H.R. 3331, THE ATLANTIC HIGHLY MIGRATORY SPECIES CONSERVATION ACT; H.R. 3390, THE ATLANTIC HIGHLY MIGRATORY SPECIES CONSERVATION ACT; H.R. 3516, TO PROHIBIT PELAGIC LONGLINE FISHING IN THE EXCLUSIVE ECONOMIC ZONE IN THE ATLANTIC OCEAN

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held February 8, 2000	1
Statements of Members:	
Faleomavaega, Hon. Eni F.H., a Delegate in Congress from American Samoa	4
Goss, Hon. Porter J., a Representative in Congress from the State of Florida	6
Prepared statement of	7
Pallone, Frank, Jr., a Representative in Congress from the State of New Jersey	4
Saxton, Hon. Jim, a Representative in Congress from the State of New Jersey	1
Prepared statement of	3
Statements of witnesses:	
Caputi, Mr. Gary, Co-Chairman, Highly Migratory Species Committee, Jersey Coast Anglers Association	90
Prepared statement of	92
Dalton, Penelope, Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, accompanied by Dr. Rebecca Lent, Chief, Highly Migratory Species Management Division, National Marine Fisheries Service	9
Prepared statement of	12
Delaney, Mr. Glenn Roger, Blue Water Fishermen's Association and U.S. Commissioner to ICCAT	26
Prepared statement of	29
Hayes, Mr. Robert G., General Counsel, Coastal Conservation Association, American Sportfishing Association, The Billfish Foundation	54
Prepared statement of	55
Nussman, Mr. Michael, Vice President, American Sportfishing Association	46
Prepared statement of	48
Panacek, Mr. Ernest, Manager, Viking Village Dock, Barnegat Light, New Jersey	59
Prepared statement of	62
Stone, Mr. Richard B., Science Advisor, Recreational Fishing Alliance	79
Prepared statement of	81
Wilmot, Dr. David, Executive Director, Living Oceans Program, National Audubon Society	96
Prepared statement of	99
Additional material submitted:	
Hinman, Ken, National Coalition for Marine Conservation, prepared statement of	85

H.R. 3331, THE ATLANTIC HIGHLY MIGRATORY SPECIES CONSERVATION ACT; H.R. 3390, THE ATLANTIC HIGHLY MIGRATORY SPECIES CONSERVATION ACT; H.R. 3516, TO PROHIBIT PELAGIC LONGLINE FISHING IN THE EXCLUSIVE ECONOMIC ZONE IN THE ATLANTIC OCEAN

TUESDAY, FEBRUARY 8, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS,
Washington, DC.

The Subcommittee met, pursuant to call, at 11 a.m., in Room 1324, Longworth House Office Building, Hon. Jim Saxton [Chairman of the Committee] presiding.

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. The Subcommittee on Fisheries Conservation, Wildlife and Oceans will come to order. Today, the Subcommittee is conducting its first in a series of hearings concerning pelagic longline fishing in the Atlantic Ocean and the Gulf of Mexico. The focus of this hearing will be on H.R. 3331, H.R. 3390, a proposal by Congressman Porter Goss who is with us this morning, also co-sponsored by Mr. Tauzin, and H.R. 3516, a measure by Congressman Mark Sanford to prohibit pelagic longline fishing in our Atlantic Exclusive Economic Zone.

In addition, we will examine the National Marine Fisheries Service's recommendation that time and area closures be established to address pelagic longline bycatch without compensation to pelagic longline fishermen. The National Marine Fisheries Service proposed closures are similar to those designated in two of the bills that I mentioned, but do differ in the Western Gulf of Mexico and the area off the coast of South Carolina known as the Charleston Bump.

We stand at an historic crossroads for the conservation of highly migratory species. The effective management of Atlantic highly migratory species is one of the most complex and difficult challenges facing the National Marine Fisheries Service and this Committee, I can tell you first-hand. These species range widely throughout international waters and the jurisdictions of many coastal nations

with diverse political perspectives on how to properly utilize and manage this valuable resource.

The fishing practices and marketing strategies for these species are equally diverse. Unlike most other domestic fisheries, effective multilateral management is the goal of our Nation's HMS policy. In fact, Congress placed Atlantic HMS management authority in the hands of the Secretary of Commerce instead of the Regional Fishery Management Councils, in theory, to ensure that our government maintains an Atlantic-wide perspective and vision.

It is my firm belief that this Committee and this Congress, together with thousands of concerned fishermen and conservationists, have a unique opportunity to work together to aggressively protect and rebuild stocks of HMS such as billfish, sharks and swordfish.

In August of 1999, I was approached by representatives of the longline industry and three recreation/conservation fishing organizations who suggested I sponsor legislation which would do several things: (1) permanently close a vast area of U.S. waters in the South Atlantic to pelagic longline fishing; (2) establish two time-area closures in the Gulf of Mexico to pelagic longlining; (3) reduce billfish bycatch and the harvesting of juvenile swordfish; and (4) provide affected fishermen a buyout to compensate them for the loss of fishing grounds and fishing opportunities. I remain a strong supporter of this concept.

I believe in this concept because the current management system whereby NMFS publishes a regulatory rule that is challenged by seemingly endless lawsuits is not an effective way of promoting sound HMS fishery management. This system has to change.

Frankly, I introduced H.R. 3331, in part, because the National Marine Fisheries Service established the pelagic longline fishery as a limited-entry fishery through the HMS Fishery Management Plan. As NMFS is well aware, I have been asking them to take this action for many years. The establishment of a limited-access system is critical to reduce harvesting capacity through attrition or a buyback program. Hence, once pelagic longline permits for HMS are bought out as proposed in H.R. 3331 and H.R. 3390, there would be no further vessels re-entering the fishery.

In addition, last November the International Convention for the Conservation of Atlantic Tunas, ICCAT, led by the United States, approved a 10-year rebuilding plan for North Atlantic swordfish. Although the final approved plan did not go as far as I would have liked in reducing the annual quota internationally, it nevertheless set an important tone for conservation. I commend the U.S. ICCAT Commissioners for their tenacity in getting the rebuilding plan approved.

Before we hear from out witnesses, I would like to make the following statement: Prior to and following the introduction of H.R. 3331, I and Subcommittee staff met with, and spoke to, a number of pelagic longline fishermen, recreational fishermen and their organizations, and a number of conservation and environmental groups. I am well aware of the strong opinions expressed by many on the issue of pelagic longline fishing, bycatch, and any buyback proposal. I am also very cognizant of the daily skirmishes that occur between certain commercial and recreational fishing organi-

zations on the issue of pelagic longline fishing. I wish to remind the witnesses that this is not the proper forum for those battles. We are here to learn and then, following this learning session and perhaps several others, we will be prepared hopefully to take action.

I would like to ask the witnesses to keep in mind that this Subcommittee is focused on producing a product that best encompasses conservation of affected highly migratory species and maintains a viable U.S. swordfish industry. This is the beginning of what I suspect will be an arduous process, but I am confident that with the input of many, we can provide a conservation measure that is good for our beleaguered highly migratory species of fish. The stakes are high and further inaction is no longer an option.

[The prepared statement of Mr. Saxton follows:]

STATEMENT OF HON. JIM SAXTON, A REPRSENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Today, the Subcommittee is conducting its first in a series of hearings concerning pelagic longline fishing in the Atlantic Ocean and the Gulf of Mexico. The focus of this hearing will be my bill, H.R. 3331; H.R. 3390, a proposal by Congressmen Porter Goss and Billy Tauzin; and H.R. 3516, a measure by Congressman Mark Sanford to prohibit pelagic longline fishing in our Atlantic Exclusive Economic Zone. In addition, we will examine the National Marine Fisheries Service's (NMFS) recommendation that time and area closures be established to address pelagic longline bycatch without compensation to pelagic longline fishermen. The NMFS proposed closures are similar to those designated by H.R. 3331 and H.R. 3390.

It is my firm belief that this Committee and this Congress, together with thousands of concerned fishermen and conservationists, have a unique opportunity to work together to aggressively protect and rebuild stocks of HMS such as billfish, sharks and swordfish.

In August of 1999, I was approached by representatives of the longline industry and three recreation conservation fishing organizations who suggested I sponsor legislation to: (1) permanently close a vast area of U.S. waters in the South Atlantic to pelagic longline fishing; (2) establish two time-area closures in the Gulf of Mexico to pelagic longlining; (3) reduce billfish bycatch and the harvesting of juvenile swordfish; and (4) provide affected fishermen a buyout to compensate them for the loss of fishing grounds and fishing opportunities. I remain a strong supporter of this concept.

I believe in this concept because the current management system whereby NMFS publishes a regulatory rule that is challenged by seemingly endless lawsuits is not an effective way of promoting sound HMS fishery management. This system has to change.

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passes conservation of affected highly migratory species and maintains a viable U.S. swordfish industry. This is the beginning of what I suspect will be an arduous process, but I am confident that with the input of many, we can provide a conservation measure that is good for our beleaguered highly migratory species of fish. The stakes are high and further inaction is no longer an option!

Mr. SAXTON. I would now like to recognize the Ranking Minority Member for any statement he may have.

Mr. Faleomavaega.

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I certainly would like to welcome our good friend and colleague, the gentleman from Florida, Mr. Goss, as he will be testifying later.

Mr. Chairman, thank you for holding this hearing today on these different legislative proposals to address overfishing and bycatch concerns in the Highly Migratory Fisheries and, in particular, the swordfish industry of the Atlantic Ocean. As you mentioned earlier, Mr. Chairman, the Atlantic swordfish and other highly migratory species have been managed internationally for many years by the International Commission for the Conservation of Atlantic Tunas.

In recent years, quotas and rebuilding plans have been adopted by ICCAT to promote the recovery of swordfish which are currently over-fished. While U.S. fishermen have been strictly held to those quotas, other nations unfortunately have not been as diligent. As a result of the new bycatch reduction requirements under the Magnuson Act, additional restrictions will be needed by the U.S. fisheries. The National Marine Fisheries Service, the entity charged with management of highly migratory species, has proposed time-area closures, and these bills lay out alternatives to the NMFS approach.

I am aware that there will likely be concerns raised about Congress legislatively establishing management measures for this or any fishery, as well as concerns about other provisions to the various bills that preclude further time-area closures and require that the buyout proposals be fully appropriated before any closures can go into effect. I expect that some of the witnesses today will elaborate on those points. At the same time, Mr. Chairman, I have no doubt that your highest priority is to ensure the long-term conservation and sustainability of swordfish is, and has always been your goal, for all marine resources.

So, with that in mind, I am here today to listen and to learn from all the witnesses in hopes that these concerns can be resolved and that we can all work together to ensure the long-term viability of this resource and the industry that depends on it.

Thank you, Mr. Chairman.

Mr. SAXTON. The gentleman from New Jersey, Mr. Pallone.

STATEMENT OF FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. I am pleased that this important issue, conserving the Atlantic highly migratory species, is now being considered by your Subcommittee. Today, we are contemplating various proposals designed to preserve highly migratory species of fish in the Atlantic to reduce bycatch of over-fished and

protected species, and to minimize the economic impacts on affected commercial fishermen. These proposals all close geographic areas for certain periods of time to commercial pelagic longline fishing, providing a new and ambitious management strategy to reduce incidental catch of undersized, overfished, and protected species.

The geographic extent of the closure should correspond to hotspots where the species to be conserved and protected are most likely to be otherwise caught. But because it is a new strategy, significant questions remain concerning the effect time-area closures will have on both fishing effort and obviously on fishing communities.

It is obviously a difficult issue, you can tell that from what the Chairman has already said. The negotiations process has come far in the past few weeks, but we still have a long way to go, and I look forward to working with scientists, recreational and commercial fishermen, and the conservationists, to find an effective solution for all, and basically will be listening to the testimony today and talking again to some of the affected parties in New Jersey as well as throughout the country. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you. Before we proceed, let me ask unanimous consent that also Committee members be permitted to include their opening statements in the record.

Before we move to Mr. Goss, it has been mentioned by myself and by my two colleagues that certain areas would be closed to longline fishing, and I would like to ask Mr. Howarth if he would explain the differences in these lines to the Committee members and to members of the public.

Mr. HOWARTH. Thank you, Mr. Chairman. I will be very brief. Members, in your folders, behind your background memo, are copies of these maps. There are charts to the left for the witnesses and charts to the right for members. On the maps are a series of lines. The one farthest south from the Gulf that is yellow and black represents the EEZ. That represents the EEZ as well as Mr. Sanford's bill banning pelagic longline fishing in the Atlantic EEZ.

The green line in the Western Gulf represents the NMFS proposal for the Gulf of Mexico.

The blue and red line in the Gulf closer to the shore represents Mr. Saxton's bill and Mr. Goss' bill. In the Atlantic, the lines blue and red, going up the East Coast, represent again Mr. Saxton and Mr. Goss' proposals. Also, you will see in the Atlantic a green line. That represents the Charleston Bump that you heard in the Chairman's testimony, and that is from the NMFS proposal.

This map here on the dais and the map over there represent the same picture. Out to the witnesses' left and the members' right represents the Mid-Atlantic. Again, the black and the yellow line represents the EEZ, the Exclusive Economic Zone, and the red line represents Mr. Saxton's proposal of the Mid-Atlantic buyout area. Thank you.

Mr. SAXTON. Well, that certainly cleared that up.

I am very pleased to have our friend and colleague from the State of Florida here with us today, Mr. Goss, who is the sponsor of H.R. 3390.

Mr. Goss, we are pleased that you are here. You may proceed as you see fit.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Thank you. I am obviously glad to be here, too, on this occasion, and I very much appreciate your leadership and the interest of the members of your Subcommittee on this subject. It is a matter clearly to say whose time has come is well understood. I have a prepared statement which I would like to submit for the record, and I would like to abbreviate it and just make a few points, if that is permitted.

First of all, I am very happy that my lead co-sponsor on H.R. 3390, which is the bill which I wish to address, is our colleague from Louisiana, Mr. Tauzin, who is well known and has been long involved in dealing with these fishery matters.

H.R. 3390, as we are presenting it, is a legislative embodiment of an agreement between the commercial fishing industry and conservation groups to close, as the map shows, some 160,000 square miles to pelagic longlining in the South Atlantic and the Gulf of Mexico.

The bill is a compromise that came about after extensive negotiation. It is the compromise that now exists, and I think it represents a win for all parties, which is why the bill is brought forward.

As you have described, or as your staff has described, the bill affects an area from Sanibel, roughly, on the west coast of Florida, down around the tip of Florida, up the South Carolina coast.

The areas selected for closure were chosen because the scientific analysis done by NMFS and independent scientists because they have high concentrations of small swordfish bycatch and billfish bycatch. Closing them should allow these stocks to rebound without unduly disrupting the swordfish longlining industry, and that, I think, is the basis of the compromise.

In addition, the 68 longlining vessels that use these fisheries will be bought out by the government. In return, these vessels are not going to go back into that fishery or other commercial fisheries.

Payment for the buyout in our bill comes from a combination of Treasury funds, consumers of swordfish, and a user fee in fact imposed on recreational fishermen.

The bill does include a bycatch reduction research program. This effort is designed to help develop measurable methods to further reduce bycatch. This is an area I have been particularly interested, as the Chairman well knows, and I think follows on the gentleman from New Jersey, Mr. Pallone's, remarks as well.

I also want to point out that a lot of interested parties have come forward on this on both sides and, frankly, I have had a lot of time to work with the Coastal Conservation Association, and I very much appreciate the CCA efforts and take on this and some other matters over the years.

I know, Mr. Chairman, that you would like to expand the closed fisheries area and that you have legislation to do that, and I very much congratulate you on that effort. I am hopeful that that process will move forward in a smooth way legislatively, at the same time not losing anything that we have achieved so far, as reflected

in H.R. 3390, the base bill compromise which we are trying to get passed.

I think that this is a unique time, that we have seen, finally, in these wars that go on, an area where people have come together and sat down and worked out an agreement. I think in that case this is somewhat benchmark, and I genuinely would like to thank all the parties involved on both sides of the issue for rationally trying to find a solution that is based on science and is also based on fair play and comes up with a piece of legislation which I think our colleagues would be able to support.

Having said that, I would also like to thank Mr. Faleomavaega for his kind reception and hospitality here, and to tell him also that he was well represented by M/Sgt. Totela Alefonga [phonetic] in American Samoa at the occasion of my recent visit there, where I learned something about the problems of the fisheries in that area first-hand. And I wish he would give my best wishes to M/Sgt. Totela Alefonga, and be assured, Mr. Faleomavaega, that you were well represented. Thank you, Mr. Chairman, that is all I have to offer at this time. I would be happy to answer any questions.

