Testimony of

JOHN H. DUNNIGAN

Executive Director

Atlantic States Marine Fisheries Commission

before the

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Subcommittee on Fisheries Conservation, Wildlife and Oceans

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Good Morning. I am John H. Dunnigan, Executive Director of the Atlantic States Marine Fisheries Commission. Today, however, I come before you in a slightly different capacity. From 1997 to 1999, the Commission was contracted by the National Oceanic and Atmospheric Administration to complete a number of specific tasks required in connection with the implementation of the Sustainable Fisheries Act. One of these tasks was to provide staff support to the Federal Fisheries Investment Task Force that the Secretary of Commerce was required to establish under Section 116 (b) of that Act (codified as a note to Section 312 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1861). Under this contract it was my privilege to serve as the facilitator for the Task Force as it carried out its business in 1998. And so I come to you to today to represent the Task Force and the work that it did in response to Congress's concern for this very important, complex and difficult issue. For the most part, the Task Force's report speaks for itself, and I whole-heartedly commend it to you. In preparing for this hearing I have taken the opportunity to go back over the report, and I believe that its perspectives are largely as valid today as when the report was issued two years ago.

Let me say at the outset that the Federal Fisheries Investment Task Force did not set out to assign blame, to find a "smoking gun," or to sound any alarms. It found that there are a lot of things that government does that affect investment in marine fisheries. These may be either good or bad, depending on one's perspective. But it is clear that the fishing investment implications of these decisions are not often well-understood or even considered ahead of time. In the end, I believe that all of the task force members would agree that we need a more complete and consistent consideration of the impacts of virtually all government policy on investment in fisheries.

STATUTORY PROVISIONS OF THE SUSTAINABLE FISHERIES ACT; FORMATION OF THE TASK FORCE

In 1996 the Congress enacted the Sustainable Fisheries Act (P.L. 104-297), which contained the most sweeping revision of federal fisheries law since 1976. During the debates leading to passage of the Act, a common catchphrase referred to "too many fishermen chasing too few fish." Complicating the "too many fishermen" issue is the oft-made allegation that government programs have over the years contributed to overcapacity in marine fisheries. Thus, the Act, in addition to all of its many conservation and procedural provisions, included a provision for a Task Force to study the role of the federal government in investment decisions in fisheries managed under the Magnuson-Stevens Fishery Conservation and Management Act.

STUDY OF FEDERAL INVESTMENT. - The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Resources of the House of Representatives within two years of the date of enactment of this Act on the role of the federal government in

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets under the Magnuson Fishery Conservation and Management Act (16 U.S.C 1801 et. seq.); and

(2) otherwise influencing the aggregate capital investments in fisheries.

(Sustainable Fisheries Act, Section 116(b))

The language of the Act gave little guidance regarding the size or make-up of the task force, how the Congress expected it should operate, or what its final report should address. Officials at the National Marine Fisheries Service believed that the task force's work should proceed independent from the efforts of the agency in this area, in order to keep any agency biases from coloring the analysis and conclusions. They wanted the report truly to be the task force's work product. NMFS also believed that the task force should broadly represent the various marine fisheries constituencies across the entire country. After a national solicitation of interest, NMFS created a task force that consisted of twenty-two extremely knowledgeable and experienced individuals. Task force members came from every region of the country, including the Western Pacific. It included individuals from commercial fisheries, recreational fisheries, Regional Fishery Management Councils, and the academic community. It included fishermen, economists, lawyers and an accountant. Throughout the deliberations, all of the task force members stayed engaged and contributed significantly to the final product. The members of the task force are listed in Appendix I to my testimony.

The task force decided to operate proactively, with task force members contributing significantly to its work. Rather than organize itself with a chair, the task force decided to rely on the staff for support, and asked me to facilitate the meetings. The task force operated primarily through a series of six meetings, held throughout the country between January and October, 1998. Public hearings were conducted in connection with four of the meetings.

