

**WRITTEN STATEMENT OF
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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**

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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.