[The prepared statement of Mr. Goss follows:]

STATEMENT OF HON. PORTER GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I am pleased to be here this morning to discuss H.R. 3390, the Atlantic Highly Migratory Species Conservation Act. For me, this bill is an excellent model for how conservation issues should be addressed. Unfortunately, as my colleagues well know, most environmental debates are often politicized for partisan gain and have little to do with substance or solutions. It is not often that combatants in conservation issues can put aside their differences long enough to come to a consensus agreement that will benefit both parties and ensure meaningful protection for our resources. So, I am delighted to be here today with what I hope is a constructive solution to a very real problem. The consensus reflected in H.R. 3390 will greatly enhance the conservation of billfishes and facilitate rebuilding of the swordfish stocks.

In the fall of 1998, representatives of four groups began a discussion that has resulted in the bill I introduced. The Coastal Conservation Association, the American Sportfishing Association, The Billfish Foundation and the Blue Water Fisherman's Association have come together to address the decline of Atlantic billfishes and the increase in catches of juvenile swordfish.

H.R. 3390 will close some 160,000 square miles to pelagic longlining in the South Atlantic and the Gulf of Mexico. These closures, developed from scientific analysis done by independent scientists and the National Marine Fisheries Service, cover a broad spectrum of conservation benefits without unduly disrupting the swordfish longlining industry. The areas were selected because of the high concentration of small swordfish catch and billfish by-catch.

The Atlantic closed area extends from my Southwest Florida district at Sanibel Island south to Key West, then north all the way to the South Carolina North Carolina boarder. This area will produce the lion's share of the conservation and economic benefit from this bill. The closure is permanent and will significantly reduce the catch of small swordfish and sailfish byeatch. Portions of the Gulf will see a three-month closure that accomplishes similar objectives.

Although no one has computed the exact economic benefit of the legislation, there is no question that it will be a huge boost for the economy of my home state of Florida and, ultimately, the nation. Florida is the number one marine recreational fishing state in the country. That activity cannot be sustained without healthy populations of fish. The benefits from the Atlantic closure will make the East Coast of Florida one of the premier sailfish fisheries in the world.

These benefits do not come without a cost, however. In order to get this level of economic and conservation benefit, the legislation makes 68 longline vessels eligible for buy-out of the vessel's fishing permits. In return for the buy-out, the longlining vessels are forever foreclosed from returning to this fishery or any other commercial

fishing worldwide. Payment for the buyout comes from a combination off Treasury funds, consumers of swordfish and a fee imposed on recreational fishermen.

The legislation also includes a bycatch reduction research program. The three-year program will direct scientists, sponsored by both the commercial industry and recreational groups, to develop measurable methods to further reduce bycatch in the longline fishery. There is a special emphasis in the mid-Atlantic to monitor displacement of vessels and propose ways to remedy it.

I said earlier that the bill is not perfect. Indeed, I have yet to see a perfect piece of legislation. No group is going to get all they want in this legislation but, taken as a whole, this is a good piece of legislation that addresses a real conservation problem. We should not pass up this opportunity.

I commend the groups that have signed the agreement and I am particularly proud to sponsor this legislation because of my respect for the work of the Coastal Conservation Association. In my state of Florida, CCA has always led the charge in the fight to protect our marine resources and I am pleased to see that commendable record of accomplishment continue.

Mr. Chairman, I know that you have legislation that would expand the buyout area envisioned in H.R. 3390. I commend you for that effort. I remain hopeful that throughout the legislative process as we move this bill toward passage, we will maintain the delicately balanced compromise that produced the agreement to close these fisheries.

Once again, I want to thank the Chairman and the other members of the Committee for the opportunity to appear before you this morning. Thank you.

Mr. SAXTON. Thank you very much for your statement and for your brevity, it is appreciated. I would just like to get one issue out on the table while you are here, and that is this: The area that you and I close are identical in our bills. The uppermost concern in the mind of many is that we have no way of knowing how many longline fishermen or fisherboats which are currently ported, docked, in or adjacent to the closed area, would opt to be bought out under the proposal, and how many would opt to go fish somewhere else.

As a Representative of the middle Atlantic States, New Jersey in particular, we have some concern that without some provisions added to your bill, as is currently represented by some provisions in my bill, to address the issue referred to as "displacement of fishermen", that many of the boats might, could, or would, move north, simply moving the fishing effort from the closed area to the area that would remain open, commonly referred to in these discussions as the mid-Atlantic Bight.

I am just interested in your thoughts on this issue because somehow, if we are going to be successful in getting a bill, we need to find a solution to this problem, and I am just interested in your comments.

Mr. GOSS. Mr. Chairman, as I said, I congratulate you on your efforts to do that because I think fair play is a critical factor in any piece of legislation, and I don't think we really entirely understand all the consequences of any legislation we pass.

What I seek to do is to bring forward a slice of this problem that I am pretty sure would be noncontroversial as it stands by itself because that is what the parties have agreed to.

Do I think this is final solution, the only solution, the best solution? No, it is not. It is what we have got so far. And if it can be improved and made fairer, specifically referring to the displacement issue, that is certainly fine by me. It is not my view that we want to in any way be unfair, but it is certainly my view that we have to have agreement among the parties in order to pass workable legislation, and that is why I brought forward H.R. 3390 in its

present form. If you could improve upon it, you will certainly have my support in any way I can.

Displacement of fishermen is a huge problem. The industry has obviously undergone some very serious readjustment. I know, with Mr. Faleomavaega, we have talked a lot about porpoises and tuna and so forth, and dealing with environmental approaches. And I find that rational people sitting down and negotiating these things out on the basis of good science and fair play is the best way to come to a reasonable solution. I think that this first step today legislatively opens the door for more of the same, and so I have nothing but encouragement for people who are going to try and make a better bill, a fairer bill, if it is possible to do, with the consent of all parties.

Mr. SAXTON. Thank you very much. Mr.Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and again I want to assure the gentleman that certainly this Member will definitely be seeking his advice and his wisdom and understanding of the complications involved here. This is just with the Atlantic. It is just as much similar problems that we're faced with in the Pacific, and probably to the uniqueness of our Nation, the fact is not only as an Atlantic nation but as a Pacific nation. But I do want to thank the gentleman for coming up with his initiative so that the members of this Subcommittee will certainly be aware of the concerns that have been addressed by the provisions of H.R. 3390. I want to assure the gentleman that I will be closely working with him to see what we can do to improve this legislation. Thank you, Mr. Chairman.

Mr. SAXTON. Mr. Goss, thank you very much, we appreciate your being with us this morning. At this time, we have no further questions.

Mr. GOSS. Thank you, Mr. Chairman. I have always been hospitably welcomed here, and I appreciate it. It is a pleasure to do business with your Subcommittee and its members.

Mr. SAXTON. Thank you very much.

I would now like to move on to our next panel. I would now like to introduce Ms. Penny Dalton, Assistant Administrator for Fisheries at the National Marine Fisheries Service. I would like to remind the witness that we operate here under the five-minute rule, which is sometimes flexible. Your written testimony certainly will be included in its entirety in the record and, Penny, you can begin when you are comfortable.

STATEMENT OF PENELOPE DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, ACCOMPANIED BY DR. REBECCA LENT, CHIEF, HIGHLY MIGRATORY SPECIES MANAGEMENT DIVISION, NATIONAL MARINE FISHERIES SERVICE

Ms. DALTON. Good morning, Mr. Chairman and members of the Subcommittee. I am Penny Dalton, NOAA Assistant Administrator for Fisheries. Accompanying me today is Dr. Rebecca Lent. She is the Chief for our Highly Migratory Species Management Division.

Thank you for the opportunity to testify today on three legislative proposals before the Subcommittee: H.R. 3331 and H.R. 3390,

both titled the Atlantic Highly Migratory Species Conservation Act; and H.R. 3516, legislation to prohibit pelagic longline fishing in the Exclusive Economic Zone in the Atlantic Ocean. I also will discuss our December 15 Rule proposing establishment of time and area closures for the longline fleet to reduce bycatch.

Mr. Chairman, my written testimony provides a detailed review of the proposed Rule and the three bills. In the interest of time, I will briefly compare the Rule and the legislation and then discuss our analysis and conclusions.

The proposed Rule includes as a preferred alternative a year-round closure of the Southeast Atlantic Coast and a seven-month closure, from March 1 to September 30th, in the Western Gulf of Mexico. In selecting this preferred alternative, NOAA Fisheries examined several options and balanced the need to (1) reduce bycatch of small swordfish, also billfish, bluefin tuna and sharks, and (2) minimize reductions in target catches.

NOAA Fisheries has published a Proposed Rule and a 75-day comment period currently is underway, which will end on March 1, 2000. Once the comments have been compiled and considered, NOAA Fisheries will complete action on the Final Rule. Similar areas are proposed for closure in the Rule, H.R. 3331 and H.R. 3390, albeit with some important differences. The South Atlantic Bight closure in the Proposed Rule is larger on the northern end to account for the variable location of the oceanographic feature known as the Charleston Bump. In addition, the Proposed Rule would close the Western end of the Gulf which is different from the legislative proposals to close an area all along the Northern Gulf Coast.

NOAA Fisheries has only recently begun to use time and area closures as a management tool for this fishery. Analyzing the impacts and effectiveness that time and area closures on the Atlantic pelagic longline fleet has proven to be challenging because it is difficult to predict changes in fishing patterns when the areas are closed.

To examine a range of possibilities, NOAA Fisheries conducted analyses under two different assumptions regarding the fishermen's behavior. The first assumption is that there would be zero-effort redistribution. In other words, sets currently made in the proposed closed areas would not be made elsewhere.

The second assumption is that there would be a total effort redistribution. That is, all of the sets currently made by fishermen in the proposed closed areas would be made in other open areas.

The benefits from the time and area closures under the two effort redistribution models have been evaluated for the Proposed Rule and for both bills. A comparison of the effectiveness of all the proposals is shown in the attached table at the end of my written testimony.

In the South Atlantic, the impact of time and area closures under the Proposed Rule is similar to that for the bills under both models. In the Gulf of Mexico, the time and area closures in the Proposed Rule may be more effective at reducing billfish bycatch than the proposals in the bill, again, under both effort and redistribution scenarios. For both the Proposed Rule and the legislative proposals, the net effects will likely be somewhere between zero and total dis-

placement, although the buyback program proposed in the bills would be likely to reduce displaced effort.

Our analyses shows that there are benefits from time and area closures even if effort is displaced at the same time our analyses indicated that the extent of the socio-economic impacts associated with the Proposed Rule and the need to consider mitigating measures such as the buyout. The economic and community effects of the Proposed Rule may be substantial. Losses in gross revenues to fishing vessels could be as high as $14 million per year. And an examination of individual vessel records indicate that up to 20 percent of the vessels could lose half of their gross income.

In addition, swordfish dealers could face substantial reductions in the total weight of fishes they handle. Comments at public hearings indicate that the effects would not be confined to the pelagic longline fishery. Processors and small businesses supplying the fleet with bait, ice and other provisions would also be affected.

Finally, for those vessel operators remaining in the fishery, fishing cost could increase if vessels must go further offshore or relocate as a result of closures.

Overall, NOAA Fisheries supports the intent of H.R. 3331 and H.R. 3390 to address bycatch concerns in the pelagic longline fishery and to reduce overcapacity and economic disruptions that result.

We would like to work with you to deal with certain provisions of the legislation that we cannot support as they currently are drafted.

While we are still completing our legislative analyses, we would like to point out two specific areas of concern. As we mentioned before, the impact of a time and area closure is difficult to predict. However, we do believe that there will be some redistribution of effort, possibly into areas with higher turtle or mammal bycatch. As introduced, the bills currently do not provide NOAA Fisheries to address increased turtle or marine mammal bycatch or other potential conversation issues in the remaining open areas.

We would be supportive of an industry-funded buyout, however, the cost associated with the implementation of the buyout must be considered. We have limited administrative resources to collect fees from wholesalers and recreational fishermen. NOAA Fisheries also lacks funds to pay for the BMS units and this would set an adverse precedent for other fisheries.

In addition, we would like to see increased flexibility with respect to implementing the buyout program and other provisions of the legislation if only partial funding is available.

We recognize the enormous effort and unprecedented collaboration between commercial fishermen and marine anglers in developing these legislative proposals. We applaud the efforts of the sponsors to meet the conservation requirements and minimize adverse impacts on displaced fishermen. I look forward to working with you to address our concerns and to enacting legislation that we can fully support.

[The prepared statement of Ms. Dalton follows:]

STATEMENT OF PENELOPE D. DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the Subcommittee. I am Penny Dalton, Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Thank you for the opportunity to testify today on three legislative proposals before the Subcommittee: H.R. 3331 and H.R. 3390, both titled the Atlantic Highly Migratory Species Conservation Act; and H.R. 3516, legislation to prohibit pelagic longline fishing in the Exclusive Economic Zone in the Atlantic Ocean.

DOMESTIC AND INTERNATIONAL MANAGEMENT OF ATLANTIC HIGHLY MIGRATORY SPECIES

Atlantic highly migratory species (HMS), such as swordfish, tunas, billfish, and sharks, range throughout tropical and temperate oceans and include some of the world's largest and most valuable fish. They are sought after by commercial fishermen and prized by sport anglers. In addition, HMS conservation and management has attracted considerable interest by the environmental community and the general public. Total commercial landings of Atlantic HMS in 1998 were over 15 thousand metric tons (mt), and the ex-vessel value was over $70 million. Expenditures in recreational fisheries for highly migratory species are in the hundreds of millions of dollars.

Since the early 1990s, Atlantic HMS have been managed directly by the Secretary of Commerce, primarily because the range of these species extends over five regional fishery management council areas. Secretarial management also eases U.S. participation in international HMS conservation programs and establishment and negotiation of U.S. positions at meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the 28-member organization charged with overseeing the science and management of tunas and tuna-like species.

Atlantic swordfish are harvested by a number of nations and currently are designated by ICCAT as overfished. The annual U.S. share of landings from the North Atlantic swordfish stock is only about 25 percent of the total harvest. Consequently, we must work with other nations to eliminate overfishing and rebuild the swordfish stock. Through ICCAT, we have worked to achieve international cooperation and adequate monitoring and compliance. The United States plays a key role in encouraging multilateral management measures for swordfish as well as other ICCAT species. At the recent ICCAT meeting in Rio de Janeiro, the Commission adopted a number of actions to strengthen international conservation efforts. Most notably, ICCAT nations committed to a 10-year rebuilding program for swordfish. While the rebuilding program requires only slight reductions in total quotas over the next three years (approximately 15 percent), the agreement counts all the harvest, including discards of dead swordfish, against the total allowable catch for the first time. Counting dead discards against the total quota could be an important additional incentive for fishermen to avoid catching undersized swordfish.

Our progress on the international front would not have been possible without the strong support of U.S. commercial and recreational fishermen, environmental groups and others. Pelagic longline fishermen were very supportive of the rebuilding program, despite the reductions in their landings that the program would entail. Responding to concern over the catch and harvest of undersized swordfish, the United States also was successful in sponsoring a resolution that called for ICCAT to analyze and consider the use of time and area closures throughout the Atlantic. Finally, I would like to note that ICCAT adopted a binding recommendation that countries ban the imports of Atlantic swordfish from Belize and Honduras.

Consistent with our ICCAT responsibilities, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that NOAA Fisheries take action to manage the fishery within U.S. waters. Two years ago, NOAA Fisheries established advisory panels under new provisions of the Magnuson-Stevens Act. With the assistance of these panels, in April 1999 NOAA Fisheries completed a new HMS fishery management plan (HMS Plan) and amended an existing fishery management plan for billfish. These new plans were among the first to be implemented under the new requirements of the Magnuson-Stevens Act and included management measures to identify and rebuild overfished HMS stocks, minimize bycatch, limit access to the pelagic longline fishery for HMS, and address socioeconomic impacts on fishermen and their communities.

Pelagic longlines are the primary commercial gear type in the HMS fisheries of the Atlantic, including the Gulf of Mexico and Caribbean. The longline fishery thus provides an important source of seafood for the American consumer. However, like

most types of fishing gear, it unintentionally catches species and sizes of fish that, for reason of regulation or economic choice, are thrown back into the sea. Some of this bycatch can be released alive, but significant amounts are discarded dead. While dead discards in the pelagic longline fishery have declined over the past decade, concerns remain about bycatch levels, particularly of juvenile swordfish, billfish, bluefin tuna, and sharks. In addition, NOAA Fisheries must address the incidental catch of endangered species such as sea turtles. Over the past three years an average of 487 mt of Atlantic swordfish (about 13 percent of the total catch) and an average of 58 mt of bluefin tuna (just over 4 percent of the total of the bluefin fishery) were discarded dead.

