

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

Testimony of David Wilmot, Ph.D.

Executive Director, Living Oceans Program

National Audubon Society

Before the House of Representatives

Committee on Resources

**Subcommittee on Fisheries Conservation,
Wildlife and Oceans / Washington, D.C.**

February 8, 2000

Mr. Chairman, my name is David Wilmot and I am the Executive Director of National Audubon Society's Living Oceans Program. National Audubon Society is a national conservation organization with more than 550,000 members. We at National Audubon are deeply concerned about the conservation and management of marine wildlife including highly migratory fishes and we appreciate the opportunity to testify today.

National Audubon Society, as a member of the Ocean Wildlife Campaign (the OWC is a coalition of National Audubon Society, the Center for Marine Conservation, the National Coalition for Marine Conservation, Natural Resources Defense Council, Wildlife Conservation Society, and World Wildlife Fund working to improve conservation and management for large ocean fishes such as tunas, sharks, and billfishes), has advocated for bycatch reduction measures in the pelagic longline fishery for many years. Specifically, we have called on the National Marine Fisheries Service (NMFS) to develop a comprehensive bycatch reduction plan as part of its fishery management plans for Atlantic highly migratory species.

Minimizing bycatch and bycatch mortality is a fundamental element of conserving marine fish and other wildlife and rebuilding depleted populations of marine species. Minimizing bycatch mortality is especially important for swordfish, marlins, sailfish, bluefin tuna, many species of sharks, and other highly migratory species because bycatch mortality has contributed substantially to their depletion. We are pleased to see that large-scale area closures, which are a necessary part of bycatch reduction for pelagic longlining, are being seriously considered by NMFS, Congress, and regional fishery management councils and likely to be implemented in the near future. The challenge is to craft a bycatch reduction strategy that maximizes the

benefits in terms of conservation for all marine wildlife affected.

Closed Areas and Conservation

Time and area closures are viewed as practicable and effective bycatch reduction measures by conservationists, scientists, and fishermen. We view large-scale closed areas as a necessary first step to reduce bycatch and help restore overfished and protected species. The closed areas in the Proposed Rule and H.R. 3331 and 3390 are similar and based upon broad support for the proposals, no one can argue against closed areas on conservation grounds.

The conservation benefits of the closed areas in the Proposed Rule are described in both the rule and the draft regulatory amendment to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (HMS FMP). Unfortunately, a similar analysis for the closed areas in the legislative proposals is not available. Without a thorough analysis of the effects of closing the specific areas proposed in the legislation, it is difficult to assess the conservation potential and adequacy of those closed areas. We do know that H.R. 3331 and 3390 close a smaller area than NMFS' Proposed Rule (approximately 160,000 square nautical miles as compared to 196,000 square nautical miles). We have not seen a biological rationale for the smaller closures.

In general, we concur with the geographic areas selected in both the Proposed Rule and H.R. 3331 and 3390 because they include areas with the highest bycatch rates of juvenile swordfish, sailfish, and marlin. We are studying the Proposed Rule in detail and may recommend adjustments in the borders of the closed areas or recommend that additional closed areas (such as the juvenile swordfish hot-spot area in the northeastern Gulf of Mexico off the Florida Panhandle) be included. As previously mentioned, it is difficult to elaborate on the shortcoming of the proposed closed areas in H.R. 3331 and 3390 without an analysis. ***However, we strongly recommend that the south Atlantic closure be expanded to include the entire Charleston Bump area, which is known to have high bycatch of juvenile swordfish. It is possible that additional areas should be included in H.R. 3331 and 3390.***

The biological benefits that will result from closures are dependent upon the fishing effort and bycatch rates of the fleet fishing in the remaining open areas. The results of NMFS' analysis of the Proposed Rule closures are encouraging, if one assumes that all of the fishing effort currently in the areas that will be closed would not be transferred to the open areas and the many vessels that remain in the fishery will not increase their fishing effort (number of sets or hooks). However, while the extent of redistribution of effort and the effect on bycatch reduction are unknown, to assume no fishing effort will redistribute is unrealistic. NMFS' analysis of its own proposed closures indicates that at least some displacement is likely, and factoring in displacement has a *major* effect on the biological costs and benefits of the closures.

The results of NMFS' analysis assuming random reallocation of fishing effort into open areas raises serious concern because the bycatch of some overfished and protected species increases. Specifically, the bycatch of blue marlin, white marlin, and sea turtles would increase. In addition, the catch of pelagic sharks, which are not yet designated as overfished but may be approaching an overfished condition, would also increase. In light of these potential side effects and the need to gauge the closed areas' effectiveness, the Final Rule and the legislation should mandate increased observer coverage for longline vessels so that we can reliably determine the effects of the closures.