CONCEPTUAL ISSUES: CAPACITY, CAPITALIZATION AND SUBSIDY

The task force noted from the outset that many of the basic concepts that are involved in any inquiry into the role of government in affecting fishing capacity and capital investments are still not well-understood; and at the same time are conceded to be very difficult to measure. "Capacity" can be looked at in two ways: 1. the potential level of landings that a given vessel or fleet is capable of producing; or 2. the potential level of landings that is consistent with some economic or social goal or objective. "Capacity utilization" relates the landings in a fishery to either the maximum potential output or an optimum output based on societal goals. "Capitalization" refers to the investments that have been made in capital stock over time. Each of these concepts is relevant to the concern for investment in marine fisheries, but each is different from the others and carries its own implications for policy. The problem is that the public discussion tends not to distinguish these concepts, and this muddies the debate. We often hear about "overcapitalization," when the problem being discussed relates more to problems of capacity or capacity utilization. The problems presented by this type of analysis are particularly vexing with regard to recreational fisheries, which are very hard to study from a capacity standpoint, but which obviously have important impacts on conservation.

The task force found a similar problem when addressing subsidies. It is not always clear or commonly accepted what constitutes a subsidy. The task force believed that since it had a very broad charge from Congress, it should take a broad look at the question of subsidies. It therefore defined a subsidy, for the task force's purposes, as any government action (or inaction) that potentially modifies (by increasing or decreasing) the potential profits earned in the short-, medium-, or long-term. The task force developed a comprehensive categorization of subsidy types, recognizing that many of these do not exist in the United States. This is included as Appendix II to this testimony. The task force took the view that not all subsidies should be viewed *per se* as bad. Whether a particular subsidy is good or bad is a societal, political judgement. However, in evaluating each subsidy separately, all of the costs, benefits and impacts of the subsidy must be clearly understood.

In general, members of the task force believed that measuring and evaluating the circumstances that affect investment in marine fisheries are very complex, little understood, and even more difficult to quantify. Public debate of these issues requires a more complete grasp of the fundamental concepts that are at play here; and also requires a much better way of measuring the various factors that influence the analysis.

ROLES OF GOVERNMENT INFLUENCING INVESTMENT

The task force looked into a number of government programs that influence investment in marine fisheries. Underlying its broad approach to these was its analysis of the role of government in influencing fisheries habitat. When government makes decisions that allow for the degradation of fisheries habitat, the capacity in the affected fisheries becomes unusable. Pacific Northwest salmon, the Florida Everglades, and Louisiana's coastal wetlands were cases that were studies for their effects on investment in fisheries.

Perhaps the most animated discussions the task force had related to the Capital Construction Fund. Under CCF, fishermen can defer taxes on profits from fishing if they are saved for a specific purpose - to purchase or reconstruct a fishing vessel. The program has a dual purpose - to support the U.S. shipbuilding industry, and to provide for the accumulation of capital that would allow U.S. fishing fleets to become and continue to be modern and competitive. There is a clear perception in the fishing industry that existing CCF account balances are a major problem today, creating too much pressure to make new capital investments in fisheries at a time when they are perceived not to be necessary. The task force came to a number of conclusions and recommendation about the CCF program, although they were not supported by all task force members. These are included as Appendix III to this testimony.

The task force also extensively considered other tax policies that affected growth in fishing capacity in the 1970s and 1980s, most notably the investment tax credit. Many of these, including the ITC, were repealed by the 1986 tax reform legislation. Thus, while the Task Force members believed that these policies were a major contributor to the inflows of capital to many fisheries, if not the single most important factor in overcapacity, it appears that there is little that anyone could or should do today in response to these programs.

The task force studied the Fisheries Obligation Guarantee program. Under this program, the United States guarantees a loan for a fishing vessel, which improves the credit terms for the fisherman. The program is now known as the Fisheries Financing Program. The conclusions of the task force for this program are included as Appendix IV.

In the past few years there have been a number of governmental efforts to remove capital from the fishing industry through buyback programs. The task force concluded that these programs, while promising, must be carefully designed and implemented. The efficacy of buyback programs needs to be looked at in the context of the current fisheries policies for the affected fisheries. Major problems in all buybacks are latent effort and leakage (i.e., vessels who sell back their permits in a fishery simply have their effort diverted to other fisheries). Policy makers should also be concerned about the effect these programs have even while they are being discussed and developed. What is essential is that buyback programs be designed carefully with clear objectives, and understanding the likely responses of the fishing firms that will be affected. This is true whether the program is funded by government, by industry, or by some combination of the two.