The Magnuson-Stevens Act requires that bycatch be minimized or avoided to the extent practicable. The draft HMS Plan released in October 1998 addressed this requirement by proposing a number of measures, including time and area closures for pelagic longline gear designed to reduce bycatch of bluefin tuna, juvenile swordfish, and billfish. Initial analyses focused on areas with high discards of juvenile swordfish and bluefin tuna based on logbook data submitted by fishermen. They led to a proposal for a June closure off the mid-Atlantic Bight to protect bluefin tuna and a closure in the Florida Straits to protect small swordfish. During the public review process, NOAA Fisheries received comments from recreational and environmental constituents, as well as some commercial constituents, that the proposed Florida Straits area was too small to be effective. Consequently, the final HMS Plan included a mid-Atlantic Bight closure but did not include the proposed closure for the Florida Straits. When the HMS Plan was published, NOAA Fisheries made a commitment to develop a new proposal to reduce swordfish bycatch, including time and area closures, before the end of 1999.

To fulfill this commitnent, NOAA initiated additional—and more extensive—analyses of logbook data in May 1999. The results of these analyses were shared with HMS Advisory Panel members at a joint meeting in June 1999. At the same meeting, a coalition of recreational and commercial fishing interests discussed their efforts to develop a legislative package that would include both time and area closures and a program to buy back Federal permits of longline fishermen affected by the closures.

Shortly after the June meeting of the HMS advisory panel, NOAA Fisheries was sued by a number of environmental groups on the grounds that the HMS Plan failed to adequately reduce bycatch. However, the parties agreed to a stay until May 1, 2000 of further proceedings in the litigation pending continued progress in developing a new regulation to address bycatch.

NOAA Fisheries completed its additional analyses and released a draft technical memorandum in October 1999. This technical memorandum was sent to advisory panel members and the five regional fishery management councils and to the general public upon request. On November 2, 1999, NOAA Fisheries published a notice of intent to prepare an environmental impact statement, and announced the availability of the technical memorandum. In this same Federal Register notice, the agency indicated that a proposed-rule on time and area closures would be published by December 15, 1999, and a final rule by May 1, 2000.

NOAA Fisheries has published the proposed rule, and a 75-day comment period is currently underway which will end on March 1, 2000. During the comment period, NOAA Fisheries will conduct 15 public hearings throughout the HMS management region, including coastal communities within and outside of the proposed closed areas. Once the comments have been compiled and considered, NOAA Fisheries will consider management options for the final rule.

The proposed rule includes as a preferred alternative a year-round closure off the southeast Atlantic coast and a 7-month closure (March 1–September 30) in the western Gulf of Mexico. In selecting this preferred alternative, NOAA Fisheries examined several options, balancing the need to: (1) reduce bycatch of undersized swordfish, billfish, bluefin tuna, and sharks; (2) minimize reductions in target catches; and (3) minimize the effect on other fisheries.

LEGISLATIVE PROPOSALS

Three bills currently are pending in the House of Representatives that address pelagic longlining: H.R. 3331, introduced by Rep. Saxton; H.R. 3390, introduced by Rep. Goss and Rep. Tauzin; and H.R. 3516, introduced by Rep. Sanford.

H.R. 3331 and H.R. 3390 are very similar to each other. There are some differences, however, primarily related to longlining in the mid-Atlantic Bight. Both bills would establish: (1) a year-round closure to pelagic longline fishing in the South Atlantic seaward of the coast from the northern South Carolina boundary to Key West, Florida; (2) two seasonal closures in the Gulf of Mexico (an area in the northeastern Gulf of Mexico from January 1st to Memorial Day each year and a clo-

sure seaward of the coast from Mexico to the Florida Panhandle that will be closed from Memorial Day to Labor Day of each year for five years); and (3) a voluntary program to buy out the longline permits of 68 named longline commercial vessels "through a partnership of the recreational and commercial fishing industries and Federal funds." All vessels that participate in the buyout program would be required to surrender all commercial fishing permits. The two bills also direct NOAA Fisheries to conduct a research program, identifying and testing the most effective fishto reduce the billfish bycatch in the Atlantic and Gulf of Mexico. In addition to the measures above, H.R. 3331 also amends the Atlantic Tunas Convention Act to allow the Secretary of Commerce to reduce swordfish quotas below ICCAT recommendations, restricts effort increases on longliners fishing in the Mid-Atlantic Bight, and creates a second voluntary vessel buyout category for mid-Atlantic Bight commercial longline fishermen.

H.R. 3516 would amend the Magnuson-Stevens Act to prohibit "pelagic longline fishing in the exclusive economic zone in the Atlantic Ocean." It does not include a buyout as contained in H.R. 3331 or H.R. 3390. In the past, NOAA Fisheries has not supported unilateral bans on specific gear types, other than destructive fishing practices such as large-scale pelagic driftnets.

Similar areas are proposed for closure in the rule and the two bills, albeit with some important differences. The South Atlantic Bight closure in the proposed rule is larger on the northern end to account for the variable location of the oceanographic feature of the Charleston Bump. In addition, the proposed rule would close the western end of the Gulf, which is different from the legislative proposals to close an area along the northern Gulf coast.

ANALYSES OF PROPOSED CLOSED AREAS

NOAA Fisheries has only recently begun to use time and area closures as a management tool for this fishery (i.e., the June closure in the mid-Atlantic Bight to protect bluefin tuna). Analyzing the impacts and effectiveness of time and area closures on the Atlantic pelagic longline fleet has proven to be challenging because it is difficult to predict changes in fishing patterns when the areas are closed. To examine a range of possibilities, NOAA Fisheries conducted analyses under two different assumptions regarding the fishermen's behavior. The biological and socioeconomic effects of the various alternatives then were compared using these different assumptions.

The first assumption is that there would be zero effort redistribution, i.e., the sets currently made in the proposed closed areas would not be made elsewhere. This assumption provides estimates of the maximum reduction in bycatch and landings of target species, as well as the maximum social and economic effects of the proposed time and area closures.

The second assumption is that there would be a total effort redistribution, i.e., the sets currently made in the proposed closed areas would be made in other, open areas (distributed proportionately to historic effort in the remaining open areas). This assumption provides an estimate of the minimum expected reduction in bycatch, because fishing effort would reoccur somewhere else. This scenario also provides a minimal estimate of the possible social and economic impacts of the proposed time and area closure.

The benefits from the time and area closures under the two effort redistribution models have been evaluated for the proposed rule and for both H.R. 3331 and H.R. 3390. Because the areas proposed in the proposed rule and the legislation are similar, bycatch reduction benefits are likely to be similar. A comparison of the effectiveness of all of the proposals is shown in the attached table. These estimates may differ from those provided by proponents of the legislation because the analyses on which the legislative proposals are based were conducted independently and assume zero effort redistribution.

In the South Atlantic, the impact of time and area closures is similar to that for the bills under both no effort redistribution and total effort redistribution. In the Gulf of Mexico, the time and area closures in the proposed rule may be more effective at reducing billfish bycatch than the proposals in the bill, again under both effort redistribution scenarios.

For both the proposed rule and the legislative proposals, the net effects will likely be somewhere between the zero displacement and the total displacement, although the buyback program proposed in the bills would be likely to reduce displaced effort. On the other hand, vessels remaining in the fishery could become more active and make more sets in the open fishing areas. Although limited access is in place in the HMS pelagic longline fishery, there is no limit on effort in the form of days fished, number of sets, length of the line, or number of hooks. However, reduced ICCAT

quotas for swordfish, and the further reductions engendered by the dead discards provisions, should limit the expansion of effort by the vessels remaining in the fleet.

These analyses provide an estimate of the range of potential benefits and costs of time and area closures. The biological and economic analyses conducted for the rulemaking will be very useful for assessing legislative options for a buyout. Our analyses show that there are benefits from time and area closures even if effort is displaced. At the same time, our analyses demonstrate the extent of socioeconomic effects associated with the proposed rule, and the need to consider mitigating measures, such as a buyout.

The economic and community effects of the proposed rule may be substantial. Losses in gross revenues to fishing vessels could be as high as $14 million per year, and examination of individual vessel records indicates that up to 20 percent of the vessels could lose half their gross income. In addition, swordfish dealers could face substantial reductions in the total weight of fish they handle. Comments at public hearings indicate that the effects would not be confined to the pelagic longline fishery; processors and small businesses supplying the fleet with bait, ice, and other provisions also would be affected. Finally, for those vessel operators remaining in the fishery, fishing costs could increase if vessels must go farther offshore or relocate as a result of closures.

CONCLUSIONS

Overall, NOAA Fisheries supports the intent of H.R. 3331 and H.R. 3390, which is to address bycatch concerns in the pelagic longline fishery and to reduce overcapacity and economic disruptions that result.

We would like to work with you to deal with certain provisions of the legislation that we cannot support as they are currently drafted. While we are still completing our legislative analysis, we would like to point out two specific areas of concern. As has been mentioned before, the impact of a time and area closure is difficult to predict. However, we do believe that there will be some redistribution of effort, possibly into areas with higher turtle or mammal bycatch. As introduced, the bills currently do not provide NOAA Fisheries with the flexibility to address increased turtle or marine mammal bycatch or other potential conservation issues in the remaining open areas. We currently are reviewing possible mitigating measures in the event that turtle or marine mammal bycatch increases as a result of closed areas.

We are supportive of an industry-funded buyout. However, the costs associated with the implementation of the buyout must be considered. The collection of fees from wholesalers and recreational fishery participants is labor intensive and requires administrative funds. Current fishery management responsibilities are already curtailed due to limited personnel and financial resources. It would be particularly difficult for NOAA Fisheries to fund vessel monitoring systems, and this would set a precedent that we would be unable to meet in other fisheries. In addition, we would like to see increased flexibility with respect to implementing the buyout program and other provisions of the legislation if only partial funding is available.

We recognize the enormous effort and unprecedented collaboration between commercial fishermen and marine anglers in developing these legislative proposals. We applaud the efforts of the sponsors to meet conservation requirements and minimize adverse impacts on displaced fishermen. I look forward to working with you to address our concerns and to enacting legislation that we can fully support.

Table 1. Comparison of Changes in Discards and Catches for NOAA Fisheries Proposed Rule ("NMFS") and H.R. 3331/H.R. 3390 ("Bills"). Percentages listed assume either no effort redistribution or total effort redistribution. Positive numbers indicate an increase in discards or catch.

	Swordfish discards	Blue Marlin discards	White Marlin discards	Sailfish discards	Turtles Caught
NO EFFORT REDISTRIBUTION					
Gulf of Mexico					
NMFS	- 3 %	- 11 %	- 13 %	- 16 %	- 2 %
Bills	- 1 %	- 1 %	- 1 %	- 3 %	0 %
South Atlantic					
NMFS	- 36 %	- 10 %	- 5 %	- 24 %	- 2 %
Bills	- 35 %	- 10 %	- 5 %	- 25 %	- 2 %
Both Areas Combined					
NMFS	- 39 %	- 22 %	- 19 %	- 40 %	- 5 %
Bills	- 37 %	- 11 %	- 6 %	- 28 %	- 3 %
TOTAL EFFORT REDISTRIBUTION					
Gulf of Mexico					
NMFS	5 %	- 7 %	- 8 %	1 %	- 1 %
Bills	- 1 %	1 %	2 %	0 %	0 %
South Atlantic					
NMFS	- 25 %	9 %	12 %	- 9 %	9 %
Bills	- 26 %	6 %	10 %	- 12 %	8 %

Both Areas Combined					
NMFS	- 19 %	4 %	5 %	- 6 %	8 %
Bills	- 25 %	7 %	12 %	- 10 %	8 %

Mr. SAXTON. Thank you very much. Let me just suggest to my two colleagues, as we move through this, if you have a question during the time that either myself of Mr. Faleomavaega have time, please just jump in.

Let me begin by asking you, what were the driving or determining factors in helping you to reach a decision where your proposed area boundaries would be located?

Ms. DALTON. In the Proposed Rule that we did to implement the HMS plan, we had a small area that we proposed for closure off the Florida Straits. During the public comment period on that Rule, we got a number of comments that the area was not adequate, that it was not large enough, that it actually could exacerbate bycatch problems.

So, when we did the Final Rule to implement the plan, we made a commitment that we would do some additional analyses and develop a new Proposed Rule. This Proposed Rule that we put out on December 15th was as a result of those additional analyses.

Mr. SAXTON. I have heard the term "nursery areas" used, I have heard the discussions about where juvenile swordfish are found. Can you discuss those issues with us at this time?

Ms. DALTON. Basically, what we did is we used the logbook information from the fleet—and Rebecca will correct me if I make a mistake here—but to look at what we were essentially hotspots for bycatch of the species of concern. And, generally, for swordfish, that is along the South Atlantic Bight and for billfish you have higher concentrations of bycatch in the Gulf. And using that logbook information then we tried different scenarios of closing different areas to see where we could maximize the reduction of bycatch and also minimize the reductions in directed swordfish harvest.

Mr. SAXTON. And, therefore, you believe that the areas that you have outlined would be the most beneficial from a conservation point of view?

Ms. DALTON. It is actually very hard—if you look at the table that is at the end of the testimony, you will see that there is a pretty significant range of potential reductions. Part of the problem is that it is difficult to deal with the issue of displacement, and depending on what you assume happens with displacement, you change what your potential conservation benefits are.

Mr. SAXTON. Mr. Goss and I have both introduced bills with areas that are substantially different than the areas that you propose to close, is that right?

Ms. DALTON. Yes, for the Gulf—it is actually fairly small for the South Atlantic.

Mr. SAXTON. Okay, let us talk about the Gulf. I am trying to figure out the rationale that you used that is different than the rationale that the people who negotiated this area to be closed. What is the difference in our approach. Why don't you like our approach in the Gulf?

Ms. DALTON. In the Eastern Gulf, at least based on the data that we have, there is less bycatch of billfish species than there is in the area further south that we closed. The good thing about the proposal that you came up with legislatively is that there obviously is going to be a problem with displacement in the Gulf.

Mr. SAXTON. The displacement would be greater with your approach?

Ms. DALTON. Well, it is going to be probably greater in the Eastern Gulf. You have closed the Eastern Gulf for that period of time in your bill. We haven't closed the Eastern Gulf, so what you are probably going to end up have happening is you are going to have the displacement right to the Eastern part of the closed area.

Mr. SAXTON. You were somewhat uncertain in your statement about the degree to which displacement might be a problem, is that correct?

Ms. DALTON. Yes.

Mr. SAXTON. Is that because we don't know which fishermen might choose to just go out of business—forgetting about the bill for a minute—there is no compensation, obviously, in your closure plan, so you would assume that some fishermen would choose to no longer fish and that some might choose to fish elsewhere, perhaps in the Eastern Gulf, is that right?

Ms. DALTON. Yes.

Mr. SAXTON. Have you done any research whatsoever—I am not asking this in a critical way, I am just asking for information purposes for the record—is there any way of having a guesstimate that without compensation so many boats would stop fishing and other boats would fish elsewhere?

Ms. DALTON. No. Basically, what we did with the two assumptions you are assuming that you are at either end of the spectrum. If you have zero-displacement, that is assuming that no one is going to make any sets at all to make up for the sets that they would have made in the closed area, so that would be the maximum reduction in their harvest and the maximum bycatch reduction.

The other end of it is if you assume that all of the sets are displaced and then you end up with the minimum reductions in bycatch, but also the minimum reductions in the total harvest.

Mr. SAXTON. And under your plan, displacement would not only likely take place in the Gulf, it would also take place in the Atlantic?

Ms. DALTON. Yes.

Mr. SAXTON. And the logical place for the displaced fishermen to go in the Atlantic would be in the mid-Atlantic Bight, would it not, and further offshore?

Ms. DALTON. Yes, actually they could go to the mid-Atlantic Bight. They could go to the Gulf. They could go to the Caribbean and Grand Banks.

Mr. SAXTON. Would it be fair to say that you might expect less displacement if there were a viable buyout in place?

Ms. DALTON. That would be our expectation.

Mr. SAXTON. And because you have difficulty measuring the amount of displacement or the number of displaced boats without a buyout, it would become somewhat more difficult to measure if you did have a buyout?

Ms. DALTON. Yes. The other thing that the buyout does is it reduces—what you find is that you have localized impacts on the industry and on coastal communities in these areas where you have the closures. So, a buyout would help mitigate those localized im-

pacts as well, at least on the fleet. It wouldn't deal with some of the problems you have with the distributors and the suppliers.

Mr. SAXTON. If you stay for the balance of the testimony—and I am not sure whether you plan to or not—but if you do, you will hear testimony later today that the closed area ought to be extended into the mid-Atlantic Bight. Would you comment on that thought?

Ms. DALTON. Let me turn it over to Rebecca.

