

**WRITTEN STATEMENT OF  
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NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON  
FIVE BILLS INCLUDING THE COASTAL JOBS CREATION ACT OF 2010 AND THE  
NATIONAL MARINE FISHERIES SERVICE OMBUDSMAN ACT OF 2010**

**BEFORE THE  
SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**July 27, 2010**

My name is Eric C. Schwaab and I am Assistant Administrator of the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). Thank you, Chairwoman Bordallo and Members of the Subcommittee, for the opportunity to testify on H.R. 4914, the Coastal Jobs Creation Act of 2010, H.R. 5180, the National Marine Fisheries Service Ombudsman Act of 2010, and H.R. 3910 the Longline Catcher Processor Subsector Single Fishery Cooperative Act. I will begin by providing some context on our role in living marine resource stewardship and supporting coastal jobs.

NOAA's mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. NOAA is dedicated to the stewardship of living marine resources through science-based conservation and management policies that support healthy, resilient ecosystems. NOAA conserves, protects, and manages living marine resources to ensure their continuation as functioning components of marine ecosystems, afford economic opportunities, and enhance the quality of life for the American public.

Using tools provided under the Magnuson-Stevens Fishery Conservation and Management Act, NOAA assesses and predicts the status of fish stocks, and ensures compliance with fisheries regulations. NOAA works with eight Regional Fishery Management Councils to manage 532 stocks and stock complexes included under 46 federal fishery management plans. Over three-quarters of the Nation's fish stocks are managed sustainably, and almost all overfished stocks are rebuilding. Marine commercial and recreational fishing contribute over \$187 billion in combined sales annually to the U.S. economy.

***H.R. 5180, the National Marine Fisheries Service Ombudsman Act of 2010***

The National Marine Fisheries Service Ombudsman Act of 2010 creates an Office of the Ombudsman. The Ombudsman would be appointed for a 4-year term by the NOAA

Administrator. Under the bill, a regional Ombudsman (appointed at the discretion of the Ombudsman) would be maintained in each region for which a Council is established. The national and regional ombudsmen would serve as points of contact, investigators, and referees in addressing conflicts between NOAA and its constituencies. Toward that end, the ombudsman would make recommendations, prepare reports, serve as third parties, and conduct issue-specific informal fact-finding investigations.

Building trust and ensuring good communication between the agency and the regulated community is a huge challenge but NOAA has many avenues by which to accomplish this. Under Dr. Lubchenco's leadership as the Under Secretary of Commerce for Oceans and Atmosphere, NOAA has renewed its commitment to improving the agency's relationship and communications with fishermen and enhancing their understanding of fisheries science, regulations and enforcement activities on the local, regional and national scale.

NOAA is working to improve and increase our communications with fishermen and other stakeholders. We are employing or developing the following communications and outreach methods and tools:

- **Fishermen Forums:** In conjunction with regularly held Fishery Management Council meetings, NMFS regional leaders hold question and answer forums. Such forums are currently conducted in the South Atlantic, Gulf of Mexico, and Western Pacific, and have helped to establish a dialogue with these fishing communities in those regions. Typically informal and without agenda, these forums focus on responding to questions, but they also provide an opportunity for proactive outreach.
- **Web-Portal and Repository:** Webpages facilitate easy public access to the regulatory compliance criteria for each region serving as a portal to the regulations and compliance criteria unique to each region. NOAA is considering a pilot project modeled after the NOAA National Weather Service "point and click" weather forecasts, where fishermen and the public could "point and click" to areas where they fish or enjoy marine recreation to access the appropriate regulations in that region.
- **Compliance Guides:** Under the Regulatory Flexibility Act, NOAA produces compliance guides to accompany each regulation, primarily designed to assist small businesses with compliance. NOAA is working to make these easier to read and accessible on the web, as well as available in hard-copy. Those that are produced in a more user-friendly format have become valuable communication tools.
- **E-mail ListServ:** A listserv is an effective way to either "push" information out to constituents or, if moderated, serve as a discussion forum or a means to answer questions. NMFS already has FishNews, which is an automated, e-mail-based national weekly product that provides electronic notification of important actions, rules, policies and programs. Regional e-mailed news letters also exist and could be further utilized to enhance communications.

- **Social Media Tools:** As the use of social media tools becomes approved and integrated into NOAA's communications operations, the use of Twitter and other push technologies could be used to communicate with fishermen about quick regulatory updates. Blogs could also be incorporated as another platform.

As the complexity of regulations accumulates over time, the need for easy access to the agency and facilitated communication with the regulated community has gained importance. We note that an Ombudsman is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests. On May 11, 1999, then Secretary of Commerce William Daley announced the appointment of Sebastian O'Kelly as NOAA's Fisheries Ombudsman. The position terminated when Sebastian O'Kelly resigned on January 20, 2001 and was not reinstated by the next administration and NOAA has determined that this was not a particularly successful program.

The agency's regulatory actions and scientific determinations can be highly controversial and at times inadequately understood or perceived as unfair. However, creating an additional layer of review by placing an Ombudsman and attendant staff in every FMC is unlikely to improve that situation. In addition to the more informal tools described above there are currently many formal means for stakeholders to participate in the management process and avail themselves of opportunities for input and appeals of the outcomes. It is important that an Ombudsman not confound clear lines of communication between the public and NOAA on fishery management issues. Instead of participating fully in the existing Council process, or in the opportunities for public comment during Secretarial review of fishery management plans and amendments and the promulgation of implementing regulations, the Ombudsman's Office would create a separate channel for people to express their concerns. The existing executive, legislative and judicial oversight of fisheries could be weakened, and a great deal of confusion could be created, if an Ombudsman works independently from, and not in coordination with, the established fishery management process.

By law, NOAA is required to take into account comments on proposed rules and National Environmental Policy Act documents when making a decision. We are concerned that significant confusion could arise regarding the role of the Ombudsman in this process. For example, if a member of the public were to provide comments to the Ombudsman, they may think they have commented on the record with NOAA when in reality they have not. Such confusion could lead to important public comments not being captured or responded to as part of the administrative process. The established fishery management process ensures that future NOAA Assistant Administrators for Fisheries and I have the benefit of receiving public input on all issues before making a decision.

