economic data collection and research; recreational fisheries economic data collection and research; and socio-cultural data collection and research on fishing participants and their commu-

nities. The recreational fisheries economic program is similar in spirit to the commercial fisheries economic program described in Question 7. That is, economic data are collected from participants (in this case, anglers and for-hire operators), and are then used to estimate the economic effects of proposed management options as well as to assess the contribution of recreational fishing to the local economy.

To enhance our understanding of the economic and socio-cultural linkages between fishing participants and fishing-dependent communities, NOAA Fisheries has hired seven social scientists (one each in AKC, SWC, NWC, SEC and HQ; two in NEC) under its National Standard 8 initiative, which is tasked with analyzing impacts on fishing communities. Agency efforts include identifying a list of key indicators that may be used to assess a community's dependence upon fishing, as well as its overall well-being. To accomplish this task, community profiling work is already under way in each NOAA Fisheries region. In addition, numerous regional economic impact models, as well as a national economic impact model, have been completed or are currently underway.

An innovative project undertaken by NOAA Fisheries is the Local Fisheries Knowledge (LFK) Pilot Project that was launched in 2003 in Hancock and Washington Counties, ME. The pilot project is designed to be both an educational project for high school students and a vehicle for gathering commercial and recreational fishermen's local fisheries and environmental knowledge on a full range of fisheries-related social science topics, *e.g.*, cultural and social organization of fishing and the fishing industry, business aspects of fishing, fishery economics, fishery management and governance. The interviews conducted by the students will be stored in a searchable database, thus allowing fisheries scientists to conduct systematic analyses of narrative texts and use this information in scientific analyses of management decisions. In the future, the database will include collaborative research conducted by professional social scientists, biologists and fishermen.

*Question 9. International Agreements—*For Georges Bank cod, yellowtail, and haddock, the U.S. and Canada have an informal agreement for allocating these stocks. Under what circumstances would this informal agreement need to be re-negotiated as a formal, binding agreement? What, from your perspective, would be the advantages and disadvantages of doing so?

*Answer.* The underlying motivation to reach an agreement was the recognition that, without such an agreement, each country's independent conservation actions could be compromised. Further, the parties realized that the full benefits of management actions were more likely to be realized if there was consistent management by the United States and Canada. As with any negotiated settlement, the agreement is a compromise. As part of the Sharing Agreement, the United States and Canada reconfirmed that the two countries develop a common fishing mortality rate based harvest strategy for the shared management units. In doing so, Canada agreed to follow the mandates of the Sustainable Fisheries Act (SFA). Therefore, it is expected that groundfish regulations in both countries will satisfy the terms specified in the informal agreement, while not compromising any of the mandates contained in the SFA. However, should either country fail to adhere to the Agreement, either country may elevate the regional, informal agreement to a more formal, national agreement.

Throughout the development of the Sharing Agreement, both countries sought an informal, regional agreement. It was felt that developing a more formal agreement would be a very slow process that would likely result in complex diplomatic negotiations that would expand beyond the fishery issues within the Northeast Region. Both countries agreed that this time lag could cause further depletion of the shared resources. A formal, national approach would severely limit industry participation from each country and create controversy and hardship among fishers. In essence, a formal agreement would likely circumvent the public process and could result in measures that would not be compatible with the harvesting strategies of either country.



RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
DR. WILLIAM HOGARTH

*Question 1.* Are you aware if NMFS has, or is currently formulating, a national policy with respect to in-river gravel mining operations? If so, under what statutory authority would NMFS take such an action? Is it your view that NMFS has the authority currently to prohibit the mining of aggregate in rivers as a general practice?

Answer. NOAA Fisheries has an existing policy, issued in 1996, that offers guidelines and recommendations for conducting gravel extraction operations. The policy is internal to NOAA Fisheries, and is not binding on the general public. The 1996 policy is currently under review, and we hope to make a new draft available for comment by early 2004.

Depending on case-by-case circumstances, NOAA Fisheries has statutory authority over instream gravel mining operations under several Federal laws.

Section 7 of the Endangered Species Act (ESA) requires Federal agencies to consult with NOAA Fisheries whenever an action by that agency may affect species listed under the ESA. In the context of gravel extraction, operators generally apply to the U.S. Army Corps of Engineers (COE) for a Clean Water Act section 404 permit. The COE initiates section 7 consultations with NOAA Fisheries to determine whether the proposed action will present jeopardy to the listed species, and whether there are reasonable and prudent alternatives to the proposed action that will be less adverse to the listed species.

Section 9 of the ESA prohibits "take" of a listed species, regardless of whether there is a Federal action. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." If a gravel extraction operation is determined to cause take, NOAA Fisheries has enforcement authority to terminate the activity and issue fines, as appropriate.

Other Federal laws offer NOAA Fisheries the opportunity to comment and make recommendations on proposed gravel extraction operations. The Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fisheries Conservation and Management Act require Federal agencies to initiate consultation when a Federal action may adversely affect designated EFH. NOAA Fisheries makes recommendations to minimize impacts to the habitat in question.

The Fish and Wildlife Coordination Act allows NOAA Fisheries and the U.S. Fish and Wildlife Service to comment on a proposed action when that action may impact trust resources. For example, under the Clean Water Act section 404, we can submit comments in response to a permit application to the COE. NOAA Fisheries can also elevate the issue if the action is determined to cause unavoidable harm to trust resources.

NOAA Fisheries does not have the authority to prohibit instream aggregate mining as a general practice. However, under the ESA, NOAA Fisheries has the authority to prohibit individual activities, if those activities cause jeopardy to a listed species.

*Question 2.* As you know, the Mitchell Act Hatchery Program supports a significant sport and tribal fishery in the Northwest. In light of NMFS' recent hatchery review, what do you see as NMFS long-term commitment to the program? What is NMFS doing to ensure that the program remains viable and continues to support a strong sport fishery in the Region?