Ms. LENT. Thank you, Mr. Chairman. We have tried to lay out a number of alternatives in our analyses that support the Proposed Rule package, and again we tried to strike a balance between reducing that discard and minimizing the impact on the target species. We selected what we think is a good balance. We are in the process right now of public comment period, and we are hearing from folks that maybe we haven't got that balance just right. Indeed, there is some concern that as you displace the effort, either the boats move, the boats that remain in the fishery make more sets than the areas that remain open, we might have an impact, and that is why we would be interested in being able to follow this year to year. Any time-area closure may need adjustment in the future, and there is some concern about bycatch rates in the Caribbean and in the mid-Atlantic area.

Mr. SAXTON. Thank you very much. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Ms. Dalton, I do have several questions that, just for the sake of time, I will submit to your office, if you could respond to them accordingly, if it is all right. I do have some conceptual questions I would like to discuss with you this morning.

These bills are in place, and we have got the Magnuson Act, we have ICCAT. What is your administration's position basically on the provisions of these proposals. Do they seem to work hand-in-hand with the current aspects of the law under the Magnuson Act as well as with ICCAT's function, or do you think they go beyond what we are trying to do here? In other words, does the administration feel that there are sufficient laws that can handle the concerns that have been expressed by the provisions of these bills?

Ms. DALTON. I think our position is that we could probably—we certainly support the intent of the legislation to deal with the bycatch problem and also to mitigate the impacts of the displacement, potential displacement.

The question of whether we can move forward with this administratively, yes, we have a Proposed Rule. We probably can do a buyout proposal as well. There is about $10 million in our budget proposal for 2001, for fisheries assistants programs. A portion of that money could probably be allocated to a buyout, if it is appropriated.

One of the values, though, in the things the administration has watched is this whole collaborative process and having the recreational industry and the commercial industry work together to try to solve the problem, and there is a value in that that is very difficult to quantify, but we certainly would like to support and encourage.

Mr. FALEOMAVAEGA. Has the administration had an opportunity to quantify what the actual costs will be on the buyouts if this does

become viable? I mean, you mentioned $10 million, but I was wondering, this might be a lot more than what we are expecting.

Ms. DALTON. Yes. If you assume that you are going to need to have the funding that is authorized to be appropriated, it is probably, what, upwards of about $25-30 million.

Mr. FALEOMAVAEGA. When you say "buyout", does this mean that the fishermen can go to another destination and continue fishing, or is he just going to scrap his vessel?

Ms. DALTON. Well, I think the bills would basically call for all of their permits to be removed, and they wouldn't be able to participate in any commercial fishing. The boats could be used for some other purpose. I don't think there is a restriction on their use in a recreational fishery. Or they could be used for some other—I don't know—whatever other purpose, research or something like that.

Mr. FALEOMAVAEGA. What if you come and fish in the Pacific?

Ms. DALTON. No, they wouldn't be able—because they would lose their fishery endorsements and their documents and their permits.

Mr. FALEOMAVAEGA. I was just noticing, the Pacific Ocean is a lot bigger than the Atlantic Ocean. I was just curious——

Mr. SAXTON. If I could just state for the record, not only would we buy the boats under our proposal, and I believe both proposals—I am sorry—we wouldn't buy the vessel, we would buy the permits. So, under both proposals, once the buyout occurred, the permits would be removed and commercial fishing on that vessel would cease.

Mr. FALEOMAVAEGA. But that will not prevent them from fishing outside U.S. waters, right?

Ms. DALTON. There is actually a restriction on their use and fishing in foreign fisheries, too, in the legislation.

Mr. FALEOMAVAEGA. There has been a little concern expressed, or criticism, about ICCAT's capability of maintaining the swordfish. What is the administration's position, is ICCAT doing its job, or are they just kind of wriding along and not really doing what they are supposed to be doing?

Ms. DALTON. I think that there has been pretty substantial progress that was made. At the last meeting, there was agreement on a 10-year rebuilding program for swordfish that calls for overall reductions in the quota, and also would have the dead discards counted against the quota.

Mr. FALEOMAVAEGA. I notice that we have some charts here that have been submitted on it, and let me say the National Marine Fisheries is a lot more colorful description of the latitude, longitude and—in fact, it is quite a difference also with both the Breaux and Chairman Saxton's proposals.

Are you suggesting that in your proposal you are a lot more scientific in understanding the nature of the migratory fish as to why this whole area between Louisiana and Florida has been zeroed-out?

Ms. DALTON. No. I am told that it was just a printing error. It just happened to be printed on our documents but not on the other ones.

Mr. FALEOMAVAEGA. That is a big printing error. So this is not really the true description of the——

Ms. DALTON. No, it is a true description. There are coordinates that—we could put the same coordinates on the other two charts as well.

Mr. FALEOMAVAEGA. You got me on that one. It says here on the 90-degree longitude—here, again, I am not a fisherman—but between that 90-degree longitude and the whole West Coast of Florida is zero. I mean, there is no restriction——

Ms. DALTON. Oh, okay. I thought you meant just the fact that the labels were on here. Yes. The area in the Gulf is quite different. And, again, we did it by analysis of the logbook data. There is a fairly high level of bycatch in the southern area that we closed, so we got a significant bycatch reduction by including that area that is further to the south of what is in the legislative proposal. There is less of a conservation benefit tied to the logbook data that we have in the Eastern Gulf.

Part of what—the other thing that has been interesting in the public hearing process is we have gotten a lot of commentary on the use of live bait that is tied to the Gulf, and the suggestion that you have higher incidence of bycatch for billfish whenever you use live bait. So this is one of the things that we are going to be looking at as we go back and relook at our Proposed Rule.

Mr. FALEOMAVAEGA. Let us talk about bycatch. This is a very sensitive issue to me and those of us in the Pacific, and I suspect that you have purse seiners also in the Atlantic Ocean catching fish in a very unique way, and the fact that there is a tremendous amount of bycatch, not necessarily skipjack, but you end up with swordfish, sharks, all other varieties of fish, which basically in my understanding is just simply discarded and not even used at all for any purposes.

Has the National Fisheries Service made any estimates of the value of this bycatch that is caught also in the Pacific as well as in the Atlantic? I am told it is in the billions of dollars.

Ms. LENT. I would just mention that in the Atlantic we only have five purse seiners, and that we have had observers onboard with logbooks, and there is very little bycatch in this fishery. They send planes out, they find schools of bluefin, they set their net, and there has been very little bycatch problem.

Mr. FALEOMAVAEGA. You only have five purse seiners in the whole Atlantic Ocean? None from the French? None from the Norwegian countries? None from other foreign countries? I can't believe that.

Ms. LENT. I am talking about the U.S. Fleet in the Atlantic.

Ms. DALTON. For highly migratory species. We also have purse seiners for menhaden as well.

Mr. FALEOMAVAEGA. What is the estimate of purse seiners that we have fishing internationally in the whole Atlantic?

Ms. DALTON. We can get you the information, but I don't have it now.

Mr. FALEOMAVAEGA. I know we have about 35 purse seiners, U.S. parceners, that do fishing in the Pacific, and I also know that the Korean government recently allocated over $4 billion to improve its fishing fleets which now totals about 780 vessels. And a very serious concern that I have is that these governments literally provide funding to subsidize their fishing fleet. We don't do that. We are

not doing that. And I am very, very concerned at the fact of how can it be possible for our commercial fishing industry to compete when countries like Korea just simply put out $4 billion to upgrade and to get a whole new fleet of the most modern technologically purse seiners, longliners, they have got it. What do you suggest on how we should compete?

Ms. DALTON. We have been working in various different international fora to—we agree with you completely that harmful subsidies are a problem in world fishing fleets, and we have been working at FAO and also in other international groups to try to get international agreement to reduce those subsidies.

Mr. FALEOMAVAEGA. This is my concern, Mr. Chairman, and I am sure Penny has been made aware of this—we are putting a lot of requirements and restrictions on our own fishing industry to comply with ICCAT requirements, even what we impose on ourselves, but how do we control those foreign fishing vessels that have just come right in and taken, and they don't even care about complying with the kind of concerns that we have about conservation and this type of thing.

Ms. DALTON. I think it is a problem. There is very little that we can do unilaterally. That is the reason we have been working within groups like the Food and Agricultural Organization to come to agreement on the need to eliminate harmful subsidies. As you know, we are also working on an agreement in Western Pacific, the multilateral high level conference right now that is going on, that will hopefully come up with a long-term agreement that will strengthen conservation and management in the Western Pacific.

Mr. FALEOMAVAEGA. I can tell you right now, Ms. Dalton, that the Japanese do not want any observers on their vessels, period. They have been fighting that for years, and they will probably continue doing so even in the Atlantic. I am positive that the Japanese have a fleet also in the Atlantic and, unfortunately, when they get in international waters we don't have much to say about that, but it doesn't help our own fleet. And I just wanted to express that concern, Mr. Chairman. Thank you. I know I have taken too much time.

Mr. SAXTON. Thank you. Mr. Pallone.

Mr. PALLONE. I just wanted to ask Ms. Dalton—and this is without prejudice to any of my colleagues because certainly on the Republican side of the aisle, Mr. Saxton and Mr. Goss are people that I respect and work with, but are you concerned—I just wanted to ask you if you are concerned that basically we have proposals here—you know, Congress is legislating on the matter of the time-area closures for the swordfish. Is your position that—do you think that specific management measures should be done this way through legislation, or would you rather that NMFS and the councils deal with this?

I guess one of the concerns I would have is the precedent that is set. Of course, I love to legislate, too, so I am probably not the person that should be asking this, but are you concerned about the precedent, or do you feel that you can work with this legislation? I mean, it is a little unusual to have legislation that comes out at the same time in terms of you have a specific proposal and now you have two other members of Congress proposing things that are

somewhat different and somewhat the same, and I just wanted your opinion on that.

Ms. DALTON. I think it is always preferable to deal with things administratively. In terms of the precedent, I think the precedent has already been set. We had the American Fisheries Act about two years ago that did something that is fairly similar to the provisions that are contained in this legislation.

While it may have been congressional management of the fisheries that raised people's concerns, it also appears to have been fairly successful in addressing overcapitalization in the North Pacific, and helping to rationalize that fishery.

So, I guess while we certainly are worried about micromanagement, we are willing to work with you on it and try to make sure that whatever you decide to do is the best thing both from a conservation perspective and also to benefit the fishery itself.

Mr. PALLONE. I will just keep a note, Mr. Chairman, so that the next time when I propose some legislation and NMFS doesn't like it, I will just remind them of what Ms. Dalton said. Thank you.

Ms. DALTON. We are happy to work with you.

Mr. SAXTON. Penny, before you go, may I just follow up on Mr. Pallone's questions. I know that you are not creating a buyout program with the regulations, as proposed. Can you create a buyout program through regulations?

Ms. DALTON. We have a Proposed Rule that is winding its way very slowly through the administrative process—actually, it is the Final Rule—that would provide the guidelines for doing buyout programs generally under Section 312 of the Magnuson-Stevens Act.

We probably could do that. Our primary limitation is at the present time we don't have any funding to do it, and there are two ways of doing that. If you do a direct Federal payment on it, it obviously requires a substantially higher appropriation. You also could do an industry-funded program that you could do by allowing the industry to take out a loan. What you are doing in your legislation is a combination of both of those things. We could probably do it administratively.

Mr. SAXTON. You could probably do it administratively with the tools you have?

Ms. DALTON. If we had the funding, but we don't have the funding either.

Mr. SAXTON. I am sorry, but we have to get the funding for our proposal, too. I mean, if Congress has the will to appropriate for a new statute, then why wouldn't Congress have the will to appropriate for a regulation? What is the difference?

Ms. DALTON. I think control of the conditions that the buyout is made under.

Mr. SAXTON. Why did you decide not to propose a rule for a buyout?

Ms. DALTON. I don't think that we made a decision not to propose a rule for the buyout. The Proposed Rule, as it currently is stated, does not have mitigation for the socio-economic impacts. One of the things that we are going to have to do in receiving public comment on that rule is go back and balance. I don't know what we will finally come out with on it.

At this point, the administration budget that just came out doesn't contain funding for doing a buyout for this fishery, other than that general financial assistance program that is intended to be used on a national basis.

Mr. SAXTON. When will this Proposed Rule be final?

Ms. DALTON. May 1.

Mr. SAXTON. And on May 1 then, you would anticipate that these areas proposed by this rule will be closed, is that right?

Ms. DALTON. Well, we will finalize the Rule. What we do in terms of the implementation is another issue. There will be at least a 30-day cooling off period.

Mr. SAXTON. That is a good term. What do you anticipate will happen at the end of the 30-day cooling off period that you just mentioned?

Ms. DALTON. Some sort of closure would go into effect unless the Rule is somehow modified to phase it in. One of the things that we have looked at, I don't think there has been any decision on. What we have done in some areas where we know that there is going to be a substantial economic impact is we have phased in closures or phased in the regulations. We have done that in some of the New England fisheries to help mitigate those impacts. But the Rule would go into effect then under whatever conditions we impose.

Mr. SAXTON. Just to change thoughts for a moment, have you done any kind of an analysis to determine localized socio-economic impacts?

Ms. DALTON. Excuse me?

Mr. SAXTON. Have you done any kind of analysis to determine localized socio-economic impacts?

Ms. DALTON. Let me turn that over to Rebecca.

Ms. LENT. We have made an attempt, based on the addresses of permit holders, to localize the community and identify the communities that would be most affected. We have, of course, looked at every single boat and every single fish they catch and tried to say what if they lost all those sets and what is the economic impact. We have the home address. One of the challenges of looking at the socio-economic effect is that the boats move around to follow the fish. You might have a boat that is in New England part of the year, and it comes down to Florida part of the year. It has been a challenge, but we have made an attempt to do that, and we are trying to get more information through our public comment process.

Mr. SAXTON. Just back to the displacement issue for a moment, would it surprise you to learn that some New Jersey marina owners have been contacted by longline fishermen from the southern part of the Atlantic for dockage?

Ms. DALTON. No.

Mr. SAXTON. It wouldn't surprise you?

Ms. DALTON. No.

Mr. SAXTON. I guess I have no further questions at this time. Mr. Faleomavaega, do you have any follow ups?

Mr. FALEOMAVAEGA. Just one short one. Ms. Dalton, has your office found any provisions of the Magnuson-Stevens Act that runs contradictory to the proposed legislations, or any provisions of the

Magnuson-Stevens Act that is contrary to any provision that has been proposed here?

Ms. DALTON. I am trying to think if there is any. I don't think there is any direct contradiction that I can think of.

Mr. FALEOMAVAEGA. Leave it to the National Marine Fisheries, they will find something.

Ms. DALTON. One of the things in Mr. Saxton's bill, he amends the underlying statute. So, that obviously is a change from what is in the law right now.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you very much, Ms. Dalton, for being with us this morning. We always enjoy having you here, and I hope we weren't too tough on you today. We didn't try to be, anyway.

Mr. SAXTON. Moving on to the next panel, we have Mr. Glenn Roger Delaney, who represents the Blue Water Fishermen's Association and who is also a Commissioner to ICCAT; Mr. Michael Nussman, who is Vice President of the American Sportfishing Association; Mr. Robert G. Hayes, who is General Counsel of the Coastal Conservation Association; Mr. Ernest Panacek, who is Manager of Viking Village in Barnegat Light, New Jersey, a town and an organization which I am very familiar with; Mr. Richard Stone, Science Advisor to the Recreational Fishing Alliance, RFA; Mr. Gary Caputi, who is Co-Chairman of the Highly Migratory Species Committee and is a member of the Jersey Coast Anglers Association; and Dr. David Wilmot, Executive Director, Living Oceans Program of the National Audubon Society.

Obviously, there are a lot of members on this panel, so I would like to just remind you that we try to observe a five-minute rule for your testimony, and that your written testimony will certainly be included in the record in its entirety.

Mr. Delaney, you may begin at your leisure.

STATEMENT OF MR. GLENN ROGER DELANEY, BLUE WATER FISHERMEN'S ASSOCIATION AND U.S. COMMISSIONER TO ICCAT

Mr. DELANEY. Thank you, Mr. Chairman. I may be your first violator of the five-minute rule, but I will do my very best.

Members of the Subcommittee, for the record, I am Glenn Delaney, Consultant to the Blue Water Fishermen's Association. I also serve as the U.S. Commissioner to ICCAT, representing the commercial fishing industry.

Mr. Chairman, our industries have certainly brought many problems to you over the years, but it is rare that we bring to you a solution, real solution, that has been hammered out in advance by the mainstream of the core constituencies, a solution that respects U.S. fishery policy, is based on sound science, and achieves major conservation objectives while addressing the social, economic and political realities of fisheries management. That is what I think we have done here, Mr. Chairman.

