

**Testimony of
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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 a 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.
 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.