Under current law and regulatory practice, individuals and entities regulated by NMFS and those with a general interest in fishery conservation and management may pose questions, offer comments, and recommend views and solutions through a number of formal avenues, including:

- (a) meetings of the Regional Fishery Management Councils;
- (b) proposals to participants of Marine Fishery Advisory Committee and Atlantic highly migratory species advisory panels;

- (c) comments on *Federal Register* notices; and
- (d) NMFS-administered appeals processes.

Further, the scientific or regulatory process can also be examined through a variety of other oversight means, including:

- (a) Congressional oversight hearings;
- (b) Special studies by the Congressional Research Service;
- (c) Government Accountability Office studies;
- (d) National Science Foundation reports;
- (e) Peer review of agency science, as required in the Magnuson-Stevens Fishery Conservation and Management Act; and
- (f) Commerce Department Inspector General reports.

NOAA is committed to improving the agency's relationship and communications with the regulated community, but we have significant concerns with the approach laid out in H.R. 5180.

#### ***H.R. 4914, the Coastal Jobs Creation Act of 2010***

This bill creates a Coastal Jobs Creation Grant Program using existing grant programs under the Coastal Zone Management Act; the Coral Reef Conservation Act; the Integrated Coastal and Ocean Observation Act; the Magnuson-Stevens Fishery Conservation and Management Act; the Marine Debris Research, Prevention, and Reduction Act; the Marine Mammal Protection Act; the National Marine Sanctuaries Act; and the National Sea Grant College Program Act. H.R. 4914 would allow funding for a variety of activities to support cooperative research, marine recreational statistics, observer training and deployment, preservation of coastal resources, research and monitoring, coral reef conservation, coastal ocean observation, and marine debris mitigation.

Under the existing grant programs that H.R. 4914 seeks to use, and through existing efforts under the Magnuson-Stevens Fishery Conservation and Management Act, the Coastal Zone Management Act, and NOAA's Marine Debris Program, NOAA currently provides millions of dollars annually through grants that benefit coastal states and their economies. Currently, grant programs make up approximately one third of the NMFS annual budget.

NOAA activities also support sustainable coastal, onshore, and offshore marine shellfish and finfish farming. A moderate expansion of sustainable domestic marine aquaculture could yield tens of thousands of jobs and inject hundreds of millions of dollars into local economies within the next 10 to 15 years.

In February 2009, the President signed the American Recovery and Reinvestment Act, a bill intended to create and sustain jobs throughout the American economy. As part of this effort, NOAA received \$167 million to invest in coastal habitat restoration and help jumpstart the Nation's economy by supporting thousands of jobs. Using a competitive evaluation process, NOAA selected a diverse set of habitat restoration projects which are restoring wetlands,

shellfish beds and coral reefs, and opening fish passage through dam removals. When complete, these projects will boost the health and resiliency of our Nation's coastal environment while creating direct and indirect jobs for coastal communities, including jobs for out-of-work fisherman. This restoration initiative demonstrates the importance of coastal investments to supporting jobs and strengthening coastal communities.

Under the Coastal Zone Management Act, NOAA provides assistance to states and territories for the purposes of redeveloping deteriorating and underutilized waterfronts, preserving public access and other coastal-dependent uses, enhancing maritime commerce, and restoring coastal features. These activities, along with NOAA's programs that rebuild wild stocks and increase domestic aquaculture, present numerous opportunities for economic growth that are well-suited to struggling constituents within the coastal population, such as out-of-work fishermen. These opportunities include the creation of jobs in such sectors as seafood processing, aquaculture, transportation, energy development, marine debris removal, tourism, and recreation.

Given today's fiscal challenges and the importance of marine and coastal resources to our Nation's economic well-being, NOAA supports the goal to create jobs and economic opportunities in coastal communities. Coastal areas generate billions of dollars annually from fisheries, recreation, tourism, ports, and other marine businesses. Working waterfronts and sustainable marine and coastal resources are a critical component of vibrant, sustainable coastal communities. A significant concern with the legislation is that the \$80 million annual appropriation authorized by this bill beginning in fiscal year 2011.

NOAA has four main objectives that are used to track progress: protect, restore and manage the use of coastal and ocean resources, advance understanding of climate variability and change, provide accurate and timely weather and water information, and support safe, efficient, and environmentally sound commercial navigation. It is important to recognize that successfully implementing these objectives supports job creation. For example, sustainable fisheries are more profitable and lead to higher full-time employment.

Cooperative research has been cited as one of the most important components of NOAA's outreach to the fishing community. Cooperative research allows industry members to become involved with the science that informs fishery management. It has not been intended as a tool for supplementing fishermen's income. However, those individuals who have qualified for, and participated in, the cooperative research projects have benefited from the funding. It is important that we continue to execute these cooperative research programs in accordance with rigorous scientific standards.

H.R. 4914 would authorize use of grant funds for training and deploying observers authorized or required under the Magnuson-Stevens Fishery Conservation and Management Act. This authorization could conflict with current observer activities. NOAA currently trains (in-house or under contract) and deploys observers through the regulatory process. In this way, NOAA ensures the integrity of the data and information incorporated into fishery science and management plans. For this reason, NOAA prefers to manage and fund observer programs through existing authorities.

In summary, NOAA recognizes the importance of strengthening coastal communities and is working to do so through existing programs. NOAA has several concerns with H.R. 4914. First, NOAA has the necessary authorities to support all of the programs identified in the bill. Second, the bill is inconsistent with the President's budget request, and therefore could redirect funds from existing programs. Finally, NOAA should measure its performance based on healthy, sustainable marine and coastal resources, not strictly the number of jobs created in the process.