Answer. The purpose of NOAA Fisheries' hatchery reviews is to make them more efficient, and more effective. There is no mistaking the Pacific Northwest's strong interest in and support for hatcheries. As long as artificial barriers block access to historically important spawning habitat (e.g., more than 50 percent of Columbia Basin Spring Chinook salmon production areas are behind dams and inaccessible to the fish) there will be obligations to replace the production that would have come from that habitat and expectations that hatcheries will be adequately funded for that purpose. The other role for hatcheries is to seed habitats that remain and are still productive and thus will support salmon recovery. More than 30 experimental supplementation or conservation programs like this (several are at least partially funded under the Mitchell Act) are now underway across the Northwest with NOAA Fisheries' full support.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO  
DR. WILLIAM HOGARTH

*Question 1.* National Standard 1 Guidelines—NMFS has held numerous workshops (2000, 2001, 2002), conducted an internal review, issued an advance notice of proposed rulemaking for revising National Standard 1 (2003), and commissioned a Report from the National Academy of Sciences on “best scientific information available,” due in January of 2004. After three full years of these activities, no changes have been recommended to the National Standard Guidelines.

What have you learned from these reviews of problems or concerns with the Guidelines as written?

What are your next steps with respect to the National Standard guidelines and what is the schedule to accomplish these?

Answer. NOAA Fisheries learned from comments it received on its advance notice of proposed rulemaking regarding National Standard 1 (published in the *Federal Register* in March 2003) that the public, the fishing industry, environmental organizations, fishery management councils and state fishery managers affected by Federal fishery management have a wide range of views and concerns regarding overfishing definitions and rebuilding plans for overfished stocks. Many commenters insisted that no changes should be made to the guidelines that would weaken National Standard 1 (*i.e.*, reduce its ability to conserve fishery resources by making overfishing and rebuilding requirements less stringent). Other commenters felt that the current guidelines do not allow enough flexibility to more fully consider the needs (especially short term) of fishermen and fishing communities. Based on these comments and other information available, NOAA Fisheries is planning to publish a proposed rule in early 2004 that would contain several proposed revisions to the guidelines. It’s likely that NOAA Fisheries will re-emphasize the need to prevent overfishing immediately, provide more guidance on how to establish status determination criteria for data poor stocks, advise how often rebuilding plans should be revised, and revise the method for calculating rebuilding periods. NOAA Fisheries will also potentially clarify under what circumstances minimum stock size thresholds do not need to be specified for a given stock that is overfished.

With respect to National Standard 2, the National Research Council began to address the issue of the best scientific information with a forum for a Committee on Defining the Best Available Science for Fisheries Management. On September 8 and 9, 2003, NOAA Fisheries sponsored a two-day workshop at the National Academy of Sciences where the Committee developed the main issues concerning *best scientific information available*, for further study by the Committee members in closed session. Issues included: (1) how should adherence to the standard be measured; (2) how and when should it be employed; (3) should information be ranked in relation to relevance and rigor; (4) how should best scientific information available be ranked; (5) what authority (statute, guideline) should decide what constitutes best scientific information available; and (6) how does anecdotal information fit in with best scientific information available. The National Research Council Working Group is continuing to work on this issue and has asked for an extension from January 2004 to April 7, 2004 to submit their report and recommendations on what changes if any, need to be made to the guidelines for National Standard 2.

*Question 2.* National Standard 8 Guidelines—There is criticism that NMFS has not adequately balanced all the National Standards in developing and analyzing Amendment 13, resulting in socio-economic impacts that could potentially be far greater than necessary.

Has National Standard 8 (Socio-Economic Impacts of the Management Decisions) received sufficient attention in the development and analysis of Amendment 13 to allow the Council to understand effects of management actions on fishing dependent communities and design appropriate alternatives?

Could you recommend practices and procedures to ensure National Standard 8 is considered as early as possible in the Fishery Management Plan development process and results in a Plan that ultimately complies with the obligation to minimize adverse economic impacts on fishing communities?

Answer. We believe that the requirements under National Standard 8 have been adequately addressed in Amendment 13. Compliance with National Standard 8 requires consideration of the impacts on fishing communities of various management alternatives that achieve similar conservation results. That is, once a sufficient range of alternatives that meet the biological goals and objectives of the FMP are established and analyzed, the Fishery Management Council and NOAA Fisheries must fully consider the adverse economic impacts to communities, to the extent practicable, that would result from these alternatives. The alternatives considered by the New England Fishery Management Council in Amendment 13 all address

National Standard 1, but have different economic and social impacts, including impacts on fishing communities. These economic and social impacts were carefully assessed in the Draft Supplemental Environmental Impact Statement. The public and the Council have had a significant opportunity to discuss, comment on, and consider, the expected impacts of the alternatives, and the analyses of those alternatives. The Council has submitted its final recommendations for measures to be implemented in Amendment 13 to NOAA Fisheries for review. We will again carefully review all of the documents supporting Amendment 13 for compliance with all of the National Standards, and all other applicable law, as well as public comments received, before making decisions on the approvability of the proposed measures.

NOAA Fisheries has recently bolstered its social science staff, and improved the quality of its impact assessments. We believe this is true of both assessments of economic impacts under the Regulatory Flexibility Act and E.O. 12866, and social impact assessments under National Standard 8. In many other ways, the agency has sought to develop and implement programs that promote economic benefits and protect fishing communities. Examples are individual fishing quotas, cooperatives, community quotas, and vessel and permit buybacks. The agency feels that it is not ignoring the human dimensions of fishery management. Additionally, NOAA Fisheries has made significant progress in developing new procedures for the rulemaking process under the Magnuson-Stevens Act that will “frontload” the process to ensure that all issues are considered and analyzed as early as possible.

*Question 3. Multispecies Management*—The Magnuson-Stevens Act recognizes the complexity of managing multispecies fisheries and provides for greater flexibility in these circumstances. National Standard 3 provides, “. . . interrelated stocks of fish shall be managed as a unit or in close coordination,” and overfishing provisions provide for multispecies fisheries to be managed as a unit. Currently the Council manages New England stocks on a single species basis.