The task force considered the Wallop-Breaux program and its effects on recreational fisheries. Although the program involves no net cost to the federal government, by improving recreational fisheries, their habitat, and access to them, the Wallop-Breaux program intends to make recreational fishing more attractive. Unfortunately even basic concepts of fishing capacity and what it means to recreational fisheries are not very well understood. The Task Force recommended that NMFS and USFWS place greater emphasis on studies of recreational fisheries, including capital, capacity and fishing effort; and encouraged state fish and wildlife agencies to use their Wallop-Breaux funds to study these matters as they are reflected within the states.

The task force also considered a number of other programs but concluded that they were of lesser importance in influencing aggregate capital investment in the fisheries. These included: disaster relief, Small Business Administration, Economic Development Administration, the farm credit system, fisheries development programs (including marketing and promotion), the Saltonstall-Kennedy Act program, USDA food programs, the USDA school lunch program, the Foreign Agriculture Service, the former National Fish and Seafood Promotion Council, and the Sea Grant College Program. The Task Force concluded that federal investment in fisheries development, marketing and promotion programs have had a direct role in the build up of capital and capacity in some U.S. fisheries. This impact, however, is impossible to quantify in any exact way. The task force members believed that the federal government should limit the funding of such programs consistent with the conservation oriented national policy goals. In particular, priorities for S-K grant funding and other federal marketing, research, and development programs should be set to avoid exacerbating the current overcapacity problem now facing the nation's fisheries.

CONCLUSION

As I said at the beginning, Mr. Chairman, the task force did not set out to resolve questions relating to the government's involvement in influencing capital investment in marine fisheries; but rather to clarify and explicate these issues. Resolution of many of these issues is properly within the policy discretion of the Congress and the Administration. These will be difficult issues to consider and make decisions upon. The task force was mostly concerned that the fisheries investment issues get proper and well-informed consideration.

One issue deserves special attention. Throughout its proceedings and running as a theme throughout its report, the task force constantly came up against data limitations. The available data are simply not adequate to permit proper empirical analysis of the various government programs that affect capacity in the fishing industry. The task force recommended that, whenever legislation is passed to establish or fund programs affecting the fishing industry, part of the mandate and budget authorization should place proper emphasis on the generation of adequate data to permit the quantitative evaluation of the capacity and subsidy effects of the program.

It was a personal pleasure for me to work with the members of the Federal Fisheries Investment Task Force. They were knowledgeable and diligent, and made great personal sacrifice to contribute to the work that Congress asked be done. The task force's relationships with the National Marine Fisheries Service were on the whole excellent. The important thing about the task force's report is not so much the questions it answers, but the issues it explores. It contains much food for thought, and lays out a blueprint for analyzing the public policy implications of the federal government's role in investment in the marine fisheries. It is a complex issue, and I know I speak for all of the members of the task force in thanking the Congress for creating this study; and in urging you consider this report thoughtfully.

Mr. Chairman, thank you for the opportunity to be here today. I would be pleased to try to answer any questions.

APPENDIX I.

Members of the Federal Fisheries Investment Task Force

Gordon Blue, Sitka, Alaska

Theo Brainerd, Silver Spring, Maryland

Priscilla Brooks, Boston, Massachusetts

Ralph Brown, Brookings, Oregon

Scott Burns, Washington D.C.

Ed Ebisui, Wahiawa, Hawaii

Tom Hill, Gloucester, Massachusetts

Robert Jones, Tallahassee, Florida

Walter Keithley, Baton Rouge, Louisiana

Jim Kendall, New Bedford, Massachusetts

James Kirkley, Gloucester Point, Virginia
Peter Leipzig, Eureka, California

Vishwanie Maharaj, Charleston, South Carolina

Bryce Morgan, Seattle, Washington

Robert Palmer, Tallahassee, Florida

R. Bruce Rettig, Corvallis, Oregon

Ricks Savage, Berlin, Maryland

William E. Schrank, St. John's, Newfoundland

Barbara Stevenson, Portland, Maine

Borden Wallace, Empire, Louisiana

Michael L. Weber, Redondo Beach, California

Donald C. Woodworth, Washington D.C.