### ***H. R. 3910, Longline Catcher Processor Subsector Single Fishery Cooperative Act***

Thank you for the opportunity to briefly comment on the Longline Catcher Processor Subsector Single Fishery Cooperative Act. This act would provide an opportunity for members of the longline catcher processor subsector to establish a fishery cooperative to better manage their allocation of the Bering Sea and Aleutian Islands (BSAI) Pacific cod annual catch limit. The longline catcher processor subsector comprises approximately 36 vessels that harvest 50 to 55 percent of the annual catch limit of BSAI Pacific cod, currently valued at approximately \$55 million. The bill establishes clear criteria for determining how much of the annual catch limit would be assigned to a cooperative. Once catch is assigned to a fishery cooperative, the cooperative would receive an exclusive catch share, thereby ending a competitive "race for fish." Those participants who do not join the cooperative would continue to participate in a race for fish for that portion of the annual catch limit not assigned to the fishery cooperative. Many fisheries in the North Pacific are managed through the use of fishery cooperatives that receive exclusive catch shares.

Past experience has demonstrated that fishery cooperatives, such as the one authorized under this bill result in more efficient and profitable use of fishery resources, reduced bycatch, improved communication with managers reducing the risk of exceeding annual catch limits, and reduced incentives to engage in dangerous fishing practices. The greatest benefit of the bill is likely to be the elimination of a race for fish resulting in slower paced fishing and processing operations, improved product quality, and greater profitability for the fleet. These changes in fishing patterns could also reduce the bycatch of halibut that is incidentally caught in the Pacific cod fishery. Overall, this bill would likely improve the management of the longline catcher processor subsector, and BSAI Pacific cod and halibut resources. NMFS supports the intent of this bill, but does not support the bill itself. The North Pacific Fishery Management Council already has the authority to recommend cooperative management for this fishery, and NMFS believes that it is preferable for such a change in fishery management policy be developed and implemented through the open and collaborative processes mandated by the Magnuson-Steven Fishery Management Act rather than imposed by statute.

### ***Closing***

Thank you for the opportunity to provide testimony on H.R. 4914 and H.R. 5180, and H.R. 3910. We welcome the opportunity to work with the Committee as the bills move forward. I am happy to answer any questions.

**Testimony of  
William P. Angrick II  
Former Iowa Citizens/ Aide/Ombudsman  
On behalf of the United States Ombudsman Association**

**before a hearing of the**

**Subcommittee on Insular Affairs, Oceans and Wildlife  
Committee on Natural Resources,  
House of Representatives**

*Tuesday, July 27, 2010*

*The National Oceanic and Atmospheric Administration's  
Fisheries Enforcement Programs and Operations*

Madam Chair Bordallo, Ranking Member Brown, and other members of the Subcommittee.

My name is William P. Angrick II. On behalf of the United States Ombudsman Association (USOA) I want to thank you and the Subcommittee for inviting USOA's comments on Representative Shea-Porter's proposal to create an ombudsman for the Marine Fisheries Service.

The United States Ombudsman Association is the oldest organization of public sector ombudsman in the United States. The Association is dedicated to actively promoting the creation of ombudsman offices that have sufficient independence and investigative and reporting authority to be effective.

The United States Ombudsman Association membership represents ombudsman offices that primarily deal with complaints from the public about federal, state, and local governments. USOA is interested in Representative Shea-Porter's bill because the office would handle "external" complaints filed by citizens impacted by actions of the National Marine Fisheries Service. It is with those objectives in mind that I speak to you on behalf of USOA.

I retired as Iowa Citizens' Aide/Ombudsman on June 24, 2010, after 32 years as Ombudsman. I am the immediate past president of the International Ombudsman Institute, an international organization of public sector ombudsman at the local, state, provincial, and national levels representing over 90 different countries. I served as president of USOA from 1981 to 1983.

I was a member of the USOA committee that drafted the USOA Governmental Ombudsman Standards adopted by USOA in 2003. The committee balanced the goal of providing a standard measure of what a Governmental Ombudsman should be with practical ideas that would be useful to individuals in offices that are not general jurisdiction in scope or established in the legislative branch. I have provided a copy of those standards as an attachment to my testimony, and I request that they be made a part of the record. I have also provided a copy of the USOA Model Ombudsman Legislation for State Governments which contains specific language that may be of interest to you in your consideration of specific powers and capacities when creating an independent and impartial ombudsman. I request that this Model Legislation also be made a part of the record.

The USOA envisioned that these Standards will be useful to individuals and policymakers interested in how a Governmental Ombudsman can serve the public and improve administrative efficiency and fairness.

In its January 2010 Audit of *National Oceanic and Atmospheric Administration Review of NOAA Fisheries Enforcement Programs and Operations*, the U.S. Inspector General (IG) recommended that NOAA should consider reestablishing the position of ombudsman to serve as an interface with the regulated industry. Such a position was created in May 1999, but has remained vacant for several years, and it is unclear within NOAA whether the position still exists.

The IG also recommended that NOAA ensure agency leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols. The IG said “Given the complexities of NOAA’s mission and organization, the industry, and the current enforcement climate, its setting of enforcement priorities should involve integration and coordination with the headquarters fisheries management and science center elements, including the Assistant reestablishing the position of ombudsman to serve as an interface with the regulated industry.”

USOA believes that in order to fulfill the IG’s recommendation, any NMFS ombudsman should incorporate the following:

### **Structural Independence**

USOA traditionally encourages:

- A. the classical model (placement in legislative branch). If that is not feasible, other placement options to consider are, in the following order:
  1. another executive agency.
  2. in the agency but with similar structure, appointment/removal and reporting authority as Inspector Generals.
  3. in the agency, with supervision/reporting directly to the head or highest authority in the agency, which in this case is the Secretary of Commerce, or the Deputy Secretary. This would be similar to what Congress did for the Citizenship and Immigration Services Ombudsman, who reports to the Deputy Secretary for Homeland Security.

4. in the agency, with supervision/reporting directly to an official who reports directly the head of the agency. This is what is proposed in the current bill, by providing for the ombudsman to report to the Under Secretary and Administrator for NOAA. While this reporting structure is not as high up as desirable, at least the ombudsman would not be supervised by the Assistant Administrator for National Marine Fisheries Service.

### **Appointment and Removal**

USOA supports establishing a set term for ombudsman appointees as protection from removal for political reasons or to squelch criticism. The bill provides some protection by requiring the administrator to inform Congress of appointment and removal 30 days in advance, so Congress can address concerns with those decisions. USOA suggests increasing that time to 60 days to ensure adequate time to act.