How does NOAA currently apply this multispecies approach either as guidelines or in management?

Are there any concerns with using a multispecies approach in New England?

Would the New England fishing industry obtain more economic benefit in the groundfish fishery under a multispecies approach?

*Answer.* The Northeast multispecies stocks are managed as a group under the FMP, but not as a mixed-species complex. The National Standard Guidelines (50 CFR 600.310(d)(6)) allow for harvesting one species of a mixed-stock complex at its optimum level at the cost of overfishing of another stock component in the complex, provided that: (1) it is demonstrated by analysis that such action will result in long-term net benefits to the Nation; (2) it is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and (3) the resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA. Whether this exception to the requirement to prevent overfishing could be justified would depend upon the particular stock proposed for exemption, and whether net benefits could in fact be enhanced by utilizing this exemption.

The Council did consider the mixed-species approach in Amendment 13, as provided in the National Standard Guidelines, but did not pursue this issue further. Although not specifically invoking this exception, Amendment 7 to the FMP utilized a somewhat analogous approach. Under that amendment, target quotas were established for five key stocks (Georges Bank cod, haddock, and yellowtail flounder, Gulf of Maine cod, and Southern New England yellowtail), with the remaining groundfish stocks combined under one quota. At the time, it was thought that the management measures associated with the five key stocks would serve as sufficient measures for the remaining stocks. However, this system of managing the groundfish complex failed, since overfishing on several of the stocks falling under the combined quota continued to occur. Among the potential problems of mixed-species approaches is the possibility that overfishing of one or more stocks could become severe enough that the entire fishery would ultimately be compromised.

It is not possible to answer the question of whether the fishing industry could obtain more economic benefit in the groundfish fishery under a multispecies approach without knowing what the approach would be. Again, if overfishing of one or more stocks became severe, it could cause great economic hardship if, for example, areas needed to be closed, or gear types prohibited. There also could be unintended impacts on predator-prey or other ecological interactions that are not yet well understood.

*Question 4. Amendment 13 Alternatives*—The New England Fishery Management Council will consider the alternative developed by the New England fishing industry as it prepares for its vote on Amendment 13. I am pleased to see an industry proposal that seeks to end overfishing while using appropriate flexibility to maintain the multispecies nature of the fishery.

Do you believe the agency can work with this proposal in the given timeline?

How can we assist?

Senator Snowe and I passed legislation last year allowing the extension of the rebuilding timeline from 2009 after the biomass targets were changed. One alternative within Amendment 13 allows for an extension of the rebuilding period to 2014.

Do you support the extension?

How will the timeline extension affect the impacts of Amendment 13 on the fishing communities of New England?

Answer. The Council adopted Amendment 13 on November 6, 2003, and submitted it to NOAA Fisheries for final review and approval. We were also very pleased that the industry came forward with a realistic and creative approach that considered both the conservation requirements and the needs of the industry and fishing communities. The Council voted to adopt that alternative as its preferred alternative in Amendment 13. Likewise, the Council voted to adopt the 2014 rebuilding timeframes for all stocks except those that require longer rebuilding times because of their biological circumstances. Both the industry-developed alternative and the longer rebuilding timelines would provide greater flexibility to the industry and reduce short-term economic impacts to the extent practicable. The Council also adopted a number of other proposed measures, such as a Days-at-Sea Leasing Program, a Days-at-Sea Transfer Program, Special Access Programs, and Sector Allocations, that could provide a good deal of flexibility to the industry to make rational business decisions based on their particular needs.

*Question 5. Adequacy of NMFS Economic Analysis*—NMFS produced an Economic Analysis of the Amendment 13 Alternatives, however many questions remain unanswered. In order to determine the impacts of the final selection, it would be useful to know the following:

If stocks are rebuilt in 2026 and you assume the stocks are fished at  $F_{msy}$ , what are the landings and revenues going forward? How does this compare to no action and status quo?

The short-term analysis shows significant losses while the long-term analysis shows increasing revenues and landings each year. Which analysis is correct? Explain.

What are  $F$ 's and revenues generated during the 2002 fishing year? How do they compare to  $F_{msy}$ ?

What would the effects of the alternatives before the Council be on shore-side industry and infrastructure?

There has been criticism as to the adequacy of the quantity and quality of socioeconomic research in the analysis. Dr. Kaplan of Woods Hole Oceanographic Institution submitted testimony for the record stating, "Proper social and economic impacts should be based on representative, random sampling techniques of the diverse groups in the commercial fishing industry. Such methodological sampling was not done for this important amendment. The focus groups referred to are not representative and only 'suggest' the concerns of the people who are able to attend such meetings. This should be unacceptable for such an important regulation."

What is your response?

Is it true the Social Science Advisory Committee to the NEFMC has never been asked to officially review or comment on Amendment 13 DSEIS? If not, why not? Do other Councils utilize SSACs more effectively? If so, which?

Answer. If stocks are rebuilt in 2026 as contemplated in the rebuilding portion of Amendment 13, the projected landings from all stocks fished at  $F_{msy}$  would be 320 million pounds and estimated revenues would be \$375 million. Projected landings in 2026 under no action would be 290 million pounds and revenues would be \$348 million. Projected landings under status quo would be 282 million pounds and revenues would be \$338 million. Thus, Amendment 13 would produce higher sustained yields of 30 and 40 million pounds compared to no action and status quo, respectively, and would produce sustained revenues that would exceed no action and status quo revenues by \$27 and \$36 million, respectively.