Supporters have touted H.R. 3390 as superior to the Proposed Rule because it would remove effort from the fishery, thus decreasing the likelihood of increasing effort in the open areas. This is far from certain. It

seems reasonable to assume that closures the size and duration of those in both the Proposed Rule and H.R. 3331 and 3390 should reduce overall longline fishing effort. But there is nothing in the Proposed Rule to prevent boats from relocating from closed to open areas, and there is nothing in H.R. 3390 to prevent boats remaining in the fishery from increasing their fishing effort in terms of sets and hooks. In fact, an increase in effort by the remaining fleet is *likely* because these fewer remaining boats will have the same quota available for swordfish, tunas, and sharks.

H.R. 3516 prohibits pelagic longline fishing in the U.S. exclusive economic zone in the Atlantic Ocean. The conservation benefits associated with this closure would be dramatic and speed recovery of overfished and protected species. Ultimately, it may be necessary to further restrict pelagic longline fishing; however, we support as a first step in reducing bycatch and bycatch mortality the establishment of time and area closures on the scale of the Proposed Rule.

Closed Areas and a Buyout

We would prefer that NMFS produce a Final Rule in accordance with the requirements of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and NMFS or Congress follow that effort by developing measures to provide economic relief to the fisherman if found to be necessary, including potentially a buyout. Legislation is not necessary to implement large-scale time and areas closures and achieve the conservation benefits that would derive from them. However, we could support legislation that would establish time and area closures to significantly reduce longline bycatch and include a buyout provided that the changes to H.R. 3331 and 3390 outlined in this statement are incorporated.

We support NMFS in its actions to produce a Final Rule. In fact, in June 1999, National Audubon Society joined by the National Coalition for Marine Conservation and the Natural Resources Defense Council, filed a lawsuit against the Secretary of Commerce charging the government with violating the Magnuson Act. In that case, NMFS agreed to stay the case pending publication of a Proposed Rule to address bycatch reduction of Atlantic highly migratory species no later than December 15, 1999, and a Final Rule by May 1, 2000. We continue to study the Proposed Rule and will provide detailed comments on how the rule can be strengthened by the March 1, 2000 deadline. We have two primary goals. First, we want to ensure that NMFS develops an adequate amendment to the HMS FMP and Atlantic Billfish Fishery Management Plan (Billfish FMP) to minimize bycatch and the mortality associated with such bycatch (National Standard 9). Second, we want NMFS to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery as required by law.

Effort and Quota Reduction in the Proposed Legislation

There is no *guarantee* of significant bycatch reduction in H.R. 3331 or 3390 due to the possibility of displacement of fishing effort. For example, there are no hard targets for bycatch reduction or guaranteed reductions in effort in H.R. 3390. H.R. 3331 does provide that landings from any mid-Atlantic vessels that voluntarily opt to be bought out in the future will be subtracted from the U.S quota (and an effort cap in the mid-Atlantic). We strongly support this provision because it would help guarantee that effort is not displaced. This will improve the likelihood that bycatch will be significantly reduced for all overfished highly migratory species and protected species and will speed the rebuilding of overfished HMS species of fish. However, the provision should be expanded beyond the mid-Atlantic region: landings from *any* vessel that opts to be bought out under the legislation should be subtracted from the pelagic longline quota.

Current law (Section 312(b) of the Magnuson Act) dictates that any fishing capacity reduction program

"prevent replacement of fishing capacity removed by the program...." Current arguments by the supporters of a buyout that the removal of 70 vessels will necessarily reduce effort are misleading. There is a poor correlation between the number of fishing vessels and actual fishing effort. For example, in 1998 the Hawaii longline fleet consisted of 138 active vessels and fished 16 million hooks, as compared with the Atlantic longline fleet of 264 vessels that fished 10 million hooks in 1996.

Providing for a quota reduction for pelagic longliners equivalent to the landings from retired vessels is simply formalizing the elimination of effort by ensuring that the remaining pelagic longline vessels do not simply fish harder to fill the quota, with a resulting increase in bycatch. This action would not result in an effort reduction for the remaining longline fleet.