Our proposal, which is fully reflected in H.R. 3390 and which is at the core of your bill, is first and foremost about conservation. Our proposal used the best available science to identify true hotspot concentrations of bycatch in order to design vast time-area

closures where 52 percent of the small swordfish and 31 percent of the billfish bycatches occur in U.S. waters.

Our proposal includes a buyout designed with the help of NMFS' economists that both minimizes displacement and provides a reasonable opportunity for those fishermen put out of business to restructure their lives, but that is not all. The buyout also substantially increases the bycatch conservations of this bill. The 68 vessels eligible for the buyout account for at least 65 percent of the total small swordfish bycatch, 56 percent of the blue marlin bycatch, 37 percent of the white marlin bycatch, and 47 percent of the sailfish bycatch in the U.S. EEZ. The conservation potential of this buyout is enormous. Finally, our proposal invests in future gains in bycatch conservation by establishing an important research program in the Gulf and Atlantic.

As well conceived as we think this proposal is, it is, as you can imagine, based on a very delicate agreement. Many months of negotiations and compromise have produced what is perhaps the only balance that could be struck between these groups. We are very apprehensive about changes that might have the effect of causing this unusual, perhaps once in a lifetime, opportunity to slip away.

As you explained before introducing your bill, Mr. Chairman, you chose to include for the purpose of discussion certain provisions that are in addition to those that we recommended. I hope you will receive my comments in that spirit and understand that they are given with the sincere purpose of providing our best possible advice.

There are three issues that I would like to cover. I think I will probably run out of time, but I will start with buyouts. In theory, policy supporting the use of buyouts to achieve special resource and economic objectives is well established in the Magnuson-Stevens Act, particularly in section 312(b) of National Standard 8.

I would just interject here that our analysis of section 312(b) does not provide NMFS with the authority to establish a buyback for highly migratory species which, as you know, are treated differently under the Act than council managed species, and I would just note that difference.

In practice, it has been Congress that has developed buyouts with extensive industry input to address several unique circumstances that have developed in fisheries in recent years. I believe our proposal is entirely consistent with this policy and with this precedent. The bottom line is that the conservation benefits of our proposal could not be achieved without this particular buyout program, period. It remains one of the fundamental reasons why we believe this proposal can succeed.

In contrast, Blue Water has expressed serious difficulty with the second mid-Atlantic buyout proposed in Section 7(k)(1) of the Chairman's bill. Buyouts represent an extraordinary solution to an extraordinary resource and economic problem. Buyouts need to have a very compelling purpose. Buyouts need to be widely supported from within the affected industry.

While we feel that the purpose of the first buyout related to the impacts of the time-area closures is compelling, it is not as clear to Blue Water what the purpose is of the mid-Atlantic buyback.

First, it is not associated with the impacts of a time-area closure.

Second, the U.S. longline industry is not overcapitalized, so the purpose cannot be to mitigate the economic impacts of overcapitalization, as Congress did in the Bering Sea pollock fishery through the American Fisheries Act.

Third, the pelagic longline fishery has not experienced a resource collapse or conservation crisis, as was the case underlying the New England groundfish buyout.

Blue Water respectfully, but strongly, recommends against the establishment of the second mid-Atlantic buyout.

The second issue I would like to cover is unilateral action. Mr. Chairman, I included on page 10 of my written submission a statement you made on the House Floor in October of 1990, when you helped champion the addition of section 6(c)(3)(K) to the Atlantic Tunas Convention Act. This provision restricts U.S. unilateral action when implementing ICCAT conservation measures.

Mr. Chairman, your statement may be the most coherent explanation that I have ever read of why this provision is now a cornerstone of U.S. policy regarding the international management of highly migratory species. Your statement and this provision reflect the core of U.S. policy and the fundamental truth that no nation can effectively conserve and manage these unique fish through a unilateral strategy. Instead, international cooperation throughout the range of these fisheries is essential to both successful resource conservation and to the fair treatment of U.S. fishermen.

Mr. Chairman, since you made that statement on the House floor, absolutely nothing has changed that would justify a change in U.S. policy or an amendment to that provision. So, we strongly urge you to drop section 7(k)(3) of your bill. I would make the same recommendation to you regarding the closely related provisions set forth in section 7(k)(2) of your bill, which would require the Secretary to make unilateral reduction in the U.S. quota of swordfish.

I think my time has expired. I did want to address the issue of displacement, and I would be happy to outline some of the reasons why we feel displacement will not be a problem under a proposal, and perhaps in response to a question, Mr. Chairman, or I can simply continue at this time, whatever your preference is.

Mr. SAXTON. In light of the fact that we have a number of witnesses, let us move on and we will try to get to those issues during the question-and-answer period.

Mr. DELANEY. Very good, sir. I would just like to wrap up and thank you for your tireless attention to the unusually complex challenges that we face in the management of Atlantic highly migratory species and, in particular, I appreciate making your staff consistently available to contribute to our efforts at ICCAT. Thank you very much.

[The prepared statement of Mr. Delaney follows:]

Statement of Glenn Roger Delaney

Consultant to

Blue Water Fishermen's Association

and

U.S. Commissioner to ICCAT

before the

Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
United States House of Representatives

In the matter of

Hearings on H.R. 3390 and H.R. 3331, the Atlantic Highly Migratory Species Conservation Act of 1999, and other legislative and administrative proposals to reduce bycatch in the U.S. Pelagic Longline Fishery

February 8, 2000
Washington, D.C.

Thank you for the opportunity to present testimony on legislative and administrative proposals to address bycatch in the US pelagic longline fishery. For the record, I serve as a consultant to the US pelagic longline fleet as represented by the Blue Water Fishermen's Association (BWFA), and I serve as the US Commissioner to ICCAT representing the commercial fishing industry.

Mr. Chairman, you have directed me to address six specific issues in my testimony and I will proceed accordingly. But, before I do, I would first like to thank you for your tireless attention to the intensely complex domestic and international challenges we face in the management of highly migratory species of fish. I have greatly appreciated our productive discussions on this topic and have left all of them with a greater knowledge and understanding. I also appreciate your making your staff consistently available to contribute to our efforts at ICCAT. We need all the help we can get.

This particular challenge to design an appropriate and effective solution to the problem of bycatch of billfish and small swordfish in the U.S. pelagic longline fleet involves an exceptionally complex matrix of science, social and economic considerations, politics and emotion at each of the local, domestic and international levels.

My colleagues and I took on this challenge and strongly believe we have presented Congress with the most effective and viable solution. There were several basic principles we followed that I believe will make our proposed solution successful.

(1) Our proposal is based on clear and achievable objectives that are of mutual benefit to each of the Parties. As set forth in our Memorandum of Understanding and Cooperation, these objectives are:

1. To achieve meaningful reductions in the bycatch and fishing mortality of undersized swordfish and all billfish species in the Atlantic and Gulf of Mexico pelagic longline fisheries within the U.S. Exclusive Economic Zone through the establishment of highly migratory species conservation zones that apply time-area closures to pelagic longline fishing based on the best available scientific information.

2. To provide compensation to U.S. pelagic longline fishermen substantially adversely affected by the establishment of HMS conservation zones and the application of time-area closures through a permit buyback program.

3. To prevent adverse impacts on the economics or conservation of potentially impacted non-HMS fisheries.

4. To conduct scientific research investigating pelagic longline fishing gear and methods that reduce billfish and other highly migratory species catch and mortality while maintaining the viability of the fishery.

5. To advance the principles of small, undersized swordfish and billfish bycatch reduction at ICCAT.

6. To promote a spirit of alliance, unity and mutual respect among the various sectors of the U.S. Atlantic recreational and commercial HMS fisheries.

(2) Our proposal respects the fundamental understanding reflected in US international policy that no nation alone can effectively conserve and manage these most highly migratory of species through a unilateral strategy. Instead, these unique fish and fisheries demand international cooperation and management throughout their range.

(3) Our proposal respects the basic tenets of domestic fishery policy as expressed by Congress in the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) with special emphasis on the principles of National Standard 9 to reduce bycatch, National Standard 8 to minimize adverse

economic impacts on fishing communities, and National Standard 2 to use the best science available as our foundation.

(4) Finally, our proposal accepts the reality that this unique opportunity demands a unique solution and process to achieve it. In this way we may have strayed from the statutes, but I believe in a most positive and necessary way. Although we consulted heavily with both Congress and NMFS on various technical issues, the legislative solution we have brought to Congress comes from within the mainstream of the affected constituencies. It strikes a balance of interests in a way that cannot be achieved through the administrative procedure, the results of which are now completely dominated by litigation that is often driven by interests that are outside of the mainstream. In fact, the NMFS proposal now before us is a case in point.

We greatly appreciate the recognition of this unique opportunity by Congressmen Goss and Tauzin, as their bill, H.R. 3390, fully reflects the substance, spirit and intent of our proposal. We are equally proud to have Senators Breaux and Snowe and a number of other prominent Senators sponsor our proposal in the Senate. We also appreciate that the Chairman's bill also contains the core of our proposal, but we understand you have chosen to include additional provisions not recommended by our group on which I understand you want to generate some discussion.

At this point, therefore, I would like to proceed to respond to your specific request for discussion.

(1) Buyouts

In a very general way, I believe that consistency with the national fisheries policy and Congressional intent reflected in National Standard 8 alone compels a buyback to mitigate the extraordinary social and economic impacts of the time-area closures proposed in each of the various bills and the NMFS proposed rule.

In a similar way I think we should also look to National Standard 9 for Congressional policy guidance which requires that "conservation and management measures shall, to the extent practicable, minimize bycatch...". I understand the public record now under development on the NMFS proposed rule will strongly confirm that it is not "practicable" to minimize bycatch by closing vast areas of the ocean to fishing without mitigating the consequent adverse economic impacts, such as through a buyout.

Some have suggested that a policy of providing economic impact mitigation to fishermen should not be linked to fish conservation policy objectives at all. Some find it philosophically objectionable. Others just hate commercial fishermen. I find such a suggestion unsupportable. Congress has ingrained this policy linkage in the MSFCMA since its enactment and it was clearly reaffirmed with the addition of National Standard 8 and the provisions of 312(b) which provide authority for the development of buyback programs to achieve very specific conservation objectives in Council and State-managed fisheries. As reflected in the Act's title, fisheries conservation and management is by

definition the conservation of fish through the management of fishermen—their families and communities. Socio-economics is a fundamental reality of fishery conservation. In practice, Congress has used buyouts as a tool to address unique circumstances that develop in fisheries on an ad hoc basis. Each buyout to date has been tailored by Congress to fit these unique circumstances through a process that directly involves the affected constituencies in the design of the program. In each case, economic impact mitigation and conservation objectives were linked. I believe our proposal is entirely consistent with this precedent.

In any case, effective fisheries management is not a philosophical debate. The bottom line is, the unprecedented conservation benefits of our proposal could not be achieved without a well-conceived, industry-generated buyback program, period. That is practical reality we faced in negotiating this deal, and that is why we believe this remains the best overall program that can be developed.

More specifically, given that the buyback proposals for those vessels impacted by the south Atlantic time-area closure set forth in both H.R. 3390 and H.R. 3331 reflect our proposal, we fully support them. Given that the NMFS proposal completely lacks any buyback or means to mitigate the adverse economic impacts of their proposed time-area closures, we reject the NMFS proposal.

I regret to point out, however, that BWFA is unable to support the second mid-Atlantic buyback proposed in section 7(k) of the Chairman's bill, H.R. 3331. The purpose of the south Atlantic time area closure buyback proposed in both H.R. 3331 and H.R. 3390 is to mitigate the social and economic impacts on fishermen whom are being asked to completely give up their ability to use their vessels in virtually any commercial fishery in the name of swordfish and billfish conservation. This purpose is clear and consistent with National Standard 8.

In contrast, it is not clear to BWFA what the purpose is of the second mid-Atlantic bight buyback set forth in section 7(k) of H.R. 3331. First, it is not associated with the social and economic impacts of a time-area closure. Second, the U.S. longline industry is not overcapitalized, so the purpose cannot be to help mitigate the economic impacts of overcapitalization as Congress did in the Bering Sea pollock fishery. Third, the pelagic longline fishery has not experienced a resource collapse or conservation crisis as was the case underlying the New England groundfish buyout funded by Congress. In fact, north Atlantic swordfish are currently at a sustainable yield that is about 65% of the maximum, and are now the beneficiaries of a ten-year rebuilding plan at ICCAT to increase this sustainable yield to 100% of the maximum. Furthermore, the yellowfin tuna population—the other primary target species-- is already at about 100% of the maximum sustainable yield.

Given the lack of a compelling economic or conservation rationale--or of an apparent national fishery policy basis-- for this second buyout, BWFA respectfully requests that the mid-Atlantic bight buyout provisions not be included in any legislation adopted by this Committee. Finally, I would reiterate that as a matter of practicality, the impetus for

any buyout needs to come from within the subject constituency —if they are to succeed, buyouts need to be designed and widely supported by the affected industry.

(2) Conservation Benefits of Closed Area Proposals

I believe the conservation benefits of the closed areas proposed in the Chairman's bill and in the Goss/Tauzin bill are extraordinary and unprecedented. If put into the domestic context of National Standard 9, which requires bycatch to be minimized to the extent practical, I am unaware of any other fishery that has or ever will adopt an interpretation of "to the extent practical" that includes achieving an immediate reduction in the bycatch of key species by as much as 50% by closing over 160,000 square nautical miles of ocean to fishing.

If put into the international context of ICCAT, this proposal wildly transcends anything we have accomplished to date, but it does provide a very useful basis for our future negotiating objectives to expand this concept internationally.

For the record, approximately 52 percent of the small swordfish bycatch and 31 percent of the billfish bycatch reported by US pelagic longline fishermen in the US EEZ occurs in the time-area closures set forth in the Chairman's bill and the Goss/Tauzin bill.

What makes these figures even more meaningful is that the bulk of the vessels responsible for this bycatch will be removed from the fishery altogether through the buyout program. This has three important bycatch conservation benefits. First, the bycatch of bought-out vessels from inside the closed-areas will be eliminated. Second, the bycatch of bought-out vessels from outside of the closed areas will also be eliminated. Third, the bycatch of vessels not bought-out but which previously fished in the closed areas will be substantially reduced because they will be forced outside the closed "hot-spots" to fish in areas that have far lower concentrations of small swordfish and billfish. Thus, it is likely that the amount of bycatch reduction of these proposals will actually exceed 52 percent for small swordfish and 31 percent for the billfish species.

With respect to the Sanford bill, H.R. 3516, which proposes to ban longline fishing within the Atlantic EEZ, I believe that both the directed species and bycatch conservation effect would be strongly negative. To the extent a ban on pelagic longline fishing within the EEZ would result in the US fleet being substantially unable to catch the US share of the ICCAT quota of swordfish, such unused share of swordfish would be reallocated to other ICCAT nations all of which, with the exception of Canada, have profoundly worse swordfish compliance and bycatch records than the US. The likely consequence is that the overall catch of swordfish would increase to an overfishing level, and that the bycatch of small swordfish and billfish would increase substantially.

Furthermore, to the extent fishing by some US vessels would be displaced outside of the US EEZ, their fishing effort is likely to increase in the Caribbean and equatorial regions that have substantially higher concentrations of billfish and, thus, billfish bycatch. Such areas are also known to be spawning areas for swordfish. The likely result is that billfish bycatch would increase and swordfish conservation would be degraded.

In addition, to the extent some US vessels would re-flag their fishing vessels outside of the US, the US would lose all management control over such vessels, both with respect to directed harvests of swordfish and bycatch species.

Finally, I would note that contrary to the national fisheries policy set forth in National Standard 10, which requires conservation and management measures to promote the safety of human life at sea, the Sanford bill may have the effect of forcing US vessels—perhaps vessels too small to do so– to fish outside the US EEZ in areas which substantially compromise their safety.

For these reasons, BWFA strongly opposes the Sanford bill (H.R. 3516) and urges the Committee to reject it completely.

With respect to the NMFS proposal, I would first refer the Committee to the conclusions set forth in the NMFS proposal itself which describes the conservation impacts of their "preferred option" as having a rather mixed result depending on the species and assumptions about displacement. This analysis betrays one of the fundamental flaws in the NMFS proposal, which is the failure to include a buyout program that would substantially minimize the conservation problems associated with displacement.

In addition, BWFA would like to take issue with the manner in which directed and bycatch species catches in the Gulf of Mexico are presented in the supporting documentation to the NMFS proposed rule. BWFA believes the NMFS draft Technical Memorandum uses a statistical "sleight of hand" to present the expected impacts of various closure scenarios. For example, the document combines the estimated percentages of Bigeye, Albacore, Yellowfin, and Skipjack tunas (BAYS) catch reductions for the Gulf closure areas and times. However, only 10 percent of the longline albacore catches are made during the closure months of March through September while more than 70 percent of the longline yellowfin catches occur during those months.