Regarding the question about the short-term and long-term analyses, we believe that both analyses are correct. The short-term losses shown in the analyses are the difference in landings and revenues for each alternative in comparison to reverting to the FMP in effect during fishing year 2001 (*i.e.*, the "No Action" alternative). Under all alternatives, revenues within 2–3 years will be at least as great as those estimated for 2004 in the 'No Action' alternative. With at least 80 percent prob-

ability, rebuilding will yield higher net benefits (consumer benefits plus industry sales less the cost of fishing) than the “No Action” alternative, once all stocks are rebuilt. The long-term analysis looked at how landings and revenues changed at particular harvest rates over particular time periods. Under all proposed Amendment 13 alternatives, the stocks gradually increase to Bmsy; therefore, the long-term analysis shows rising returns in landings and revenues during the rebuilding period. We would also note that the short-term analysis provides information useful in understanding which regulatory alternatives (consistent with the selected rebuilding strategy) would be least burdensome, and how the resulting impacts would be distributed among different components of the groundfish fleet. The long-term analysis was designed to address questions related to the choice of rebuilding time frame, as well as to provide comparisons of net economic benefits among the alternatives.

In terms of the calculation of F, it is important to understand that fishing mortality rates are calculated by calendar year. This means that the full biological impact of the regulations in the 2002 fishing year (May 2002–April 2003) will not be known until sometime in calendar year 2004. The table below provides estimated fishing mortality rates (F) for calendar year 2002, as well as MSY fishing mortality rates (Fmsy) for stocks where analytical assessments are possible. Of the stocks in this table, only Georges Bank haddock, Georges Bank yellowtail flounder, Acadian redfish, and Gulf of Maine winter flounder were fished at or below Fmsy in 2002. The remaining stocks were fished at levels higher than Fmsy.

Estimated Calendar Year 2002 Fishing Mortality Rates (F) and MSY Mortality Rates ( Fmsy) by Stock

Stock	F2002	FMSY
Cape Cod Gulf of Maine yellowtail	0.68	0.17
Georges Bank cod	0.43	0.18
SNE-Mid-Atlantic yellowtail	0.85	0.26
American plaice	0.27	0.17
Gulf of Maine cod	0.33	0.23
Georges Bank haddock	0.20	0.26
Witch flounder	0.41	0.23
Acadian redfish	0.01	0.04
SNE Mid-Atlantic winter flounder	0.44	0.32
Georges Bank yellowtail	0.15	0.25
Gulf of Maine winter flounder	0.10	0.43

It is possible to look at landings and revenues by fishing year (FY). In FY 2002, total combined groundfish landings were 85.7 million pounds valued at \$102 million; less than one-third of the estimated landings and revenues expected once all groundfish stocks have been rebuilt. Note that FY 2001 landings were 106.3 million pounds valued at \$106.2 million. Thus, compared to FY 2001, groundfish landings declined by about 19 percent, but revenues declined by about 4 percent. In addition, FY 2002 DAS use fell by nearly 35 percent, indicating that operating costs in FY 2002 probably declined proportionally more than revenues did. This means that industry profits were probably higher in FY 2002 than FY 2001. If this pattern holds for FY2004, revenues to fishing vessels may be expected to be higher than those predicted in the short-term impact assessments.

Regarding the effects on the shore-side industry and infrastructure, NOAA Fisheries does not maintain a database on shore-side industry and infrastructure. The agency’s Northeast Fisheries Science Center (NEFSC) has developed impact assessment models using Input/Output methods that include 528 industrial sectors in the New England region. The underlying data, however, are aggregated at a regional industry level. Thus, impacts on specific establishments, or in specific ports, cannot be identified. This means that predictive models could not be developed, and discussing realized effects on shore-side infrastructure is a matter of conjecture.

As noted earlier, we believe that the socio-economic analyses are adequate to support this action. There is no consensus in the qualitative social sciences on the absolute merit of “random sampling techniques” versus other sampling methods. While commonly used by sociologists, random sampling techniques have often been criticized by anthropologists for actually misrepresenting different cultural worlds in their own terms.

There are reasons why methodological sampling techniques are frequently impractical for use in FMP analyses. The government must obtain Paperwork Reduction Act (PRA) clearance whenever an agency addresses identical questions to 10 or more members of the public. Such clearance takes time, usually more time than is available for collecting data to support development of a particular plan action. A recent Agency initiative seeks generic OMB approval for certain types of social scientific

analyses which would mitigate this problem. Still, many FMP amendments are considerably altered during development, making it difficult to devise relevant socio-economic survey instruments and complete the associated sampling in a timely enough way to be useful.

With regard to the statement about focus groups, "focus groups" were just one of the sources of information about communities and individuals used in the analyses of Amendment 13 alternatives. The Council's Social Impact Informational Meetings were designed and conducted using scientifically-based methodologies, and the data and information obtained were analyzed using validated research techniques. Focus groups are considered an appropriate and useful tool for understanding how widespread ideas and values are in a given group (Bernard, H. Russell. 1988. *Research Methods in Cultural Anthropology*, Newbury Park: Sage).

Regarding the use of the Social Science Advisory Committee (SSAC), the SSAC is an advisory committee to, and is tasked by, the Council. The NEFMC does not require its SSC (Scientific and Statistical Committee) or SSAC to review DEIS documents, and did not specifically ask the SSAC committee to review or comment on the DSEIS for Amendment 13. Members of the SSAC were free to comment on the DSEIS, and some did so during the comment period.

Other Councils use a variety of means for obtaining input on social science issues. Some Councils receive social science advice through their SSCs, whose membership includes social scientists, rather than using separate committees for biological advice and social science advice. Other Councils with designated social science advisory groups are the Gulf of Mexico Council and the South Atlantic Council. In the Southeast region, the Socio-economic Advisory Panel or SEP serves both the Gulf and South Atlantic Councils.

*Question 6. Economic Impacts—*NMFS' economic analysis of Amendment 13 shows that smaller vessels will experience a larger economic impact than the larger vessels in the fishery.

What is the number and location of vessels under 30ft and vessels 30ft and 50ft that will be adversely affected by the Amendment 13 alternatives?

Given the unequal distribution of economic burden that Amendment 13 will impose on the smaller vessel fishers, the agency and the Council need to explore creative means to lessen the blow to these fishermen.

How can the agency help the Council identify and reduce these unequal regulatory burdens? and What are management measures that may be helpful in addressing this inequity?