### **Define the Ombudsman's Authority to Investigate**

The term "investigate" is a core function for a classical/external ombudsman. Government entities and individual government employees that are the subjects of complaints may be resistant to cooperating in investigations. Therefore, the Ombudsman's authority to investigate must be clearly established.

USOA strongly recommends adding a provision to clearly and forcefully state the Ombudsman *shall* have statutory access to information, reports, electronic correspondence, internal memorandum, etc. from the agency to avert obstacles to thorough, impartial investigation.

The Ombudsman should have unlimited access to records and proceedings held by jurisdictional agencies, including records that are considered confidential or not otherwise open to the public. Agency staff should be required to cooperate with the Ombudsman during the conduct of an investigation. The power to issue subpoenas and to take sworn testimony makes enforcement of such a requirement possible. Managers and supervisors should not interfere with an Ombudsman's ability to talk directly to staff.

The authority to examine government premises, documents and files, including electronic records, is crucial to the Ombudsman's role as an investigator. The Ombudsman should be authorized to enter agency premises and inspect without notice. The Ombudsman should be able to initiate an investigation on the Ombudsman's own motion in addition to investigating upon complaint.

As the USOA reads the current legislative document, it appears that complainants are or may be limited to the regulated community only. The USOA believes that the stakeholders in this are much broader than the regulated community only, and recommends that standing to be a complainant to the ombudsman is broadened.

### **Protections for Complainants and the Ombudsman**

USOA suggests adding provisions for:

- A. Confidentiality of ombudsman records including the identity of complainants, with the possible exceptions (e.g., legislative oversight), and
- B. Privilege or immunity protections from being compelled to testify in civil or criminal proceedings that may result from the Fisheries Service taking enforcement actions.

### **Reporting Provision**

USOA suggests adding the provision to allow issuance of investigative or special reports (allowing for agency to append a response), besides annual reports. We also believe that there is a need to be provisions allowing the Ombudsman to report the Ombudsman's findings to the complainant and public.

Perhaps this would be a good time to end my prepared testimony and make myself available to answer questions or respond to comments. During my 32 years of service as Iowa's Ombudsman and in my capacities as an officer in both the United States Ombudsman Association and the International Ombudsman Institute, I have had the opportunity and experience to legally enforce and defend the independence and authority of the office. I am keenly aware of situations in jurisdictions where less independent ombudsman offices have been thwarted from accomplishing the good work they were supposed to attain.

On behalf of the United States Ombudsman Association I again wish to thank you for the opportunity to appear, give testimony, and submit information.

**Written Testimony  
Of  
Sebastian O’Kelly, former Ombudsman, Department of Commerce  
On H.R. 5180, The National Marine Fisheries Service Ombudsman Act of 2010  
Before  
The House Subcommittee on Insular Affairs, Oceans and Wildlife**

July 27, 2010

Thank you for inviting me to testify on H.R. 5180, The National Marine Fisheries Service Ombudsman Act of 2010. I am currently a consultant to the law firm of Hoffman, Silver, Gilman and Blasco, but I am here today to present my individual perspective as the former Ombudsman for the Department of Commerce and not that of the firm or its clients.

My understanding is that this bill was born of controversy over the National Marine Fisheries Service’s (NMFS) enforcement practices in New England. The creation of my position was also born of controversy, also in New England, twelve years ago but the situation was a little different. The controversy was over whether NMFS would open parts of Georges Bank to scalloping. These areas had been closed to fishing to restore groundfish stocks and had the added benefit of boosting scallop populations. Then-Secretary William Daley had been dissatisfied with the reluctance of NMFS to open those grounds despite scientific evidence over the plentiful abundance of scallops. Ultimately, the area was opened to scalloping on a limited basis with appropriate groundfish bycatch restrictions. In the process, the Secretary decided to create the Ombudsman position to provide an independent viewpoint and arbiter on major marine fisheries, marine mammal and endangered species decisions that fall under the purview of NMFS. I served as the Ombudsman from 1998 to 2001 as a Schedule C political appointment. I was the only one to serve in the position and it was not continued into the next administration.

Based on my experience there are two concepts critical to the bill to maximize the effectiveness of the Fisheries Ombudsman. They are independence and integration into the fisheries decision-making process. My comments are aimed at the fisheries management and regulatory process and are less relevant to enforcement as I had minimal involvement in that area.

The legislation takes several steps toward ensuring independence. They include giving the position a statutory mandate along with a separate reporting requirement to Congress. There is a tendency in all bureaucracies to resist or control independent viewpoints. This was the case when the first Inspector Generals were established and a primary reason why Congress ensured that the IGs reported both to the agency and Congress. It looks like you are emulating that model in this bill. The personnel protections in Section 2(a)(6) are also positive steps towards protecting the office’s independence.

Integration into the decision-making process is a more difficult goal to achieve. The legislation notes that the Ombudsman’s functions include mitigating points of conflict and resolving complaints from the regulated community. That raises a few of questions. Is the Ombudsman role primarily to examine how NMFS implements and enforces its regulations and respond to complaints over unfair enforcement? Or should the Ombudsman have the ability to review and have an impact on the actual substance of the regulation itself as it is being developed? What powers should the Ombudsman have to mediate a dispute or resolve points of conflict after a rule has been approved by the Regional Fishery Management Council? After its final approval by the Department?

During my tenure, the overwhelming majority of complaints I received were over the allocation and conservation requirements in fishery management rules. I also received complaints over some marine mammal and endangered species protections. Enforcement was an issue that I did not receive many complaints. If the sponsors of the legislation are intending for the Ombudsman to be able to have input into the substance of fishery management rules and decisions aside from just their enforcement then it needs to be spelled out more clearly. Clarification of how the office might fit within the formal process of fishery management decision-making governing the Magnuson-Stevens Act would also be helpful. Also, the bill should indicate that the Ombudsman have access to all records maintained by NMFS as well as ensure it is included as at least a "cc" in the paperwork trail that goes to the Administrator and ultimately the Secretary. Otherwise, the office will likely not be in the loop on many of the issues it will inevitably receive complaints about.