There may be an additional option in the New England region. A reallocation of swordfish quota from pelagic longliners to fishermen who use selective gears such as harpoon or rod and reel could provide the opportunity for commercial fishermen to catch the U.S. quota while minimizing the risk of increasing bycatch in the region. As the swordfish population rebuilds, larger fish will become more plentiful in the region and could again provide significant fishing opportunities for harpoon and rod and reel fishermen.

Whether the U.S. quota is reduced or the quota is reallocated from pelagic longliners to harpoon fishermen, foreign fishermen will not benefit at the expense of U.S. fishermen because international quotas for north Atlantic swordfish have already been set by ICCAT for the next three years.

We recommend that landings by vessels in the closed areas (with or without a buyout) be subtracted from the U.S. quota. As an alternative, the quota could be subtracted from a pelagic longline quota and reallocated to selective gears that does not have bycatch such as harpoons or rod and reel. We support changes to the Atlantic Tunas Convention Act (ATCA) and the Magnuson Act to accomplish this.

The Subcommittee requested alternatives to a buyout program that would reduce the capacity of the U.S. longline fleet while addressing the socioeconomic consequences of the closed areas. As I pointed out above, H.R. 3331 and 3390 are *not* designed to reduce the capacity of the longline fleet. However, if our suggested changes are incorporated, the legislation would have that effect. We do not believe that NMFS is required to provide economic relief for its conservation and management measures. If Congress deems it necessary to provide relief to longline vessels that can demonstrate significant adverse economic impacts as a result of the regulations, the conservation of overfished and protected species, which all agree is essential, should take precedence.

In addition to selecting the proper time and area closures and preventing reallocation of fishing effort, below we discuss several additional provisions in H.R. 3310 and 3390 that we would like to see amended.

The Four-Year (or Longer) Prohibition on Interim Regulations (H.R. 3310, Section 13; H.R. 3390, Section 12)

Critical to the success of any bycatch reduction plan based on time and area closures will be monitoring, evaluation, and adjustment. It is essential that any plan be designed from the onset to provide NMFS the ability to manage in a flexible and adaptive manner. We strongly oppose Section 13, H.R. 3331 and Section 12, H.R. 3390 because they prohibit NMFS from proposing or adopting "any rules or regulations that have the effect of establishing any time-area closures for pelagic longline fishing in the Atlantic by US fishing vessels that are in addition to, or otherwise expand, those time-area closures established under this act" for at least 4 years (and possibly longer) except in three very limited situations: 1) if necessary to implement a

future ICCAT recommendation or Act of Congress; 2) to make purely technical and conforming corrections necessary for public safety and enforcement of the legislation; or 3) if the Secretary finds after consultation with the ICCAT Commissioners that there is an emergency with respect to the conservation of Atlantic HMS of fish, the emergency can not be or will not be addressed by ICCAT in a timely manner and a time/area closure is necessary to address the emergency and there is no other practicable means to address the emergency. We oppose this provision because:

- a. This provision would prevent NMFS from closing areas (or taking actions "that have the effect of establishing time-area closures") to protect species such as marine mammals, sea turtles and sea birds, including closures needed to protect such species from the unintended or unanticipated consequences of the closures established by the legislation.
- b. The language "that have the effect of establishing time-area closures" could hamstring the agency's ability to take other actions besides closures to protect *any* species affected by longlining.
- c. The emergency exception is limited to instances where protections are needed for HMS species of fish only, not emergencies affecting other species of marine life.
- d. Requiring an emergency exception for species, including pelagic sharks, that are approaching an overfished condition or for which overfishing may already be occurring is too high a standard. It would preclude NMFS from taking needed measures to prevent overfishing of such stocks, measures to rebuild stocks identified as overfished, and measures to reduce bycatch, as currently required by the Magnuson Act.
- e. Deferring to ICCAT to take action to deal with a domestic emergency is an inappropriate relinquishment of authority. Also, requiring the Secretary to find first that ICCAT "will not act" is setting a standard that may be very hard to prove.

We recommend that the language in H.R. 3331 (Section 13) and H.R. 3390 (Section 12) be removed.

The Closure of Any Areas is Dependent on the Completion of the Buyout

The legislation makes the closure of areas dependent on the appropriation of federal dollars to complete the buyout. We perceive two problems with this. First, it is our opinion that current law authorizes, indeed requires that areas be closed whether or not there is a buyout. As such, the current legislative language that conditions the closures on completion of the buyout represents a substantial retreat from current law. Second, requiring that the buyout be *complete* before the closures go into effect could well result in substantial or even permanent delays in implementation of the closures -- even if many, but not all, of the vessels have been bought out.