NMFS' economic analysis show that New Bedford, Boston, and Gloucester will be among the hardest hit ports when Amendment 13 is implemented, due to their reliance on groundfish fisheries.

Assuming Amendment 13 is implemented, what assistance would be most useful to fishermen and the ports of New Bedford, Boston, and Gloucester?

How do you justify dismantling significant portion of the industry for a comparatively small long-term economic benefit?

Answer. The economic analysis of Amendment 13 does not show that small vessels will be disproportionately affected compared to larger vessels. The magnitude of adverse effects of Amendment 13 correlates more to a vessel's dependence on groundfish and fishing practices (gear, area, and season fished) than to vessel size. Estimated revenue impacts on small vessels tend to be most sensitive to changes in the timing and size of area closures, as well as to trip limits.

Based on FY 2002 permit application data, there were 116 permitted limited access multispecies vessels that were 30 feet or less in overall length, and 797 vessels that were between 31 and 50 feet in overall length (state by state numbers are summarized in the table below). Of these, 521 were located in Massachusetts ports. During FY 2002, 56 percent of vessels 30 feet or less reported landings of the 10 regulated groundfish species, while about 23 percent of vessels 31 to 50 feet reported groundfish landings. Thus, overall, about 27 percent of these small vessels could be adversely affected by Amendment 13, a majority of which are located in Massachusetts.

Number and Home Port State Location of Small Limited Access Permit Holders (FY 2002)

Home Port State	Vessels <= 30 feet LOA		Vessels 31 to 50 feet LOA	
	Permits	Active Permits	Permits	Active Permits
Maine	8	2	138	39
New Hampshire	7	5	61	27
Massachusetts	80	52	441	100
Rhode Island	7	3	31	3
Connecticut	0	0	12	1
New York	9	2	63	6
New Jersey	3	1	36	5
Delaware	1	0	0	0
Maryland	0	0	2	0
Virginia	0	0	3	0
North Carolina	1	0	3	0
Other	0	0	7	0
Total	116	65	797	181

NOAA Fisheries has assessed the distributional effects of the amendment and the DSEIS suggests that small vessels would not, on average, be disadvantaged relative to larger vessels. The Council's preferred alternative already contains a number of features that would mitigate economic impacts for all vessels. These measures include provisions for DAS leasing or DAS transfer that would enable small vessels to increase their fishing income. The Amendment would also implement at least one sector allocation for the Georges Bank cod hook sector, a group of small Massachusetts vessels operating principally out of Cape Cod ports. The Amendment specifies a process by which other groups may also develop sector allocation proposals. Small vessels may also be able to use additional "B" DAS, an issue scheduled for discussion at an upcoming Council meeting. Other measures in Amendment 13 that may provide some relief to smaller vessels include the increase in the Gulf of Maine cod trip limit, the relaxation of some gear restrictions for gillnet vessels, and an expansion of the shrimp exemption area in the Gulf of Maine.

To take advantage of several of the Amendment 13 mitigating measures, some vessels may need to make investments to obtain and operate new equipment. For example, participation in several Special Access Programs would require VMS. Vessels may also need to secure financing to lease DAS or to finance a DAS transfer. Groups of individuals interested in forming a sector allocation may need assistance to develop a sector plan. Assistance in the form of grants or low-interest loans may be helpful to communities to retain or make improvements to shoreside facilities in the early years of the Amendment 13 rebuilding period.

Regarding the question of dismantling a portion of the industry, we believe there is little reason to expect that a significant portion of the industry will be dismantled owing to Amendment 13; tripling the current landings, as is contemplated under the plan, is a large long-term benefit.

*Question 7.* Fisheries Observers—NMFS currently deploys observers to collect fishery dependent data in only 28 of the 100 Federal fisheries that it manages under the authority of the MSA. We have long urged the Administration to improve observer coverage, and now increased coverage is being required by court decisions—such as the one in New England.

- What is being done to increase this coverage?
- Have you identified how much it will cost to provide adequate observer coverage, nationwide?
- Will you be able to get the required number of observers out for the New England fishery this season?

Answer. Intensive efforts by the agency to increase the level of funding for fishery observer programs has been underway since 2000, with necessary increases identified in the President's annual Budget requests. This has contributed to a steady increase in funding appropriated and available for additional observer coverage, as indicated in Table 1. Some funding has also been made available for observers through related lines in the NOAA Fisheries budget.

Table 1.—Program, Project, or Activity (PPA) Funds related to Observer Programs

Fiscal Year	Observer PPA Sources (in \$M)	Non-observer PPA Sources (in \$M)	TOTAL (in \$M)
1999	2.7	5.3	8.0
2000	7.7	5.9	13.6
2001	8.0	8.5	16.5
2002	13.8	6.9	20.7
2003	13.8	7.5	21.3
2004	President's Budget Request: 20.0	President's Budget Request: 9.5 (includes 2M under Reducing Bycatch)	29.5

NOAA has identified funding estimates for full observer coverage. These estimates will be reviewed in future budget request processes. In FY 2003, 28 fisheries were observed with 20 fisheries at an adequate level of coverage and in FY 2004, assuming funding at the President's Budget request level, 33 fisheries will be observed with 24 at an adequate level of coverage. This does not include coverage of fisheries with low levels of bycatch that may not require monitoring by observers, but may still require reporting of bycatch via logbooks or other sources. Nor does it include projections for observer coverage paid for by the fishing industry, which is currently estimated at \$14.7 million annually, and which may need to be increased over time to meet expanding demands for vessel-specific catch accounting and monitoring of exempted or experimental fishing activities.