The NMFS document then compounds the confusion by lumping together the entire Gulf and Atlantic US pelagic longline catch for all four species as the basis for evaluating the economic impacts of their proposal even though the Gulf catches of albacore, bigeye and skipjack are minor. The Gulf longline fishery is primarily a yellowfin tuna fishery. As a result of this manipulation of data, NMFS projects that the expected reductions in the catches of the combined BAYS tunas range from 2 percent to 24 percent. This substantially hides the true negative economic impact of their time-area closure proposal on the Gulf of Mexico yellowfin tuna longline fishery. In fact, the NMFS proposal would impose a devastating 72 percent reduction in landings of Gulf longline yellowfin tuna—the primary directed species of that fishery. In contrast, the entire US Gulf marlin and sailfish longline mortalities only represent 7 tenths of 1 percent of the total 1998 Atlantic marlin and sailfish mortalities reported to ICCAT. In other words, the NMFS alternative would propose to sacrifice 72 percent of the US Gulf directed yellowfin tuna longline fishery in order to reduce Atlantic billfish mortalities by something less than 7 tenths of one percent.

Furthermore, the NMFS preferred time-area closure option for the Gulf of Mexico indicates that the bycatch of bluefin tuna in the Gulf longline fishery would be reduced by as much as 60%. This percentage reduction may be a correct figure, but it needs to be put into proper context in order to reveal the true bycatch conservation savings as compared to the devastating social and economic price. In fact, in 1998 the US Gulf pelagic longline fleet bycatch (regulatory discards) of bluefin tuna was only 36 fish. Therefore, a 60 percent reduction in the bycatch of bluefin tuna would translate into a bycatch savings of only 22 fish. Again, put into context, the total 1998 US commercial and recreational estimated harvest of bluefin tuna was about 13,250 fish. Again, the NMFS proposal would sacrifice 72 percent of the directed Gulf yellowfin tuna longline fishery in order to save less than 2 tenths of one percent (0.0017) of the bluefin tuna caught in the US.

(3) Displacement

Perhaps the only definitive statement that can be made about displacement is that any of the 68 eligible vessels that accept the south-Atlantic closure buyout under the Chairman's bill and the Goss/Tauzin bill will not be displaced into other areas or other commercial fisheries. As compared to the NMFS proposal, which presents a rather tortured analysis of the impacts of displacement in the absence of a buyout, the buyout represents a substantial, tangible benefit in this respect. If anything, this NMFS analysis of effort displacement confirms the need for a buyout in terms of both bycatch and displacement.

Beyond this conclusion, there are a number of indications and assumption we can present that lead us to conclude that fishing effort displacement will not be a significant problem under our proposal as reflected in the Goss/Tauzin bill.

First, it is expected that overall fishing effort in the US pelagic longline fleet will decrease as a result of the buyout. Significant increases in fishing effort by non-buyout vessels fishing elsewhere in and outside of the US EEZ is not feasible since such vessels are already fishing at or near their maximum capacity. Furthermore, there is already in place a limited entry program for pelagic longline fishing vessels that precludes any new entrants into the fishery and that places significant limits on the ability of a vessel owner to increase the fishing capacity of any permitted vessel. What we do expect to achieve as a result of our proposal is an increase in the catch per unit effort in the swordfish fishery as well as an increase in the average size of the fish harvested.

For the benefit of the Chairman and others concerned about displacement into the mid-Atlantic bight area, given that at least one half of the 68 vessels eligible for the buyout placed part of their annual fishing effort the mid-Atlantic region, we can expect a significant decrease in fishing effort in the mid-Atlantic bight as a result of the buyout.

In addition, we do not expect those vessels now based in the mid-Atlantic bight that fished part-time in the south Atlantic closed areas to displace this effort back north into the mid-Atlantic bight. The reason is that these vessels fished in the south Atlantic closed

area only during the colder winter months when fishing in the mid-Atlantic bight is unproductive. Thus, we would expect this effort to move further outside or south of the closed areas, but not to the north.

Furthermore, those vessels based in the vicinity of the south Atlantic closed area are among the smallest pelagic longline vessels in the US fleet. They are typically day-boats supplying a specialty, high-value fresh product market. A typical boat may be constructed of fiberglass and measure only 40 feet in length. These are not vessels that can fish in any other offshore pelagic longline fishery such as that which occurs in the mid-Atlantic bight. Thus, any of the 68 vessels that choose not to accept the buyout may choose to pack up their family and move to fish somewhere else in some other fishery, but they would definitely not be suited to safely or practically fish in the mid-Atlantic bight pelagic longline fishery.

Finally, because under the Goss/Tauzin bill the remaining non-buyout fleet would have the same US ICCAT quota of swordfish available to distribute over a smaller universe of vessels, the stability and economics of opportunities to fish in the distant water Grand banks fisheries would increase. Most of the mid-Atlantic-based pelagic longline vessels are of the size and design that would enable them to participate in that fishery. Again, this would result in a reduction of fishing effort in the mid-Atlantic bight.

Because these assumptions about effort displacement cannot be tested or confirmed until the bill is implemented and the fishery is prosecuted for at least one season, it is impossible to address in very specific terms this otherwise valid concern. Nevertheless, BWFA is interested in working with the Chairman on the provisions set forth in Section 12 of the Chairman's bill which we believe can address the core of the Chairman's concern in a general but effective way. Our best advice to the Chairman is to focus this provision on monitoring the number of hooks as the single most effective and practicable measure of fishing effort in this fishery, and to have this information reported to Congress for your evaluation of the proper course of action.

Other parameters of fishing effort such as days at sea, number of sets, length of line and soak-time are highly variable and very difficult to measure. We have found, as has NMFS, that the most reliable and measurable indication of pelagic longline fishing effort is number of hooks fished. With these changes, we believe the provision will effectively achieve the Chairman's objective to prevent any significant displacement of effort into the mid-Atlantic bight.

(4) Restrictions on Buyout Vessels

Our proposal as reflected in both the Chairman's bill and the Goss/Tauzin bill places very substantial restrictions on the use of vessels accepting the buyout. We felt it was essential to prevent any of these vessels from circumventing our billfish and small swordfish bycatch conservation objectives and from disrupting other commercial fisheries. Furthermore, we were concerned that these vessels not be allowed to operate outside of US fishery management control by reflagging into other countries. We

believe we have achieved these objectives by placing restrictions on the use of these vessels that prevent them from entering any other pelagic longline fisheries and virtually any other commercial fishery in or outside the US.

Importantly, our proposal does not include a buyout of the actual vessels. This was in part a fiscal concern and in part a reflection of our respect for the fact that these fishermen are being asked to give up their livelihoods on these vessels. We do not believe it should be the purpose of Congress to banish these fishermen from working on the water and pursing what is often an intensely and personally held desire to work at sea. We felt if any vessel owner/operator could find alternative uses for their vessels outside of commercial fishing that they should certainly be allowed to pursue this lifestyle. Thus, our proposal as reflected in both the Chairman's bill and the Goss/Tauzin bill would allow the use of such "buyout" vessels as private recreational and charter fishing vessels, towing vessels, etc.

It has come to our attention that there may be a position expressed by some associated with the recreational fishing industry that these vessels should not be allowed to operate as recreational charter boats. We wish to stress that BWFA and our CCA, TBF and ASA partners remain committed to allowing this use of the buyout vessels. Already, we are aware that several of the buyout vessel owners hope to pursue this business. We hope you will recognize that there will be very limited opportunities for these fishermen to continue their working lives at sea and that charter boat operating is a very important option.

Finally, as stated above, with respect to the vessel restrictions set forth in section 12 of the Chairman's bill, we look forward to working with the Chairman to modify the language to achieve an effective and practicable mechanism to monitor displacement of pelagic longline fishing effort into the mid-Atlantic bight.

BWFA would also like to register on the record that they are unable to support the provision added at the end of section 11(a) of the Chairman's bill that would impose a fee on the US pelagic longline fishing industry for observers placed on vessels operating in the mid-Atlantic bight. Our proposal provides for observers to be placed on vessels in both the Gulf of Mexico and in areas north of the south-Atlantic closure, including the mid-Atlantic bight, in order to facilitate and participate in the research program set forth in section 11 of the Chairman's bill and in the Goss/Tauzin bill. As you will note, the legislation includes an authorization of $3 million per fiscal year for the purposes of carrying out this research program including such additional observer coverage in the mid-Atlantic bight.

BWFA feels very strongly that the imposition of an additional fee on the US pelagic longline fishery—a fishery that is already subject to an observer program, and that already provides substantially more scientific and fishery data to NMFS than any other sector of the highly migratory species fisheries, is both punitive and discriminatory. Furthermore, the revenue that would be generated by the fee duplicates the appropriations already authorized under section 16 of the Chairman's bill. BWFA respectfully requests

that the addition provision added at the end of section 11(a) of the Chairman's bill, H.R. 3331, be removed.

(5) Amending the Atlantic Tunas Convention Act

As you know, Mr. Chairman, the addition of section 6(c)(3)(K) to the Atlantic Tunas Convention Act in 1990 and its subsequent improvements in 1995 were extremely important legislative achievements. For the record, this provision provides that:

> "...no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission."

No other provision of law is more fundamental to our ability to effectively conserve and manage highly migratory species than this. It reflects the core of the understanding held by the US for many decades that no individual fishing nation can effectively conserve and manage these unique fish through unilateral measures. Instead, international management cooperation throughout the range of the fisheries is essential. Without this provision preventing unilateral preemption, it would be virtually impossible for the U.S. Commissioners to ICCAT to achieve the international cooperation or negotiate the international fishery management measures necessary to effectively conserve and manage these most highly migratory of all fish species.

Mr. Chairman, as you stated on the House floor on October 23, 1990, when this provision was first added to the ACTA by the bill H.R. 2061:

> *"The bill also requires that any measures included within any management plan for highly migratory species must be consistent with any applicable treaty or international agreement to which the United States is a party, and that does not increase or decrease any allocation or quota of fish provided to the United States under such treaty or agreement.*
>
> *This is an extremely important change. Heretofore, management plans could be developed regardless of any international agreement or consensus. This has put the United States in a very tenuous negotiating position when trying to obtain international cooperation for conservation and management measures.*
>
> *Effective management for highly migratory species must involve and coordinate efforts over the entire range of the species and include all harvesting nations. Otherwise, conservation efforts of our domestic fishermen will only result in protection of the species while in U.S. waters and would eliminate any incentive for other nations to cooperate or adopt equal measures. Such a situation is unfair and unacceptable.*
>
> *U.S. fishermen must be given a reasonable opportunity to harvest the U.S. internationally agreed to allocation. This should not preclude complementary*

time-area closures or minimum size regulations which attempt to protect spawning stock. Any such complementary regulations for target and by-catch species must be reasonable and be based on adequate scientific data and not on political interest."

Mr. Chairman, I have never read a more clear and rational explanation of the importance of this provision and the fundamental theory behind international management of highly migratory species at ICCAT. A great deal has been accomplished in the ten years since you made that statement. The reason why is because you were absolutely right. There is no way we could have achieved anything significant at ICCAT without the absolute commitment of the US government to back-up our international negotiating efforts. US unilateral action would have completely eliminated any incentive or basis to achieve cooperation from other ICCAT nations, most of which have characteristically displayed far less conservation ethic than the US.

I am proud to report that in the past decade we have for the first time in any international fishery management regime put into place real enforcement provisions with tangible economic penalties against both non-member and member nations. We have established timely rebuilding plans for bluefin tuna and north Atlantic swordfish, and we have achieved the first-ever international conservation measures to substantially reduce the mortality of billfish in pelagic longline fisheries. Much more has to be done, of course, but we were able to do this, Mr. Chairman, because we knew that the US government would honor our international commitments and faithfully implement such management measures back home. This provision in ATCA is one of the main reasons.

Mr. Chairman, since you made that enlightened statement on the House floor, absolutely nothing has changed that would suggest a need to modify that key provision of the ACTA as suggested in section 7(k) in your bill.

Also included in section 7(k) of your bill is an associated provision that would direct the Secretary of Commerce to reduce the US quota of swordfish by an amount commensurate to the amount of fish harvested by vessels accepting the second mid-Atlantic buyout proposed in your bill. First I would note that, with your and your staff's help, we have made great advancements for north Atlantic swordfish conservation. There is absolutely no legitimate conservation basis that might be used to support an argument to reduce the US quota of swordfish unilaterally. The north Atlantic swordfish stock is not in peril. It is now stable at a sustainable yield that is about 65 percent of the maximum, and we now have a solid plan in place to gradually increase the stock to a level that will produce the full 100 percent of the maximum sustainable yield within 10 years. I would note that it was many of your New Jersey longline fishermen that made the conservation sacrifices necessary to achieve this rebuilding plan at ICCAT last year. This is certainly not the time to abandon their sacrifices or our principles of international cooperation and management of highly migratory species at ICCAT and turn them over to a doomed strategy of unilateral management.

In addition to the reasons stated above, I want to make clear that any unilateral reductions in the US quota of ICCAT-managed species will only result in these fish being reallocated to other ICCAT nations. With the exception of Canada, which has a relatively small share of the north Atlantic swordfish fishery, all other north Atlantic swordfish fishing nations have a substantially higher bycatch rate of both billfish and small swordfish, as well as a poor record of compliance with the directed swordfish quotas. In addition, unlike the US pelagic longline fleet, no other ICCAT longline fleet has a requirement to release live billfish and so their rates of billfish bycatch mortality are much higher. The important point is that a unilateral reduction in the US quota for swordfish will have a substantially negative conservation consequence for billfish and small swordfish bycatch and it would likely lead to overall swordfish overfishing.

For all of these reasons, we strongly urge you to drop the provisions set forth in section 7(k) of your bill.

(6) Alternative to Buyout to Reduce Capacity in the US longline fleet.

The purpose of the buyout in our proposal, as reflected in the Goss/Tauzin bill, is not to reduce capacity in the US longline fleet. The purpose is to mitigate adverse economic impacts of closing vast areas of the US EEZ to pelagic longline fishing in order to achieve rather ambitious bycatch reduction objectives. The US longline fleet is not overcapitalized and so BWFA does not support any alternatives simply designed to reduce capacity in the U.S. longline fleet. In fact, in the past 10 years, the US pelagic longline fleet exceeded its quota in only 1 year, 1995, and in all other years posted minor under-harvests.

Pelagic longline fishing involving the size of vessels operated in the US is subject to a great many variables far beyond the control of the fishermen including weather and a range of environmental, hydrological and climactic variables and cycles that greatly affect the location and productivity of the fishing grounds. The fishing capacity of the present US pelagic longline fleet in any given year may be adequate or inadequate to harvest the US quota depending on these variables. In no case is there any basis to conclude that there is an overcapacity in this fleet that would justify a mechanism designed simply to reduce capacity.

Mr. Chairman, other members of the Subcommittee, I am very grateful for the opportunity to present this testimony before your Subcommittee. I am convinced that the many months of discussion and compromise among the Parties to our Memorandum of Understanding and Cooperation have produced a solution to the issue of bycatch in the US pelagic longline fishery that is the best possible solution that could be achieved. We ask for your full support and look forward to working with you to achieve speedy enactment.

ATTACHMENT

Memorandum of Understanding And Cooperation

Parties

Blue Water Fishermen's Association
American Sportfishing Association
Coastal Conservation Association
The Billfish Foundation

Objectives

1. To achieve meaningful reductions in the bycatch and fishing mortality of undersized swordfish and all billfish species in the Atlantic and Gulf of Mexico pelagic longline fisheries within the U.S. Exclusive Economic Zone through the establishment of highly migratory species conservation zones that apply time-area closures to pelagic longline fishing based on the best available scientific information.

2. To provide compensation to U.S. pelagic longline fishermen substantially adversely affected by the establishment of HMS conservation zones and the application of time-area closures through a permit buyback program.

3. To prevent adverse impacts on the economics or conservation of potentially impacted non-HMS fisheries.

4. To conduct scientific research investigating pelagic longline fishing gear and methods that reduce billfish and other highly migratory species catch and mortality while maintaining the viability of the fishery.

5. To advance the principles of small, undersized swordfish and billfish bycatch reduction at ICCAT.

6. To promote a spirit of alliance, unity and mutual respect among the various sectors of the U.S. Atlantic recreational and commercial HMS fisheries.

Understanding

Recognizing the mutual interests of the parties in advancing the conservation and management of highly migratory species in the United States and internationally through ICCAT, and to achieve the aforementioned objectives, the Parties agree to the following:

Process:

1. To implement this Memorandum in good faith and in the spirit of full cooperation, and to take such steps as are necessary to avoid and prevent any circumstances that serve to undermine or diminish such cooperation including discouraging any attempts by non-parties to negatively impact, unilaterally disadvantage and/or eliminate those Atlantic HMS fisheries engaged in by the parties.