The Ombudsman in the bill reports directly to the NOAA Administrator. During my tenure, I reported to the NOAA leadership, with a dotted line relationship to the Secretary. While there were some advantages to this reporting relationship, it did not have all the advantages that one might think. The Magnuson Stevens Act (MSA) defers significant powers to the Regional Fishery Management Councils. Departmental orders implementing the Act also delegate review and initial approval of Council recommendations to NMFS. By the time a fishery management rule reached NOAA and Departmental review, agency and departmental leadership had very little flexibility to make or suggest any changes. Two barriers stood in their way – many times rules arrive at the Department with the fishing season about ready to start, in some cases as little as 24 hours. Any delay brought howls of protesting from the fishing community, even if there was strong disagreement over the restrictions in the rule. Second, the MSA has timelines and specific criteria for review, approval, or rejection of Council actions. Any attempt by the Secretary or NOAA Administrator to substitute his judgment for NMFS and the Councils after they have already acted would face strict legal scrutiny and possible court action.

Lastly, the Congressional report requirement in the bill provides some transparency and accountability for the Ombudsman. It would be worth considering extending that transparency, particularly if the office's role is to provide meaningful input in the development of fishery management regulations, to make the Ombudsman's comments and views on such regulations a part of the public rulemaking record. That would allow the public, the fishing community and others to ascertain the Ombudsman's involvement, thoughts and position, if any, on a fishery management rule. Also, it would put NMFS in the position of having to publicly address the Ombudsman's concerns in the rule-making record, though in the end the Ombudsman's comments would only be advisory. This approach would be a little unusual, but there is a precedent. SBA's Office of Advocacy frequently publicly comments on the small business impacts of rules being developed by Federal agencies.

Thank you again for inviting me to testify and I look forward to your questions.



Testimony of

Jim Hutchinson, Jr.

Committee on Natural Resources  
Subcommittee on Insular Affairs, Oceans and Wildlife  
U.S. House of Representatives

July 27, 2010

Madam Chairwoman and members of the Committee, my name is Jim Hutchinson, I'm Managing Director of the Recreational Fishing Alliance (RFA). The RFA is a national 501(c)(4) non-profit political action organization whose mission is to safeguard the rights of saltwater anglers, protect marine industry jobs, and ensure the long-term sustainability of our Nation's marine fisheries. The RFA represents individual recreational fishermen, recreational fishing boat manufacturers, party and charter boat owners and operators, bait and tackle businesses, marina operators and other businesses dependent on recreational fishing.

I appreciate the opportunity to appear before you today about our coastal communities and the importance of the House version of the Coastal Jobs Creation Act of 2010 (H.R. 4914). Today I have the distinct privilege of speaking on behalf of not only RFA but also as President of the New York Sportfishing Federation, and as Governmental Affairs Representative for the New York Fishing Tackle Trades Association. These organizations are made up of not just individual coastal anglers, but American businesses, many of them smaller coastal operators who are not only being hampered by a down economy, but are equally hard-hit by widespread recreational fishing closures and ever-tightening management measures. The Gulf tragedy of course has had a catastrophic impact on our coastal fishermen – and I pray every day that we'll soon see an end to the ongoing environmental disaster so that our folks there can start getting their lives back, as well as their livelihoods.

But while this disaster in the Gulf is something we all hope deeply never, ever happens again, it serves notice that perhaps our coastal communities have been somewhat overlooked during the past few years. As you probably know, the RFA and many of our allied groups including more than a thousand individuals from the Gulf states held a rally at Upper Senate Park this past February – there are several members of this Committee of course who joined us for this historic rally in support of our coastal fishermen that many media accounts tabbed at upwards of 5,000 fishermen. Our coastal communities have been suffering for years because of

these deep sacrifices being made in the name of protecting the fish – and on behalf of real, hard-working Americans, I ask you to now consider our nation’s fishermen.

Few could argue that the fisherman is first and foremost a conservationist, and those whom I represent today wish to see as many fish in the ocean tomorrow - and the day after - as there are today, and yes, even yesterday. A healthy, sustained resource is our responsibility as stakeholders, and maintaining that resource for tomorrow’s user is not just a goal, it’s truly part of our mission. That said, the federal requirements to rebuild fish populations to historic levels have had a deleterious impact on many of our coastal businesses; the for-hire fleet of charter and party boat captains has experienced significant loss of customers, which in turn has impacted their mates, their crew, and many of the ancillary businesses around the docks. Individual anglers experiencing denied access to the resource have in turn not had as much need to visit local tackle shops, or fill their boats at the gas dock, much less keep the boat in the marina. As you can imagine, the recent bottom fishing closure in the South Atlantic, the black sea bass closure in the Mid-Atlantic this past fall and winter, and of course the Gulf area closures before and after the Deepwater Horizon catastrophe have kept many folks away from our waterfront, and in turn has forced coastal businesses to suffer. Respectfully, as the members of this Committee are intimately aware, our fishermen and the communities that support them are hurting.

U.S. recreational fisheries provide enormous benefits to our national economy, including jobs, food, recreation, even ecological benefits. A 2006 U.S. Fish and Wildlife Service report said that there were 7.7 million saltwater anglers who spent nearly \$9 billion on trips and equipment to fish in our coastal communities that year. Trip-related expenditures accounted for \$5.3 billion, food and lodging totaled \$1.7 billion, while transportation accounted for roughly \$1.1 billion. In terms of saltwater equipment, bait and guide fees alone, anglers spent \$6.1 billion in 2006. Regrettably, this same year our economy began its nosedive, and our fisheries restrictions started piling up. When the U.S. Fish and Wildlife Service begins compiling new data for their next survey release two years from now, I can’t say that I’m very optimistic about where we’re going and what we’ll learn. For many small business owners along the shore, two years is an eternity considering that the next two months are do-or-die.