Initial FY 2003 observer funding levels for New England groundfish observers were inadequate to meet court-mandated coverage requirements, and therefore were supplemented by other sources of funds in FY 2003. This allowed NOAA Fisheries to obtain the 5 percent level of coverage that the agency has determined is adequate for meeting the court's requirement for observer coverage in the New England groundfish fishery. However, these supplemental sources of funds were not expected to be available in FY 2004 and beyond. Therefore, the President's FY 2004 request includes a \$3 million increase for New England groundfish observers, which will allow 5 percent coverage to be obtained in 2004. The FY 2004 conference report indicates that up to \$9.5 million may be made available in FY 2004, which will allow the agency to obtain an even higher level of coverage in 2004, consistent with concerns about the accuracy and precision of bycatch estimates obtained at 5 percent coverage levels.

*Question 8. Socioeconomic Analysis*—From reading the report prepared for the NOAA Deputy Under Secretary in 2000, *An Independent Assessment of the Resource Requirements for the National Marine Fisheries Service* (the "Kammer Report") and other reviews, we appear to lack the infrastructure necessary to systematically conduct socioeconomic analyses mandated under the Regulatory Flexibility Act and National Standard 8 of the SFA. Each Stock Assessment and Fishery Evaluation (SAFE) report is required to summarize the social and economic condition of the fishery's recreational, commercial and processing sectors, as well as the most recent biological status of the fishery.

- Does NMFS currently perform any social science evaluations at the regional or national scale?
- Are Councils better equipped for this?
- What is the agency's current staffing capacity to collect and analyze social and economic information relating to the marine activities NMFS regulates under SFA and RFA?
- What plans are there to address this increasing need to employ enough qualified economists, sociologists, and anthropologists?

*Answer.* As outlined in NOAA Fisheries' *Social Science Plan*, which was developed nationally and which is implemented regionally, NOAA Fisheries routinely conducts a host of social and economic analyses, including those required under National Standards 1, 5, 7, and 8 of the Magnuson-Stevens Act; the Regulatory Flexibility Act (RFA); the Endangered Species Act; Executive Order 12866; the National Environmental Policy Act; and the Marine Mammal Protection Act. For each proposed regulatory action, NOAA Fisheries is required to analyze the economic impacts of the proposed regulation, as well as a suite of management alternatives.

At the national level, NOAA Fisheries has completed a qualitative assessment of fishing capacity. The agency also plans to complete a quantitative assessment of



over-capacity. In addition, NOAA Fisheries is engaged in a nationwide community impact analysis, which will assess commercial fisheries' contribution to local employment and regional economic impacts, as well as a national employment survey to determine the number of individuals participating in commercial and for-hire fisheries.

The scientific basis of NOAA Fisheries' socio-economic analyses depends upon several factors, including the ability to collect appropriate economic data. Current restrictions in the Magnuson-Stevens Act against the mandatory collection of certain kinds of economic data constrain the agency's social science research program at both the national and regional levels in meeting its objectives.

Although the Councils contribute to the analysis of socio-economic impacts, NOAA Fisheries is responsible for conducting the majority of technical analyses used to inform fishery decision makers. In this context, it would be highly irregular to shift the sole responsibility for conducting this research (data collections as well as social and economic analyses) to the Councils. Further, such a move could be burdensome to the Councils and not improve the status quo, since Councils have significantly less social science staffing than their counterparts in the NOAA Fisheries regional offices.

There are currently 57.5 social science FTEs in NOAA Fisheries, up 17 in the last three years, coinciding with budget increases for economics and National Standard 8 implementation. The FY 2004 President's budget requests an additional \$1.7 million for its social science programs.

*Question 9. Flexibility in Decisionmaking*—With all this talk of process, it feels like we are going down a path of less flexibility in management decisionmaking. The lack of flexibility is incredibly frustrating both to fishermen and—I would assume—to managers. For example, I understand that last year when stock assessments came back with better news than expected for Monkfish, the agency could not issue a rule that would change the 0 harvest default rules in time for the season, and the fishery was closed.

Let me repeat: We have had to close a fishery that could have had increased harvest! This makes no sense.

- Doesn't the agency have enough discretion to change management measures when the news is good? What is the sticking point?
- How can we inject flexibility in this process?
- How can you expect to meet procedural requirements like NEPA and still make quick decisions that respond to new information?
- It has been suggested that the public hearing requirements of NEPA and MSA are duplicative. How could the requirements of NEPA and MSA be reconciled to allow for public input as well as flexible in-season decision-making?

*Answer.* In the situation regarding monkfish, the New England Fishery Management Council submitted a framework action that had to be disapproved because it was inconsistent with the Fishery Management Plan, although it did reflect the most recent stock assessment for monkfish. NOAA Fisheries then published an emergency rule that did allow an increase in catch and a resumption of the fishery.

NOAA Fisheries has undertaken two efforts that will be useful to provide more flexibility and improve the management process: the Regulatory Streamlining Project (RSP), for which we provided a report to Congress last year, and a review of agency guidelines for National Standard 1 under the Magnuson-Stevens Act.

The RSP is focused on ensuring that all parties participate in the development of a Fishery Management Plan or amendment early in the process to ensure that all requirements of the Magnuson-Stevens Act and other applicable law are met. We have worked particularly hard to ensure that MSA and NEPA requirements are simultaneously addressed and that we mesh the procedural requirements of these two laws to the greatest extent possible to avoid duplication. NOAA Fisheries is completing the revision of its Operational Guidelines to implement the RSP in 2004.

With respect to National Standard 1, public comments regarding problems and suggested changes to the guidelines were sought under an advanced notice of proposed rulemaking earlier this year. In addition, a NOAA Fisheries working group conducted a review of the guidelines and suggested changes that would serve to update, simplify, clarify, and also provide additional flexibility to the development of management measures to prevent overfishing and rebuild depleted stocks. Based on public comments and the recommendations of the working group, NOAA Fisheries is developing a proposed rule to revise the guidelines, which it intends to publish in the *Federal Register* for public comment in early 2004.

*Question 10. The Rx for Fishery Disasters—Regional Plans?*—Sadly, New England has been the site of a very difficult transitional process starting with the closure

and fishery disaster declaration. I look back on the ways we have tried to help our fishing communities get through this trying time, and now that have another crisis, I wonder if we could have done it better.