We recommend that the prohibition on the closures going into effect unless and until the buyout is completed be removed to allow closures to take effect whether or not the buyout takes place.

Vessel Monitoring Systems

H.R. 3331 and 3390 require that the federal government (i.e., the public) pay for the purchase and installation of vessel monitoring systems (VMS) on all vessels. Moreover, it eliminates the requirement for pelagic longline fishing vessels to carry VMS if Congress fails to appropriate adequate funding to provide VMS for the fleet. This represents a rollback in current requirements. The final HMS FMP already contains

a requirement that pelagic longline vessels carry VMS. Moreover, in terms of the closed areas, VMS is absolutely essential for enforcement. Without VMS, there is no way to ensure that vessels are not fishing in the closed areas, in violation of the legislation. Vessels must be required to have VMS and the federal government should not be required to pay for it. It is the cost of doing business in a responsible manner.

We recommend that the provisions requiring the federal government to pay for VMS on all vessels and making the VMS requirement dependent on federal appropriations be eliminated.

Observers and Research Programs

Despite the requirement in Section 303(a) of the Magnuson Act for a standardized bycatch reporting methodology, which we believe in the pelagic longlining fishery context requires observers; NMFS has not yet implemented an adequate observer program. Further, the U.S. is in violation of ICCAT's recommendation and the Biological Opinion concerning sea turtle bycatch in the longline fishery that requires a minimum 5% observer coverage of pelagic longline vessels. An explicit provision must be included in the legislation requiring statistically significant levels of observer coverage. Currently, the bills do not require any observer coverage. Self-reporting by any fishing fleet, including the pelagic longline fleet, is insufficient. Increasing onboard observers for longline vessels is essential to reliably determine the effects of the closures.

In addition, the research program in Section 11, H.R. 3331 and 3390 should be expanded to include all HMS species and geographic areas, including all regions of the Atlantic, Gulf of Mexico and Caribbean, to accurately determine the effectiveness of the closed areas in reducing bycatch and promoting rebuilding of overfished species. The bills currently mandate a research program focusing only on billfish bycatch in certain areas. Expansion of the research program, both in terms of species and geographic area, would provide valuable data critical to evaluate the effectiveness of the closed areas. The current language identifies only commercial and recreational communities for participation in the research program design team. The conservation community must be included as a legitimate stakeholder in all phases of the program's development and implementation, including the design team.

We recommend that increased onboard observer coverage be mandated. In addition, the research program should be expanded to include all HMS species and geographic areas and the conservation community should be included in all phases of the research program's development and implementation.

Retiring Vessels

The legislation does not require the scrapping of vessels. The legislation should require the scrapping of the bought-out vessels (as was done in New England and has been done elsewhere in the world) rather than relying on a hard-to-enforce prohibition on the use of these vessels for commercial fishing. Scrapping will ensure that the vessels do not contribute to the overcapitalization problem facing fleets in the United States and around the globe.

We recommend that all vessels that opt for the buyout be scrapped.

National Standard 8

There is a suggestion in the purpose section, paragraph (2), that the buyout is necessary to satisfy National Standard 8, a contention that is plainly at odds with the language of National Standard 8 itself (see 16 U.S.C.

§1851(a)(8)).

We recommend that this subsection of the purpose section be deleted.

Conclusion

In closing, we believe that minimizing bycatch and bycatch mortality is fundamental to rebuilding populations of overfished and protected species. Large-scale time and area closures are a necessary part of any bycatch reduction plan for the pelagic longline fleet, and we strongly support closures on the scale in the Proposed Rule. But closures alone may be insufficient to guarantee significant bycatch reduction because of the threat of displacement of fishing effort. Therefore, we also support subtracting landings by vessels in the closed areas (with or without a buyout) from the pelagic longline quota and changes to the ATCA and Magnuson Act to accomplish this.

We support NMFS' efforts to publish a Final Rule in accordance with the requirements of the Magnuson Act, and we do not believe that NMFS is required to provide economic relief for its conservation and management measures. However, we could support legislation that would establish time and area closures to reduce longline bycatch and include a buyout provided that the changes outlined above are incorporated into H.R. 3331 and 3390.

H.R. 3331 and 3390 require a huge investment by the public to help conserve a valuable public resource. We believe strongly that the public interest will be served only if conservation takes precedence and the legislation is revised to provide additional bycatch reduction guarantees and protections for overfished and protected species. Mr. Chairman, we appreciate the opportunity to share our thoughts on these challenging and important issues with the subcommittee and look forward to working with you in the future.

#####