APPENDIX II.

CATEGORIZATION OF SUBSIDY TYPES

The Task Force attempted to establish an exhaustive categorization of subsidy types in order to help structure its analysis, recognizing that many of these do not exist in the United States.

A. Direct government payments related to fisheries

1. Direct expenditures of the government to the fishing industry which lower costs and therefore potentially increase the industry's profits are subsidies.

2. Direct payments can take many forms and serve many purposes, such as the health care assistance provided to fishing families in New England, or vessel buybacks.

3. Gear conflict compensation programs that pay fishermen for gear losses due to foreign or U.S. fishing operations, or the oil industry, as subsidies.

4. A compensatory subsidy arises when the United States pays foreign governments to permit U.S. vessels to fish in their waters.

5. The payment by the United States of fines and penalties incurred by U.S. fishermen to foreign governments would be a subsidy.

6. Infrastructure expenditure directly relating to fisheries, such as fishing port facilities, fish unloading facilities, or fishing vessel haulout or maintenance facilities, are subsidies.

7. Unemployment insurance paid to fishermen would constitute a subsidy.

8. Direct government infusions of equity capital into fisheries companies would be a subsidy.

- Government fishery loans, loan guarantees and insurance

1. Mortgage insurance for the building or refitting of fishing vessels would be a subsidy.

2. Loans made to the fishing industry to finance the replacement and operation of fishing vessels, either directly by the government or indirectly under government guarantee, at less than market rates of interest, or on terms, such as amortization periods, that are more advantageous to the firm than those otherwise available, are subsidies.

3. Loans to allow crew members of small fishing vessels to purchase individual fishing quota shares are subsidies.

- **Implicit payments to, or charges against, the fisheries industry**

1. Government supported marketing efforts, where the cost is not charged back to the industry, are subsidies.

2. Programs to enhance fish stocks through hatcheries or improvements in fish habitat are subsidies.

3. Government expenditures in support of a fishery, other than direct payments to the fishery, or loans or loan guarantees, which could be, or in other jurisdictions are, recovered from the fishing

industry are subsidies.

4. Costs imposed by government regulations or legislation are profit-reducing, and therefore are negative subsidies.

5. Government technology transfer programs are positive subsidies in that they reduce the cost of introducing new gear.

6. Loan guarantees to U.S. firms making investments in high-risk countries, such as those provided by the Overseas Private Investment Corporation, are subsidies to the extent that the participation and sponsorship of the U.S. government is essential to the success of the program.

- **Price support programs affecting fisheries**

1. Price support programs that affect fisheries through explicit government mandates that raise prices to consumers, for instance, through officially sanctioned marketing boards or through structures that support minimum prices, are subsidies.

2. Tariffs are a traditional method of profit enhancement that raise the domestic price of competing foreign products, therefore allowing domestic producers to charge higher prices; and are subsidies.

3. Embargoes work as tariffs do to keep the prices that domestic producers can charge high.

- **General programs that affect fisheries**

1. Dredging and construction projects of the U.S. Army Corps of Engineers may affect the profits of the fishing industry, and therefore are subsidies to the fishery.

2. Edits

3. Infrastructure expenditures that are not targeted to fisheries but which provide an advantage to the fishery, e.g., port facilities, are subsidies.

4. Payments for disaster relief to compensate fishermen are subsidies.

5. Aid from the Small Business Administration, the Economic Development Administration, the Farm Credit Administration and similar programs provide subsidies.

6. When the government subsidizes activities in non-fishing industries, the effects may negatively (or occasionally positively) affect the profitability of fishing firms; and thereby comprise a negative (or positive) subsidy to the fishery.

7. When the government collects a tax and distributes the proceeds for a public purpose (e.g., the Wallop-Breaux program), to the extent that the distributions increase profits in firms there is a subsidy, even if there is no net cost to the government.