Penny Dalton has worked through this issue both on the Committee and in the agency, and Dr. Hogarth is now struggling with this issue. We have learned a lot over the past 6 years. Since we are rethinking how we do business, I'd like your thoughts—

- How can we best streamline Federal assistance when a “disaster” is declared?
- What must be included for communities to successfully transition?
- What are the top 3 barriers to getting there? Can we help break through them?

Answer. As used here, “disaster” seems to encompass all the situations NOAA Fisheries has faced where fisheries are in need of assistance. In some cases, NOAA Fisheries has, on behalf of the Department of Commerce, determined a commercial failure under sections 308(b) or 308(d) of the Interjurisdictional Fisheries Act (IFA), or section 312(a) of the Magnuson-Stevens Act (MSA). Section 308(b) of the IFA requires determination of a commercial fishery failure, or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes. Section 308(d) of the IFA provides for assistance to commercial fishermen, either directly or indirectly through state and local government agencies and nonprofit organizations, to alleviate harm from a fishery resource disaster arising from named hurricanes or any other natural disaster. Section 312(a) of the MSA requires determination of a commercial fishery failure due to a fishery resource disaster as a result of natural causes; man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or undetermined causes. The Federal grant share under both section 308(a) of the IFA and MSA is limited to 75 percent of cost (no cost-share in IFA 308(d)). The 25 percent non-Federal recipient cost-share requirement can be met with funds or non-cash contributions such as participation in research or other activities.

The New England multispecies groundfish is a case where we have commercial failure determinations (under IFA 308(b) and 308(d)), and also the need for community transition due to impacts of fishery management measures. In fact, the FY 2003 appropriation provided funds under “disaster assistance” to address several such situations.

As for how we can best streamline Federal assistance, NOAA Fisheries is looking at a number of options for streamlining assistance, including stimulating earlier constituent involvement and planning, reviewing cost-share requirements. Where Congress designates recipients and indicates urgency, NOAA Fisheries can disburse funds without requiring the preparation of proposals and merit reviews, thus greatly speeding up the delivery of disaster assistance to specific recipients.

What communities need to successfully transition varies with the specific situation. The response needed to address a normally sustainable fishery affected by a hurricane is different from the need to rationalize capacity in a fishery that is transitioning to sustainability. For those fisheries where overcapacity is the problem, capacity reduction is essential. MSA capacity reduction can help harvesters transition. Capacity reduction authority should be focused on reducing active capacity and latent capacity to ensure long-term fishing effort is reduced. Successful transitioning from a fishery resource disaster arising from either natural or man-made causes can be facilitated by grants to compensate fishermen for gear losses, loss of income, etc.; grants to assist fishermen and fishery dependant businesses in leaving the affected fishery for other fisheries or occupations; to assess status of the affected resource; and to assess socioeconomic impacts of disasters and provide mitigating funds.

Barriers to success include the timeliness of assistance, which has been affected by the use of grants mechanism, as opposed to direct payments, to provide assistance. Lack of agreement by all stakeholders on how best to address a given situation, and lack of social science data, as well as fisheries data, are also barriers that NOAA Fisheries is attempting to address.

*Question 11. Innovative Techniques*—The North Pacific Council has outlined some impressive accomplishments in the Alaska groundfish fishery that seem to be entirely appropriate for use in all parts of the country—including New England. I am particularly impressed by the bycatch reduction and the independent scientific review process in the North Pacific Council. I also understand that they are also pioneering work in ecosystem management.

- What are the barriers to making these techniques work in a fishery like the New England groundfish fishery?

- How close are we to getting to multispecies management in the North Pacific?
- Would it be beneficial to get the North Pacific Council together with our New England Council to discuss strategies that might be transferable?
- What would you propose to move us along this path?

Answer. The eight Regional Fishery Management Councils have the responsibility to develop and propose fishery management plans and plan amendments that address the unique circumstances of regulated fisheries in their respective areas. The fisheries in Alaska and New England are indeed different in several respects, and the two Councils have approached their responsibility differently. Most federally managed fish resources in the North Pacific are larger, are in relatively healthy shape, and are managed by individual transferable quotas (ITQs), individual fishing quotas (IFQs), or other exclusive quotas, such as community quotas and fishing cooperatives. The Alaska industry also produces a wide variety of finished and semi-finished products and competes in the world marketplace; processors are key players in both the fishery and the management process. In New England, many of the stocks are fairly small and in poor, although improving, condition; the fishing industry is more traditional in structure, featuring large numbers of owner-operated small vessels; ITQs and IFQs are not in place; and processors play a relatively smaller role. The over-riding priorities in the New England groundfish fishery are stock recovery and reduction of overcapacity. In addition, the number of states involved with the respective groundfish fishery varies greatly—three states (Alaska, Washington, and Oregon) in the Alaska groundfish fishery, while up to 11 states (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, and North Carolina) in the New England groundfish fishery.

The North Pacific Fishery Management Council works closely with the NOAA Fisheries Alaska Region and the State of Alaska to consider the known effects of management measures of one fishery on other fisheries, protected species, and the environment. While there is not yet what might be termed an “ecosystem-based plan,” all the elements are taken into consideration in the management process. Still, continued research into interspecies interactions is needed to make progress towards ecosystem-based management.

All of the Chairs and Executive Directors of the eight Regional Fishery Management Councils already conduct regular meetings, and we believe that these meetings are highly useful. NOAA Fisheries also holds meetings to orient new and current members of the Councils on requirements of the laws, biological terminology, methods used in fisheries management, and the full range of their responsibilities. NOAA Fisheries would be happy to propose to the Councils that future Council Chairs/Executive Directors meetings should include a session that enables each Council to discuss strategies to address bycatch, scientific reviews, and ecosystem management.