2. To engage and apply all available political, scientific, public relations and administrative assets to implement this Memorandum in as expeditious a manner as is possible.

3. To achieve Objectives 1, 2, 3 and 4 of this Memorandum exclusively through the enactment of such authorizing and appropriations legislation as is necessary during the full term of the 106th Congress.

4. To take such actions as are necessary and appropriate to ensure that any rulemaking or other form of administrative action does not supersede, preempt or interfere with this legislative initiative.

5. To oppose any legislation and legislative amendments that are inconsistent with the objective and specific details of this Memorandum.

6. To provide or secure in a timely manner any scientific, economic or other data that is necessary for the implementation of this Memorandum.

7. To work cooperatively with Congress, the Administration, and non-governmental entities to implement all aspects of this Memorandum.

Specifics

1. That the legislation shall establish an Atlantic swordfish/billfish conservation zone closed annually, year-round to the use of pelagic longline gear as described by the following coordinates of latitude and longitude.

(A) [North/South Carolina land border]
(B) [North/South Carolina border-- seaward extension]
(C) 33° 00' N/78° 00' W
(D) 33° 00' N/77° 00' W
(E) 32° 00' N/77° 00' W
(F) 32° 00' N/78° 00' W
(G) 31° 00' N/78° 00' W
(H) 31° 00' N/79° 00' W

(I) 24° 00' N/79° 00' W
(J) 24° 00' N/82° 00' W
(K) 25° 00' N/82° 00' W
(L) 25° 00' N/81° 30' W
(M) 26° 00'N/81° 30' W

2. That the legislation shall establish a Gulf of Mexico swordfish conservation zone closed to the use of pelagic longline gear annually from January 1st to Memorial Day as described by the following coordinates of latitude and longitude.

(A) 30° 00'N/87° 30' W
(B) 30° 00'N/86° 00' W
(C) 29° 00'N/86° 00' W
(D) 29° 00'N/87° 30' W

3. That the legislation shall establish a Gulf of Mexico billfish conservation zone closed to the use of pelagic longline gear annually from Memorial Day through Labor Day as described by the following coordinates of latitude and longitude.

(A) 26° '00 N/97° 10' W [approx loc. of US/Mex land border]
(B) 26° '00 N/96° 00' W
(C) 27° 30' N/94° 30' W
(D) 27° 30' N/90° 00' W
(E) 28° 00' N/90° 00' W
(F) 29° 00' N/88° 00' W
(G) 29° 00' N/86° 00' W
(H) 29° 40' N/85° 20' W [approx. loc. of Cape San Blas, Fla.]

4. That the legislation will provide for the establishment of a fishing permit "buyback" program for pelagic longline vessels to take effect at the same time as the swordfish/billfish conservation zones. The legislation will provide a process to buy all fishing permits from up to 60 eligible vessels on a willing buyer, willing seller basis. Vessels will be prevented from reflagging or fishing in any other commercial fishery including state water fisheries. Vessel owners will be compensated by paying them for all of their fishing licenses (federal and state). Vessels not documented will be named and barred from any commercial fishery. Vessels will be allowed to participate in any sector of the recreational fishery including as a charter boat.

5. That the legislation will provide no less than 50% of the total costs of a buyback program be paid by the Federal government through appropriations, and will provide the necessary authorities and mechanisms for half of the remaining total costs to be paid by a fee on the sale within the US of Atlantic swordfish and

the other half of the remaining total costs to be paid by recreational fishermen benefiting from the closed areas.

6. That the legislation will establish a Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program that identifies and tests a variety of longline gear configurations and uses in order to determine which are the most effective for reducing billfish bycatch mortality in the Gulf of Mexico yellowfin tuna fishery. The legislation shall require the precise design of this Program to be developed through a scientific workshop convened by NMFS, Southeast Fishery Science Center and that members of the pelagic longline and recreational billfish industries and their scientists will be included as part of the design team.

7. That the legislation will provide for: (i) the results of the Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program to be submitted as a report to Congress no later than 3 years from the date of the enactment of legislation; (ii) the restrictions on pelagic longlining in the Gulf of Mexico billfish conservation zone to sunset no later than 4 years from the date of enactment of the legislation; and (iii) for there to be a clear nexus between the report to Congress and the sunset so as to ensure a comprehensive reevaluation of the most effective and practicable means to reduce billfish bycatch and billfish bycatch mortality in the yellowfin tuna pelagic longline fishery in the Gulf of Mexico.

8. That the legislation will provide the necessary authorization and appropriations to cover 100% of the costs for the Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program and, in addition, at least $400,000 to the NMFS Southeast Fishery Science Center for additional billfish and associated highly migratory species research.

9. That the legislation will ensure that any future considerations of time-area closures for pelagic longlining within the US EEZ are consistent with ICCAT recommendations, do not disadvantage US fishermen relative to the fishermen of other nations, and are justified by the best available scientific information. This paragraph is not intended as a vehicle to modify existing law.

10. That the legislation will ensure that NMFS is not precluded from conducting pelagic longline fishery research, including research involving the use experimental pelagic longline fishing gear, in any of the conservation zones at any time.

signed:

Blue Water Fishermen's Association
Date: 8/30/99

American Sportfishing Association
Date: 8/16/99

Coastal Conservation Association
Date: 8/20/99

The Billfish Foundation
Date: 24. VIII. 99

Mr. SAXTON. Thank you.
Mr. Nussman.

STATEMENT OF MR. MICHAEL NUSSMAN, VICE PRESIDENT, AMERICAN SPORTFISHING ASSOCIATION

Mr. NUSSMAN. Thank you, Mr. Chairman. I appreciate the opportunity to be here today and to testify on behalf of the American Sportfishing Association. ASA is a non-profit trade association that represents 500 members of the sportfishing industry. Besides working for that group, I also serve as the U.S. Recreational Commissioner to ICCAT.

Today, I am going to comment on the entire variety of bills that have been laid out before you, as well as the NMFS proposal that has been discussed previously.

Billfish—and by that I mean blue marlin, white marlin and sailfish—as well as swordfish are important recreational and commercial species. Unfortunately, in the Atlantic, each of these species is overfished. Billfish are at about 25 percent of the level necessary to provide and sustainable yield, while swordfish are at around 65 percent of that level.

Having said that, the outlook for one of these stocks, swordfish, is improving. The last stock assessment completed in the fall shows the stock has stabilized—and, in fact, may be recovering—due in large part to international and domestic quota cuts taken over the last five years.

Even more promising, late last year ICCAT agreed to a 10-year rebuilding plan for swordfish. As a part of that plan, U.S. swordfish quotas will be cut by 7 percent this year, and that will increase to 12 percent by the year 2002.

Now, with this background, I think it is important to understand why ASA, along with the Coastal Conservation Association and the Billfish Foundation agreed to work together with Blue Water on a concept that has become H.R. 3390, and in large measure your bill, H.R. 3331.

From a recreational perspective—and I mean that both from the industry perspective as well as the angler perspective—our goal is a very simple one. We want to improve recreational fishing.

So, despite the fact that we have swordfish on a reasonable path to recovery, we all know that billfish are still in significant trouble. Further, we recognize that the single largest source of billfish mortality in U.S. waters is longline bycatch. So, collectively, our groups came together. We took the best scientific data and identified areas that had the highest bycatch-to-targeted catch ratio and we proposed to close them.

Next, the groups agreed to cooperate in a buyout of longline vessels that spent a significant amount of time fishing in these areas. From our perspective, there are two good reasons to do this. First, we are taking these fishermen's livelihoods from them, and equity dictates that they be compensated.

Second, despite the quota reductions I spoke of earlier, if these vessels are not retired, their effort could be displaced elsewhere, and this displacement could, in fact, have unintended consequences which we can't predict.

Each of the groups involved realize that this effort, while an important and critical first step, will not be the final answer in restoring our fish populations to healthy levels. So, we have included a research program to improve data on bycatch associated with longline fishing. This three-year effort, signed off on by all parties, will yield important information upon which to base future management decisions.

Finally, Mr. Chairman, despite the ICCAT quota reduction and the buyout contemplated by the legislation, some have raised concerns that longline vessels will be displaced to other areas. To address this issue, both your bill and H.R. 3390 require aggressive monitoring in the mid-Atlantic, an area where any possible displacement could, in fact, occur.

This monitoring will be accomplished by increasing the level of observer coverage and by mandating use of vessel monitoring system. Further, the bills require NMFS to take action if displacement is found to be affecting recreational fishing.

With regard to the rule proposed by the National Marine Fisheries Service, we compliment the agency for its hard work and note that the proposed areas, while different in some ways, are, in fact, fairly similar to the areas that we propose.

Unfortunately, the agency does not at this time have all the tools needed to complete its work. NMFS' proposal, because it lacks a buyout, actually encourages displacement of longline effort outside the closed area because it leaves the displaced boats in business. NMFS acknowledges that this displacement is likely to occur and, in fact, will result in increased bycatch of blue and white marlin, both species that are significantly depressed. We believe that would be a disappointing outcome for such a significant proposal as we have on the table today.

In concluding, Mr. Chairman, I believe that of the bills being considered here, H.R. 3390 has the broadest support. I would say that it is not a perfect bill but, in fact, few bills are. With that understanding, I would urge you to move it forward. I appreciate the opportunity to testify, and look forward to answering any questions. Thank you.

[The prepared statement of Mr. Nussman follows:]

Testimony of Mike Nussman

Mr. Chairman, I appreciate the opportunity to testify before the Subcommittee on behalf of the recreational fishing industry. My testimony today addresses the two versions of the Atlantic Highly Migratory Species Conservation Act, H.R. 3331 and 3390, legislation to prohibit pelagic longline fishing in certain areas of the U.S. Exclusive Economic Zone (EEZ), and the National Marine Fisheries Service's Proposed Rule regarding the same matter. My comments specifically address the buyout and conservation provisions outlined in the related bills and are endorsed by the American Sportfishing Association.

ASA is a non-profit trade organization whose members include fishing tackle manufacturers, boat builders, state fish and wildlife agencies, angler organizations, sport fishing retailers, and the outdoor media. For over 50 years, ASA and its predecessor organizations have promoted the conservation of fishery resources and environmental measures that improve the aquatic environment, in order to ensure the enjoyment of healthy fisheries by America's 50 million anglers.

Background

As vice president of ASA and the U.S. Recreational Commissioner to the International Commission for the Conservation of Atlantic Tunas (ICCAT), I am pleased to provide the committee with some thoughts on highly migratory species management. As you know, billfish and other large pelagic species are of extreme importance to recreational anglers and the sport fishing industry. Saltwater sport fishing, in addition to being a popular leisure activity, is also big business. In 1996, approximately 10 million Americans spent just over 100 million days fishing in saltwater. The economic impact of this activity exceeded eight and a half billion dollars at the retail level, accounted for the equivalent of 288,000 full-time jobs, and generated $25 billion in overall economic output.

Many of these jobs and economic benefits are in jeopardy as stocks of saltwater big game fish are overfished. For example, blue and white marlin have been over-exploited Atlantic-wide for more than two decades. While some of these species may not be subject to a directed harvest by commercial fishermen, substantial numbers are caught as bycatch. Most of these saltwater game species are highly migratory, regularly passing in and out of the U.S. EEZ, making the problem not one the U.S. can effectively address alone.

Role of ICCAT

In 1966, the International Commission for the Conservation of Atlantic Tunas was formed to be the international body charged with management of HMS Atlantic-wide. Recognizing the need for international cooperation in the management of

these species, the United States joined ICCAT as an active participant in 1975. Traditionally, U.S. fishermen catch only 29% of the North Atlantic swordfish quota established by ICCAT. Fishermen from a host of foreign nations catch the remaining 71%. Therefore, even were we to discontinue all longline fishing in the U.S. EEZ, the stocks of swordfish and other HMS would still be in need of serious management measures.

ICCAT's past management efforts are not littered with success stories. As a result, most of the species for which ICCAT is responsible have seen steady declines. While serving as the U.S. Recreational Commissioner to ICCAT, I have been critical of these failures and, in fact, I was one of many skeptical that ICCAT would be able to stem the decline of swordfish. However, this past October, we witnessed a change. An international team of scientists reported that in response to previously mandated ICCAT quota cuts, swordfish stocks had begun to make the slow climb back up toward a sustainable status.

At this fall's ICCAT meeting in Brazil, the United States agreed to further reduce its swordfish quota for 2000 by 7%. There will be additional cuts in the subsequent two years of 10% and 12% from the 1999 quota level. The result is that ICCAT has established an international rebuilding plan for swordfish that should rebuild the stocks to MSY in around ten years.

Sustainable Fisheries Act

The 1996 amendments to the Magnuson-Stevens Act called for a concerted effort to be made to reduce bycatch. As I see it, there are three ways in which such reductions can be accomplished. First, fishermen can fish in areas that have low concentrations of bycatch species. Second, fishermen can find methods to fish more selectively. Or third, the government can outlaw the gear responsible for the high levels of bycatch. The legislation under consideration today contemplates all three of these alternatives. H.R. 3331 and 3390 deal with the bycatch reduction methods outlined in options one and two. H.R. 3516 suggests that option three will best accomplish the goal.

Position of ASA

ASA's overriding goal in this effort is to improve sport fishing for pelagic saltwater game fish. One way this can be accomplished is by addressing the substantial bycatch of those species that occur in commercial longlining. As I stated, all of the legislative and administrative proposals up for consideration today take steps in this direction. However, only one, H.R. 3390, puts forth a comprehensive approach that maintains the support of a substantial number in the recreational and commercial fishing communities.

Summary of H.R. 3390, 3331 and 3516

H.R. 3390 proposes reducing bycatch in the commercial longline fleet with a three-tiered approach. First, the bill permanently closes the U.S. southeastern Atlantic waters to commercial longlining, with additional seasonal closures along virtually the entire length of the Gulf of Mexico. Secondly, it provides for the removal of approximately 70 vessels from the longline fishery through the buyout of their state and federal commercial fishing permits. Only those vessels affected by the permanent closure in the Atlantic will be eligible for the buyout. Finally, H.R. 3390 mandates increased monitoring and creation of an extensive bycatch reduction research program.

H.R. 3331 contains the same provisions as H.R. 3390 with the addition of a voluntary buyout of vessels in the mid-Atlantic Bight and a corresponding quota reduction based on the number of vessels that leave the fishery from that area.

H.R. 3516 would amend the Magnuson Act to ban the use of commercial longlines in the U.S. Atlantic EEZ.

Closed Areas

The areas closed in both versions of the legislation (H.R. 3331 and 3390) and the NMFS Proposed Rule represent large swaths of ocean where, based on an analysis of reported landings from commercial fishing logbooks, high bycatch of nontarget species (especially billfish) occurs in the commercial longline fishery. The actual areas closed differ only slightly in the Atlantic, but significantly in the Gulf.

Our concern centers on the NMFS proposed closure in the Gulf of Mexico. As only the western Gulf is closed, it is possible, if not likely, that there may be a move of longlining operations to the eastern Gulf, thereby significantly reducing the conservation benefits of the entire Gulf closed area. Further, unlike the Atlantic, there is no buyout proposed for the displaced vessels.

The closed areas outlined in H.R. 3331 and 3390 will have significant conservation benefits for many species of popular saltwater game fish. As a result of the closures, scientists estimate that longline bycatch in the U.S. EEZ will be reduced by as much as 47% for sailfish, 32% for blue marlin, 29% for spearfish, and 13% for white marlin. In addition, because H.R. 3331 and 3390 cover all species caught by pelagic longlines, unlike the NMFS Proposed Rule, additional benefits should be realized for sharks, wahoo, and mahi mahi among others.

Those critical of these legislative proposals have suggested that little commercial longline fishing actually occurs in the proposed closed areas and therefore, any associated conservation benefit would be minimal. At the same time, we have also heard the criticism that these areas are under such intense fishing pressure that once closed, considerable displacement will occur to areas outside the

closed zones. I respectively submit that these critics cannot have it both ways. In addressing the first point, I note that the NMFS Proposed Rule and H.R. 3331 and 3390 have identified virtually the same areas to be closed. This should be a strong indication that the closures are based on the best science available. My response to the second point is that displacement is certainly an issue of concern, but it is difficult to predict where and how much may occur. Nevertheless, H.R. 3331 and 3390 contain several provisions that help protect against any adverse effects from displacement including a buyout of commercial fishing permits along with increased monitoring and research of the remaining longline fleet.