- **Tax policies**

1. Fuel Tax rebates to the fishing industry, to the extent that fuel tax revenues accrue to general government revenues, would be subsidies.

2. Programs such as the Capital Construction Fund, which permit fishing vessel owners to defer income taxes, are subsidies, as are allowances for accelerated depreciation.

3. General investment tax credits affect profits and fisheries capitalization even though they are not targeted specifically to fisheries.

The Task Force believes, however, that this all-encompassing list should not imply that any of these types of programs do not serve a valid important public interest. Rather, it is important in evaluating these programs to understand the role that the subsidy plays and make decision regarding the utility of the programs accordingly.

APPENDIX III.

TASK FORCE VIEWS CONCERNING THE CAPITAL CONSTRUCTION FUND

The predominant view of task force members (14 of 22 members) favored the following concerning the Capital Construction Fund Program:

1. The Task Force concludes that CCF has contributed to capital investment in US fisheries. It is however, impossible to measure the impact of CCF with any precision because of a lack of adequate data. The task force recommends that any revised CCF legislation require a data gathering operation to permit the proper evaluation of the revised CCF program.

2. The Jones Act, by requiring the building and refurbishing of US fishing vessels in the US, imposes a negative subsidy on fisheries. In the interest of fairness to US fishermen, positive subsidies to offset the negative subsidies are necessary. The CCF program should be modified to provide this offset, or a new program can be implemented to accomplish the purpose. Alternatively, the appropriate part of the Jones Act can be modified.

3. The SFA establishes the framework of current fisheries policy with an emphasis on conservation, and a mandate to limit fish catching capacity to levels consistent with the sustainability of fish stocks. CCF should therefore no longer be permitted to finance the building, rebuilding or refitting of fishery vessels other then the offset described in # 2 above.

4. Fishing vessel owners have been placing money in CCF funds to finance the building, rebuilding and refitting of fishing vessels. Since under # 3 above, such activities should no longer be possible with CCF funds, fairness requires that holders of CCF accounts be permitted to withdraw any portion of their CCF funds under favorable tax treatment, such as the funds being taxed at their CCF holder's current marginal tax rate. The withdrawal of funds under these favorable conditions should be a one-time option, with Congress setting both a deadline date for making the election and a cut-off date defining those funds which can be withdrawn under these favorable conditions.

5. In addition to the offset of # 2, CCF funds may be used for such purposes as fishing vessel safety upgrades, training, research, buyouts, IRA rollover, quota purchases, and other projects that do not

tend to increase fishing capacity.

6. Congress should set a limitation on the maximum amount any firm or individual can accumulate in CCF funds.

7. In order to keep it from being recycled into the fishery, vessel buyback money cannot be put into a CCF account, except:

a. In the case of a qualified, one-time withdrawal in #4; or

b. When the funds are rolled into an IRA as provided in #5.

APPENDIX IV.

CONCLUSIONS CONCERNING FISHERIES OBLIGATION GUARANTEE / FISHERIES FINANCING PROGRAM

The Task Force came to a number of conclusions and recommendation concerning the FOG program:

1. As a general rule, lack of private financing was not a limiting factor in expanding and modernizing fishing fleets. Rather, FOG provided a more favorable financial basis for qualified fishermen to do so.

2. Together with investment tax laws and such policies as Americanization of fisheries within the U.S. exclusive economic zone, FOG has increased investment and fleet capacity.

3. FOG's impact has changed over time.

4. FOG's impact has largely been concentrated in a few regions and fisheries.

5. The main benefit of the program to a borrower is the longer amortization period that risk-averse private lenders will not assume.

6. The scope of the FOG/Fisheries Financing Program should change to reflect the new direction of federal fisheries policy. Congress should end support for the construction and reconstruction of vessels. Instead, the program should focus on activities that directly assist in the transition toward reduced fleets, as through vessel buyback programs, bycatch reduction and improved gear selectivity.

7. Congress and NMFS should establish a process to consider the future role of FOG in financing vessel construction or reconstruction, particularly in underutilized fisheries where overcapacity is not a problem. These future uses should be crafted in a precautionary manner that is consistent with regional conservation and management objectives.