When the President announced plans to put forth a jobs creation bill, my friends in the coastal community had their fingers crossed. Would there be floor-planning for boat owners so that our manufacturers could keep building American-made sportfishing boats, center consoles and cruisers? Would there be stimulus funding to put coastal laborers to work on rebuilding our crumbling marine infrastructure, to revitalize our working waterfronts? Our fishermen had hoped for dedicated earmarks towards improving NOAA Fisheries’ science and data collection abilities, so that U.S. fisheries could remain healthy and vibrant while both our recreational and commercial fishermen could be assured of the best possible science through improved technology and perhaps participation in the process. None of this has happened, and our coastal communities continue to suffer.

The Coastal Jobs Creation Act of 2010 (H.R. 4914) begins to address some of these concerns of coastal business owners, and it’s a good start. RFA supports the intended purpose of this bill, to provide employment opportunities for coastal communities by increasing support for

cooperative research, revitalizing coastal infrastructure, recreational fishing registry programs, marine debris removal and restoration of coastal resources. If the funds made available under this Act to implement a Coastal Jobs Creation Grant Program are truly dedicated to those full-time fishermen, tackle purveyors, and fully vested marine industry professionals who are suffering through difficult times, then we fully support the intent of this bill. However, if monies are tied up in a bureaucratic web or reallocated to individuals, entrepreneurs and NOAA favorites who are not currently invested in our coastal industry, then this legislation will not work as intended.

It's vitally important that our active fishing businesses, the hard-working charter and party boat captains for example, are given every opportunity under this law to participate in the program. That means that longtime fishing industry representatives should be given unique consideration for any monitoring or observer opportunities. That means amending current law to allow our seasoned coastal professionals to act as observers. The National Marine Fisheries Service presently lists as minimum eligibility standards for marine fisheries observers that they possess a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The rules also contain 'conflict of interest' restrictions which prevent anyone with an interest in a fishery, such as a fisherman who owns a boat or has a permit, or someone who works shoreside for a fishing business, from working as an observer. For the Coastal Jobs Creation Act to work as intended, it's important that NMFS loosen these restrictive measures so that we can allow seasoned professionals from our fishing communities to work as observers. Not all of these folks have college degrees, but I would argue their own on-water experience, some passed on through many generations, is more valuable in terms of a professional observation than those of some greenhorn fresh out of college who gained most of his resource knowledge by looking at a computer screen.

In terms of the revitalization of our coastal resources, we also have concerns about the broad scope of this definition, and hope this is not interpreted to further deny access to our public resources through ever-tightening restrictions and exclusions. When the fishing community sees plans to "identify habitat areas of particular concern," we understandably react with some valid suspicion. Our recreational fishermen especially have asked for increased, improved science and data collection to more accurately monitor catch and participation, but we're also concerned that some of this scientific funding might instead be reallocated towards closing off certain habitat areas which might be of concern to some. When considering the restoration of our coastal resources, I'd ask that our legislators keep in mind that the fishery management councils established by the Magnuson Stevens Fishery Conservation and Management Act are the place where many of these fisheries decisions already takes place. Again, this is also why we need seasoned veterans onboard our ocean vessels, those with knowledge of the resource, familiarity of the fishing grounds, and hands-on experience in working with the local habitat and ecosystem.

We also want to protect local working waterfronts, and ensure that the symbiotic relationship between coastal stakeholders and our oceans will continue for many generations to follow. The House version of this bill makes direct reference to the "Redevelopment of deteriorating and under-utilized working waterfronts and ports." It is vitally important that we protect the heritage and traditions of these ports for the future, and the first priority should be

toward maintaining working infrastructure for the benefit of our fishing communities. To keep fishermen working as the bill's purpose states, it's imperative that we keep this waterfronts working in the name of U.S. fisheries. What we cannot have is economically critical waterfront areas passed into private hands, razed, re-zoned and then redeveloped as condominiums or alternate uses which will further restrict our fishermen from accessing our marine resources.

I mentioned the Magnuson Stevens Fishery Conservation and Management Act, so it's important to point out the congressional mandate contained in the 2006 reauthorization that NOAA fix the recreational data collection methodologies, in part through the creation of a new national registry of saltwater anglers. NOAA has been late in meeting your demand, and instead of implementing a national registry in 2009, the angler registry component was initialized only this year. I would respectfully remind the members of this Committee of the deadlines contained in that law, which stated that the new survey program should've been implemented no later than January 1, 2009, and that within 24 months after establishment of this program, the Secretary shall submit a report to Congress to describe the progress made toward achieving the goals and objectives of said program.

The national registry was 12 months late in its rollout, and the program itself is still not in place within the recreational sector at this time. What we have now is a patchwork of registry programs along coastal states, with very little money at the state level to ensure that NOAA's grand plan for data collection can be administered. NOAA has the money to help fix this problem, and we can certainly afford to allocate monies to coastal states for the purpose of establishing and implementing a registry program to meet the requirements of Section 401(g) of the Magnuson Stevens Fishery Conservation and Management Act. This is a key component of the House version (H.R. 4914) of the Coastal Jobs Creation Act of 2010, and one which I would implore the Committee to make sure remains in place, and is also picked up in the Senate version. If this bill truly intends to meet its mission of promoting sustainable fisheries, then this particular amendment to allocate money to individual states for improved data collection should be vital to passage of this bill.

Finally, the RFA believes that the term "fishing communities" needs to be broadened to include party and charter boat operations, marina and tackle store businesses, bait dealers, and our entire recreational fishing infrastructure. As evidenced in the Gulf of Mexico, our sector has suffered equally with the commercial sector. In terms of loss from widespread fishing closures due to environmental catastrophe, acts of God, and/or restrictive acts of federal law, our recreational sector, in fairness, should be given the same consideration as those in the commercial sector. It's important moving forward that our recreational fishing communities are clearly delineated and accurately portrayed as a driving economic engine in America today. According to a recent NOAA Fisheries estimate, saltwater angling generates \$82 billion in overall sales and supports more than 500,000 jobs annually. Our community shouldn't be an afterthought, an inference, or a footnote on a graph. If the purpose and intent of the Coastal Jobs Creation Act is to promote coastal jobs creation, to promote sustainable fisheries and fishing communities, while also revitalizing working waterfronts, we'd ask then that the Committee take particular note of our recreational fishing businesses and how important our industry is to the lifeblood of our national economy.