NOAA Fisheries will continue to work with the Regional Fishery Management Councils, States, industry, and other constituents to develop effective management measures. We are actively reviewing our bycatch policies with a view towards making them more effective in avoiding or reducing the effects of bycatch. We will continue to conduct research and develop new methods of integrating additional environmental and fisheries data into our calculation of optimum yields in the fisheries. We will also be looking at best practices and how to share those practices among the Councils.

*Question 12.* The Future of U.S. Fisheries—Some suggest that an agency straining to meet legal mandates, respond to litigation and implement administrative changes, is not in the best position to take a long, critical look at needed reforms over the next 5 to 10 years. Do we know what the goals of U.S. fisheries are over the next 10–25 years? Is there a plan in place to develop or pursue long-term goals for fisheries and reconcile some of the difficulties created by the multiple statutes?

Answer. NOAA Fisheries has given considerable thought to its needs over the next 5 to 10 years and its longer range goals. The agency developed a draft assessment of these critical needs for the five-year period from FY 2004 to FY 2008, focusing on (1) fisheries and related science, including ecosystems and the social sciences, (2) management improvements, with an emphasis on reducing bycatch and over-fishing/overcapacity, and (3) upgrades in infrastructure. This assessment draws on several other recently completed studies on the agency’s programmatic and budget needs.

NOAA Fisheries has also commented on these matters in testimony at Congressional hearings on Magnuson-Stevens Act reauthorization over the last two years. Matters that we have identified for reform include: (1) IFQs; (2) observers; (3) economic and social information; (4) Council processes and procedures; and (5) law en-

forcement. Proposals in these and other areas were transmitted to Congress in June 2003.

With respect to long-term goals (10 to 25 years ahead), our fundamental objective is to manage the Nation's marine fisheries resources sustainably and for the maximum benefit of all users. How NOAA Fisheries can reach that goal will depend, over the long term, on a number of factors, including amendments to the Magnuson-Stevens Act and other laws that drive our missions and activities.

*Question 13. Tools Needed to Improve Compliance*—Ms. Iudicello states that the existing compliance system isn't always well implemented. She also concludes that while the system does not need to be changed, we do need to change the tools and resources we provide to NMFS and the Councils.

Do you agree?

What are the tools and resources you see as being essential to this task?

Given the current litigation burden, is this possible?

Do you see statutory changes being needed to accomplish this?

Answer. NOAA Fisheries agrees that the system does not need to be changed or overhauled, but we are always working to make improvements and advancements, some of which are described below in response to this question.

The NOAA Fisheries Office for Law Enforcement (OLE) is the primary enforcement agency responsible for the protection of our Nation's living marine resources. The primary tools and resources essential to this task are investigations, vessel monitoring, at-sea patrols, and enforcement partnerships, all of which increase compliance with regulations, provide more effective prosecution of violations, and decrease vulnerability to litigation. Our most critical partner in this mission is the United States Coast Guard (USCG) which generates nearly 18 percent of the 3,000+ cases handled by OLE annually. While the OLE conducts extensive investigations, inspections, shore-side, and limited near-shore patrols, the USCG provides at-sea patrol coverage.

OLE currently has 164 sworn personnel to cover 3.4 million square miles of jurisdiction. OLE is experiencing an expansion of enforcement responsibilities as a result of new regulatory schemes, more complex criminal and civil investigations, expanded levels of contacts as a result of our Joint Enforcement Agreements with the States, an amplification of international investigations, expanded use of VMS, and the impact on fisheries enforcement by U.S. Coast Guard as a result of their expanded duties and responsibilities under Homeland Security.

The OLE has and will continue to emphasize and support programs and strategies that serve to magnify and supplement its law enforcement capabilities such as partnerships, the use of technology and other strategies that significantly enhance the services provided by the OLE and USCG for fisheries enforcement.

The Vessel Monitoring System (VMS) program greatly enhances the ability of the OLE to improve compliance and enforcement in a manner that is extremely significant. Dedicated annual allocation of funding for the VMS program at the level supported through the President's request will support the expansion, completion, and ongoing maintenance of the national VMS program and thereby makes VMS services available throughout the country.

The Cooperative Enforcement Program with the coastal states became operational under FY 2001 funding. This partnership-based initiative has already provided extensive supplemental enforcement services in support of the OLE mission. Thousands of additional patrol hours are being provided monthly in the coastal states in support of the conservation and protection of our mission.

The USCG is funded to support the OLE mission through at-sea patrols. The NOAA Fisheries mission is not always their primary role and marine resource related operations are conducted as part of broader operations. Such operations are often overshadowed by the necessity to direct USCG assets toward higher priority missions. More intensified Homeland and Port Security patrols would be a current example. The development of a more structured and reliable system to assure the dedication of USCG assets to marine resource related patrols would be a useful tool. Ensuring compliance with regulations requires specified levels of "at-sea" or aerial patrol time available only from the USCG. This precludes the assurance that specific areas and fisheries will be patrolled in accordance with the level of enforcement support anticipated when regulations are written. The role of the USCG in domestic fisheries enforcement is very critical. However, depending upon USCG's role in the new Department of Homeland Security, it may be necessary to clarify their role in fisheries.

OLE also attempts to suppress violations through patrols and inspections (monitoring and surveillance) and through outreach and education of users of marine resources.

In addition to the above, current program planning is exploring ways to increase the resources available to improve compliance with resource protection measures, provide alternative at sea surveillance/enforcement resources and expand enforcement services in a number of areas. Expanded investigative resources would also include financial analysts and computer forensics support. In addition to an expanded presence which will increase investigations, prevention patrols, compliance inspections and public outreach and education, we are also exploring ways to leverage existing and new technology to meet our enforcement mission.

The current level of litigation directed toward NOAA Fisheries is not a direct burden on the Office of Law Enforcement (OLE). Agency litigation is directed primarily at the agency's programs, not OLE activities. Thus, OLE is not altering priorities nor unable to pursue enforcement cases due to the litigation.

The MSA reauthorization developed by NOAA Fisheries contains a number of improvements to strengthen our ability to gain compliance, including increased maximum penalties and investigative administrative subpoenas.