RFA would like to go on record with the following specific items of note with regard to language contained with the Coastal Jobs Creation Act (HR 4914) and we respectfully ask the Committee to give a more thorough review of the bill before moving forward. In addition to the points made above, the RFA strongly believes the following key sections warrant special consideration.

Under the activities section 3 (c), HR 4914 identifies numerous deficiencies that if corrected would improve manager's ability to efficiently regulate recreational fisheries and provide a more stable business environment in the recreational fishing industry. RFA supports section (c)(1) to provide federal assistance to cooperative research to collect and compile social and economic information related to the recreational and commercial fisheries. This information is critically important when evaluating the consequences of management on both fishing sectors.

RFA supports section (c)(2) which would support cooperative research to identify habitat areas of particular concern and for habitat restoration and conservation. The RFA has made it clear in past testimony provided to this Subcommittee that placing the entire rebuilding burden solely on the sacrifices of fishermen is far from an efficient or productive management approach. A holistic approach that accounts for non fishing activities and sources of stress must be a part of our fisheries management process. It is undeniable that environmental factors and habitat are the bottleneck in many fisheries that prevent the fishing community from achieving rebuilding objectives. RFA hopes that the results of cooperative research conducted under section (c)(2) provides the information necessary to move in this direction.

RFA supports section (c)(3) to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey. RFA has testified a minimum of 5 times before this Subcommittee and addressed the need for better recreational catch, harvest, effort, and participation estimates produced through the programs included in this section. However, RFA points out that currently NOAA is in the process of decommissioning the MRFSS program and is moving forward with a new program called the Marine Recreational Information Program (MRIP) which is described as having some improvement over MRFSS. RFA questions the placement of additional funds into a data collection system that is activity being dismantled and would suggest that a better use of this money would be directed towards the speedy implementation of the new program which is already years behind schedule. RFA suggests funding MRIP would serve the recreational sector better, and we ask that the Senate version of this act be modified to incorporate this particular language.

RFA supports section (c)(10) to develop, test, and deploy innovations and improvements in coast and ocean observation technologies. RFA believes efforts described under this section could have dramatic benefits particularly for the offshore component of the recreational fishery. Monitoring buoys in the offshore canyons would improve fishermen's ability to predict fishing conditions in the areas that are 50 to 120 miles offshore and outside of traditional monitoring programs. RFA further believes this section would promote a greater level of safety at sea through the use of real time monitoring.

RFA supports section (c)(13) to reduce and prevent the occurrence and adverse impacts of marine debris. RFA suggests funds be directed specifically to state marine enforcement

programs to aid in achieving the objectives of this section. Without a financial incentive for marine law enforcement to reduce and prevent marine debris, they will pursue fishery violations since there is the potential to generate revenue from this action. Marine law enforcement agencies already have the infrastructure and resources to deal with marine debris and has the most potential in meeting the objectives of this section if give incentive.

RFA is uncomfortable with the language of section (c)(7) because, as written, it would prompt the redevelopment of under-utilized working waterfronts and may cause a shift away from traditional uses that service the fishing industries. It should be noted as an example that a marina or a tackle shop may have a lower ratable than a condominium complex sited on the same location. But on the broader note, a marina or tackle provides services to a far greater number of individuals resulting in a greater social value than that can be achieved through non-fishing uses. This socioeconomic information may not be captured in a property assessment or evaluation that considers the best use of the land for redevelopment. Recreational infrastructure is extremely fragile and is disappearing at a rapid rate. Experience has proven that any reduction in recreational infrastructure tends to be permanent which results in an overall lose of access for recreational fishermen and the general public. RFA suggest that this section needs to be rewritten to ensure that fishing infrastructure is preserved during redevelopment of working water fronts.

In section 4 (4), RFA suggest that “subject to the availability of appropriations” be stricken. RFA believes assistance to states should be a top priority. States are currently having a difficult time in light of their inadequate funding to comply with the mandates of MSA section 401 as reauthorized in 2007 to create saltwater angler registries. Federal assistance to implement this federal mandate should be mandatory and provided only if funds are available. Improvements to recreational data collection programs has been identified as being critical to the improved overall health and vitality of the recreational fishing industry and coastal communities, and monies should specifically be dedicated to remedying the problem. Investments to states working to meet these requirements would be a great benefit to anglers and would produce significant socioeconomic impacts in the recreational fishing industry.

RFA is suspect of Section 5 which allows upwards of 5 percent administrative expenses per year which would amount to 2 million over the course of the 5 year appropriation. This amount seems excessive and would be much better served addressing very real problems in fisheries management that are attributed to funding shortfalls.

**United States House of Representatives  
Committee on Natural Resources  
Subcommittee on Insular Affairs, Oceans and Wildlife**

**Written Testimony of Matt Tinning  
Vice President of External Affairs  
Ocean Conservancy**

**July 27, 2010**

Chairwoman Bordallo, Ranking Member Brown, and Members of the Subcommittee, thank you for the invitation to participate in today's hearing on H.R. 4914, the Coastal Jobs Creation Act. My name is Matt Tinning, and I am Vice President of External Affairs at Ocean Conservancy, a national marine conservation organization that has promoted healthy and diverse ocean ecosystems since its founding in 1972. Of most relevance to the legislation before us today, Ocean Conservancy has a proud history of working with fishing communities, retailers, policymakers and the public to advance sustainable fisheries. We are supported by more than 500,000 members and volunteers, and our headquarters is in Washington, DC.

A healthy ocean is critically important to every one of us. The ocean regulates our climate, and provides us with food to eat, water to drink, and oxygen to breathe. Regardless of where we live, we all have a profound stake in ocean ecosystems that are resilient, diverse and teeming with life. It is coastal communities, however, that often suffer the most immediate consequences of a marine environment under stress. For regions where fishing is an economic staple and a way of life, the wellbeing of the marine ecosystem and the community are closely linked. Decades of overfishing has come at a severe cost not only to ocean health, but also to those who have historically relied on abundant fisheries for their livelihoods.

The Coastal Jobs Creation Act seeks to provide economic support to fishermen and fishing communities while measures to end overfishing and rebuild depleted fish populations are implemented. The bill has the potential to advance a number of important policy objectives simultaneously, including provision of economic assistance to coastal communities in need; funding projects that will revitalize waterfronts and improve the ocean environment; and helping ensure that critical legislative mandates established by the Magnuson-Stevens Fishery Conservation and Management Act are met. Ocean Conservancy therefore strongly support this bill.

### **Sustainable Fisheries**

The context for the Coastal Jobs Creation Act is our national challenge of transitioning to sustainable fisheries through science-based management. For many decades, our nation's fisheries have suffered from the effects of overfishing. At the end of 2006, Congress enacted important changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), our nation's federal fisheries law. These changes came just over a decade after Congress passed

the Sustainable Fisheries Act, which also aimed to end overfishing – but which failed to fully deliver on that promise. The changes signed into law in 2007 significantly strengthened key provisions of the Act. At the core of the reauthorization was a mandate for science-based fishery management to end overfishing of America’s fisheries once and for all.

In fisheries where science-based management has been implemented we are already seeing evidence of success. In the Gulf of Mexico, for example, the iconic red snapper has long been a poster child for poor management. Unsustainable fishing practices drove the species’ population to a small fraction of its historic spawning abundance. In 2008, a plan was finally implemented to manage red snapper in accordance with science-based catch limits. Shared responsibility for reducing catch was the key to making the new red snapper plan work. Allowable catch was reduced by roughly 40 percent in the short term, a decision that enabled the red snapper population to begin to recover. An updated population assessment led the Gulf of Mexico Fishery Management Council to approve an increase in the red snapper total allowable catch earlier this year. It was a move that Ocean Conservancy supported, and one that illustrated how a short-term reduction in catch limits can put a severely depleted fishery on the path to recovery, leading to increased fishing and economic opportunities.

The BP *Deepwater Horizon* disaster has since added a tragic new dimension to this emerging success story in the Gulf of Mexico. The trajectory of red snapper before the disaster, however, is illustrative of the significant long-term benefits to coastal communities that science-based management can bring. According to the National Oceanic and Atmospheric Administration (NOAA), rebuilding fish populations would at least triple the economic value of many US fisheries, increasing sales by approximately \$31 billion and supporting an estimated 500,000 new US jobs. It is an investment in our future that Congress has mandated, and one that we must see through to completion.

### **Assistance for Coastal Communities**

In the interim, however, assistance may be needed for many coastal communities. The economic downturn has reduced job opportunities, and in the Gulf of Mexico the economic fallout from the BP *Deepwater Horizon* disaster is severe. In some instances measures to end overfishing pursuant to the MSA will mean short-term reductions in the amount of fish that can be caught during a fishing season. As we transition coastal communities to stronger economic health by ending overfishing and rebuilding our fisheries, we should look for opportunities to assist fishermen through any short term economic challenges that may exist.

H.R. 4914 seeks to provide that assistance in a thoughtful and targeted way. It establishes a Coastal Jobs Creation Grant Program; and defines funding criteria that prioritize job creation, conservation gain, and programmatic effectiveness. The five priority areas for which the legislation seeks to increase support are all of vital importance, and are considered in turn below.

### *1. Cooperative Research and Monitoring*

Cooperative research and monitoring programs engage fishermen to collect fisheries information. In addition to providing data that informs fishery management decisions, cooperative research builds partnerships between fishermen and government scientists, increasing stakeholder confidence in the data and creating a more transparent process. Successful cooperative research programs have been conducted by the National Marine Fisheries Service since 1999. They have included work to improve the quality of fish population assessments, assess non-target catch mortality, develop environmentally-friendly fishing gear, and study the impacts of marine protected areas.

### *2. The Revitalization of Coastal Infrastructure*

For many coastal communities, efforts to sustain their economy and culture are dependent on effective and functioning waterfront infrastructure. Whether it be boat ramps, docking facilities, ports or concessions, funds for the revitalization of coastal infrastructure can have benefits far beyond the immediate infusion of funds and direct creation of jobs. Successful working waterfront partnerships in a number of states could be among the beneficiaries of grants under the Act.

### *3. Recreational Fishing Registry Programs*

The current method for collecting data on recreational fishing often does not provide the timely information that managers need to best prevent exceeding science based fishing limits, which in turn may lead to more restrictive fishing opportunities in the future and compromise the ability to achieve management goals. The grant money and funding criteria outlined in the bill could improve the quality and accuracy of information generated by the marine recreational fishing surveys, integrate the local ecological knowledge of fishermen into the scientific process, and support establishment and implementation of critical State recreational fishing registry programs.

### *4. Marine Debris Removal*

Marine debris is one of the most pervasive pollution problems of our time. Among the challenges that NOAA's Marine Debris Program has sought to counter since its inception is the threat that derelict fishing gear poses to marine wildlife, habitat and navigational safety. Several programs have been highly successful in employing fishermen to remove derelict fishing nets, crab pots and lobster traps from the marine environment, and these could be expanded through additional grant funding.

## *5. Restoration of Coastal Resources*

Our coastal resources are under increasing strain, and their protection and restoration must be a national priority. Restoration of our coasts is essential in maintaining the productivity of the marine environment, whether it be the decades-long restoration challenge we face in the wake of the BP *Deepwater Horizon* disaster, or a smaller-scale project funded under this Act. Among the activities eligible for grants are restoration projects identified for their conservation, recreational, ecological, historical, or aesthetic values.

### **Conclusion**

The Coastal Jobs Creation Act not only provides economic assistance to coastal communities in need; it does so by funding activities that advance other important priorities. As we finally move to end overfishing and rebuild fish populations, the Coastal Jobs Creation Act can help bridge immediate economic challenges and pave the way for coastal communities to share in the economic benefits of more abundant fisheries.

Ocean Conservancy strongly supports the Coastal Jobs Creation Act, and we commend Congressman Pallone, as well as Congresswoman Pingree, Congresswoman Shea-Porter, and the bill's other cosponsors for their leadership on this issue. We urge all members of the subcommittee to work for its enactment.