Buyout

By offering to buy back all commercial fishing permits from many of the affected longliners in the Atlantic, H.R 3331 and 3390 each address the displacement issue head on. Permanently removing approximately 70 vessels from the Atlantic longline fishery means that there are roughly one-third less vessels to move to other open areas. Meanwhile, the NMFS Proposed Rule actually encourages displacement of commercial effort outside the closed areas as it leaves the same number of vessels in the water, but forces them to fish in other areas. In fact, NMFS acknowledges that this displacement is likely to occur and would actually result in more bycatch of blue and white marlin (+5% and +6% respectively), sea turtles (+8%), BAYS tuna (+9%) and pelagic sharks (+6%). However, as Director Dalton has informed the Subcommittee, NMFS' hands are tied in this regard as it is not within their administrative powers to even suggest a buyout.

The legislative buyout is designed to compensate those commercial longliners who will have their livelihood taken away by the permanent closure in the southeastern Atlantic. To be eligible, a vessel must have directed at least 35% of its fishing effort within the permanently closed areas. In this way, only those vessels that have a significant impact on the resource will be removed. However, the buyout is based on a willing buyer, willing seller basis so the fishermen are in no way forced to accept the buyout. Thus far, about 50 vessels have expressed an interest in accepting the proposal to leave the commercial longline fishery forever.

Although the total price tag for the buyout is figured to be around $25 million, ASA strongly supports the premise that those users of the resource who will benefit from the closures, primarily the commercial and recreational communities, will share in paying the cost. The total cost to the recreational community is estimated at $5 million, roughly 20% of the entire program cost. It will be paid off through a $25 permit required of recreational vessels fishing for HMS in the closed areas. This total recreational amount equates to about one dollar for each affected state saltwater recreational angler. This notion of user-pays/user-benefits is similar to the idea behind the Wallop-Breaux manufacturer's excise tax for sport fish restoration activities. ASA sees this contribution by the recreational fishing community for the commercial buyout outlined in H.R. 3390 as a worthy investment in our saltwater sport fisheries.

An example frequently used to discount the idea of a buyout surrounds the recent buyout of the New England groundfish fishery begun in 1994. It is true that these northeastern stocks remain severely depressed despite investments of million of dollars and management efforts including a buyout. However, there are several specific differences in the southeast that give us optimism that such a buyout contained in H.R. 3390 will turn out much more favorably.

The New England plan bought out the permits 79 commercial fishing vessels at a total cost of about $30 million; figures roughly equal to the number outlined in H.R. 3390 and 3331. However, according to NMFS, the northeast fishery was comprised of approximately one thousand vessels fishing for groundfish, so removal of 79 vessels resulted in a fleet reduction of only about 8%. In the H.R. 3390 proposed buyout of longline fishers, nearly one-third of the entire fleet would be removed.

Secondly, the northeast groundfish buyout did not include any associated closed areas. This added measure included in H.R. 3390 should result in reduced pressure on those important target and nontarget species at critical locations and times of the year.

Lastly, New England groundfish populations at the time of the buyout were severely depressed. The buyout had little effect because the fishery was already so overcapitalized that such a small reduction of effort directed as such depleted populations was a case of too little too late. In the case at hand, the most recent ICCAT stock assessment indicated that Atlantic swordfish populations are on the rebound. These stocks are far from recovered, but the reduction in vessels in conjunction with the closed areas and ICCAT's quota cutback should ensure that swordfish and other associated recreational species have an opportunity to rebuild.

Another criticism that has been leveled against these proposals concerns the cost of the buyout. Some have complained that the buyout is too generous to the longliners. Others have stated that no one will accept the buyout. In my view, it is at least possible that one of these criticisms could be correct. However, I do not believe both can be accurate at the same time. The method used for determining cost of the vessel is tied directly to its catch history. What the bills attempt to do is fairly compensate the vessel owners for the vessel's permanent removal from commercial fishing. Conversely, should nobody accept the buyout, nothing has been lost, as the legislation requires acceptance of the buyout option before funds are spent.

Monitoring and Research

In addition to handling displaced effort by removing commercial vessels from the fishery, H.R. 3331 and 3390 require aggressive monitoring in the mid-Atlantic bight, an area where any possible displacement is likely to occur. This monitoring will be accomplished by increasing the level of observer coverage and mandating use of

Vessel Monitoring Systems (VMS). Furthermore, the legislation mandates that NMFS take action should any such displacement be found to be adversely affecting recreational fishing. The NMFS proposed rule, however, does nothing to monitor where that displacement will occur or put in place provisions for addressing that displacement.

Also not included in the NMFS proposed rule, but is found in H.R. 3331 and 3390, is a mandated research program to increase data on the bycatch associated with commercial longline fishing. This three-year long research program, signed off on by the commercial longliners, conducted by NMFS, and funded in the legislation, will result in the most comprehensive scientific evidence about the sustainability of pelagic commercial longlining to date. In an area where scientific evidence is often hard to come by, this research program will provide the critical information for future management decisions.

Conclusion

H.R. 3390 represents an unprecedented case of the recreational and commercial fishing communities coming together for the good of the resource. Certainly, both sides have something to gain from this arrangement and this has been a source of criticism by some. The longliners that remain in the market will benefit from the removal of vessels and those fishermen that do accept the buyout will receive compensation. However, the gains for the resource and correspondingly for sport anglers will be large and should not be overshadowed by a few dissenters who are critical of any deal involving the commercial fishing industry. Finally, Mr. Chairman, I want to thank you for the leadership you have provided in this effort. I realize the controversial nature of this proposal; however, only through such a bold step will we make the progress necessary to restore our great saltwater sport fishing.

Mr. SAXTON. Thank you.
Mr. Hayes.

MR. ROBERT G. HAYES, GENERAL COUNSEL, COASTAL CONSERVATION ASSOCIATION, AMERICAN SPORTFISHING ASSOCIATION, THE BILLFISH FOUNDATION

Mr. HAYES. I am here today as the General Counsel for the American Sportfishing Association, the Coastal Conservation Association and the Billfish Foundation. I want to address three issues that have been raised here this morning, and three issues that I think are important to the passage of this bill.

The first one is, why legislate? Why do we need to do this in Congress? There are three very fundamental reasons, in my view. The first, Glenn has already indicated, there is a question whether there is authority under the Magnuson Act to do a buyout through the National Marine Fisheries Service. That is an obvious question.

The second thing is that the buyout that is envisioned in the Magnuson-Stevens Act doesn't allow recreational fishermen, who clearly could be the beneficiaries of a buyout, to participate.

And the third reason is that there are a number of decisions that have been made here, because this is a compromise, which might not be the most perfectly scientifically supported compromise that could be used here. Let me give you the best example.

The question was raised about the Gulf of Mexico. The administrative proposal essentially is to close the entire EEZ off the State of Texas. That will essentially displace 35 to 40 longliners who now reside in the State of Texas and would have to go to the upper Gulf.

Our purpose in designing the line the way in which we designed it was to ensure that there would not be any displacement of longline vessels from the Gulf of Mexico because, if we were going to displace them, that would increase the cost and increase the buyout.

Our concept here is to minimize displacement, but provide the greatest, broadest lateral benefit to recreational fishermen in the Gulf. That was the basis of the negotiation. Frankly, the proposal by the National Marine Fisheries Service would have to be essentially to close the entire Gulf, if it was going to benefit recreational fishermen. If you close the entire Gulf, it is obvious at that point that you are going to displace 100 vessels out of the Gulf of Mexico, clearly something that we were trying to avoid.

The second thing I want to talk about is the question of why legislate. What we are trying to avoid here was litigation. There has been a lot of discussion about the possibility of proceeding administratively with the closure and then having the buyout.

Frankly, it is our belief that if you do not couple the two together, that you are going to put yourself into Federal District Court someplace and we are going to be involved in litigation for years over whether these are the right areas, whether the science supports them, whether the displacement is accurate, whether the buyout plan ultimately developed by the National Marine Fisheries Service is fair.

What that leads us to believe is that we were talking about a five-year process under the administrative approach. We think all

of that can be avoided by the bills that we have agreed on and have brought to you.

The second thing I want to talk about very briefly is this research program. The research program here is, to the recreational community, one of the jewels of this legislation. What we are asking Congress to do is fund a research program not for the National Marine Fisheries Service, but to fund a program that allows scientists from the environmental community, from the recreational community, and from the commercial community, to come together and design a system in which we can prove to each other whether there are available bycatch reduction mechanisms that can be put in place here in the United States. That research program should lead us to a practical, logical, scientifically supported form of management free for five years down the line.

The last thing I want to talk about, and I am going to do it very briefly, is I want to talk about this issue of what do we do internationally. I was intrigued by the comments that there was more than one longline fleet and parcener fleet out floating around in the Atlantic Ocean. This program that we have put forward—closed areas, reducing fleet size, looking at research, looking at alternative ways of reducing bycatch—we want to take this concept internationally. I think we could even take it to the Pacific Ocean because, if it works, it works on every vessel.

And then the question becomes, do we have the domestic willpower and the presence to go to international organizations and get them to buy these kinds of closed areas and scientifically proven bycatch reduction systems? I think we do, and I think for all of those reasons it is important to support these bills and move them forward. Thank you.

[The prepared statement of Mr. Hayes follows:]

Mr. SAXTON. I am glad you said "support these bills". That is very good.

Ernie Panacek.

STATEMENT OF MR. ROBERT G. HAYES, GENERAL COUNSEL, COASTAL CONSERVATION ASSOCIATION, AMERICAN SPORTFISHING ASSOCIATION, THE BILLFISH FOUNDATION

Good morning Mr. Chairman:

My name is Bob Hayes, and I am the General Counsel for the Coastal Conservation Association ("CCA"), The Billfish Foundation ("TBF") and the American Sportfishing Association ("ASA"). This morning I'd like to focus my testimony on three areas. First, I would like to tell you a little about CCA and TBF. Second, I would like to tell you about how some of the policy decisions in H.R. 3390 were made, and third, I would like to address the particulars of the bill itself.

The Coastal Conservation Association is the leading marine recreational fishing group in the United States. Formed by a small group of sportfishermen in Houston in 1978, CCA has grown to a fifteen-state operation with over 70,000 members. Each of our states operates somewhat independently, focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues encompass a regional and national perspective; therefore, CCA learned long ago that Federal and international fisheries management were just as important to the local marine recreational fishermen as the conservation of the most local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards are made up of active volunteers concerned about the health of the nation's fisheries. CCA has been active in a number of conservation issues in the last twenty years, including: all of the east and Gulf coast net bans; gamefish status for redfish, speckled trout, tarpon, striped bass, river shad, marlins, spearfish and sailfish; and the reduction of bycatch through the use of closed areas and technology. We have also pushed for the improvement of the management system

through the restructuring of state and Federal management systems, the elimination of conflicts of interests by decision-makers, and the active involvement of our membership in the management process.

TBF began as a result of a concern by a group of offshore fisherman that scientific emphasis on billfish was inadequate to develop meaningful conservation measures. From its inception TBF has taken the leadership role nationally and internationally in the development of science to recover billfishes. As that science has developed, TBF has expanded its advocacy role to include both domestic and international management of billfishes.

Today, TBF has members from all over the world and works cooperatively with tournaments and other groups interested in the conservation of billfishes. Like CCA, it is a board driven policymaking body that hires professional staff to implement the policy.

The four guiding principles.

Legislation like the kind being proposed can't be developed without some guiding principles. Four have been used by the parties to the MOU that lead to the Saxton and Goss bills under consideration today.

Sound science, not emotion, should be the basis of fishery management decisions.

The National Marine Fisheries Service and The Billfish Foundation developed the underlying science for all of the bills dealing with HMS. Dr. Phil Goodyear, in his published report, found that there were areas of the Gulf of Mexico and the Southeast coast that if closed to longlining would reduce the bycatch of billfishes and small swordfish. The data and conclusions in that study form the basis for the NMFS proposal. It is not suprising that they are very similar, especially on the East Coast. The bill's unified approach to closing these areas demonstrates the value of sound science.

Longline bycatch is not one of those areas where the science is abundant. Therefore, the bills establish a scientific research program to determine ways to further reduce bycatch in the longline fishery. That scientific analysis will give Congress, fishery managers and the public a better understanding on which to base future decisions.

There has to be a benefit to all parties to make this work.

Not every group will get what it wants when this legislation goes into effect. Deals like this one are extremely complicated because of the diversity of the fishery and the lack of legislative authority to do what needs to be done. The recreational fishing community got into this because we wanted to improve billfishing. To do that, we had to address the single largest source of mortality in U.S. waters—longline bycatch. The longline fishery is extremely complicated. It is managed by the states, the Federal Government and by an international body. It is not monolithic. There are tuna and swordfish fleets and mixes of the both. They fish year round all over the Atlantic Ocean. Universally, they have said to us that they want to address the same problem we do, but they don't want to go out of business doing it.

The Goss bill tries to balance the interests of the fleet with the interests of the fish that recreational fisherman want to catch, and for the most part, release. The buyout program will clearly benefit the fleet by reducing competition and making the remaining fleet more viable. The closed areas will also benefit the fleet by reducing small swordfish catches and helping them accommodate the new ICCAT rebuilding plan. The closed areas will be a tremendous benefit for recreational anglers. Not only will they improve billfish catches, but also it will improve the catch of mahi mahi and wahoo. In addition it will reduce the conflicts between these gears, which has lead to many of the emotional confrontations with the longline fleet.

The beneficiaries of the bill have to contribute to the cost.

One of the earliest votes taken by CCA, TBF and ASA on the negotiation was whether we as recreational fishermen were willing to pay for some of the buyout of the longline fleet. The vote was unanimous. These groups operate on a principle that we are willing to put our money where our conservation mouths are. There are number of instances in which recreational fisherman have participated in the buyout of gear and licenses through the contribution of funds. As an example in Louisiana, we supported legislation that placed a surcharge on recreational fishing licenses to provide funds for commercial fishermen impacted by the net ban. In Texas CCA made direct contributions to the state to buy-out bay shrimp licenses. The tackle industry has been making contributions to improve fishing for years through Wallop-Breaux. Putting money up to improve fishing is not new for the recreational sector. We look at resource issues to determine what gains can be made and how those gains will improve recreational fishing. We are not willing to stand back and

avoid achieving improvements because someone else is responsible for the damage. We are willing to pay because we are getting a benefit.

The commercial industry is also willing to pay because of the benefit they are getting.

Minimize displacement of the remaining fleet.

Displacement of the remaining longlining fleet—the unintended moving of the fleet from one place to another—has been a concern of all four groups from the beginning of our discussions. We have tried to minimize the impact on other areas of the country. As a result, we decided early on that none of the bought out vessels could be used in any other commercial fishery. We concluded in the Gulf that the closed area had to be designed to allow the existing fleet to remain in place albeit further offshore. We concluded that the buy down of the fleet had to be large enough to ensure that a minimum amount of displacement in the mid-Atlantic would occur. We think the provisions of the Goss bill do that and protect other fisheries and regions from any displacement.

H.R. 3390

CCA, TBF and ASA got involved in this issue through the BlueWater Fishermen's Association ("BWFA"). BWFA wanted to explore reducing the bycatch of billfish through closed areas if there were support for a buyout of the smaller vessels in the fleet. We were very interested in this concept. Our Boards met three times on this issue and concluded that the approach taken in the Goss bill was not only the right approach for the resource, it was the only way we could accomplish our basic conservation goals. As a result, they instructed me to enter into negotiations with BWFA and to build a coalition of other like-minded conservation groups. These negotiations led to a Memorandum of Understanding among CCA, BWFA, the American Sportfishing Association and The Billfish Foundation, which was signed in August. The MOU contained many of the principles found in your legislation and formed the basis for the working relationship the participating groups have today. Each of the parties to the MOU still support it, because each of the parties knows this is the only way to get a bill like this one passed.

The bill we support, H.R. 3390, does the following:

1. Permanently closes an area from the North Carolina/South Carolina border to Key West, Florida, to all pelagic longlining.
2. Permanently closes an area off the Gulf coast from Panama City, Florida, to Mobile, Alabama to longlining from January through Labor Day.
3. For five years after enactment, it closes an area in the Gulf from Cape San Blas, Florida to Brownsville, Texas, from Memorial Day to Labor Day from the beach out to at least 500 fathoms.
4. Provides for a three-year research program with the longline fleet to determine ways to further reduce bycatch by longliners. This research will provide the basis for a permanent solution for longline bycatch, not only in the U.S., but in all Atlantic waters. These measures can be implemented at any time by either NMFS or the Congress.
5. Offers to buy all fishing permits from 68 eligible vessels on a willing buyer/willing seller basis. To be eligible, a vessel must receive at least 35 percent of its income from the permanently closed area.
6. Vessel owners will be compensated by payment for all fishing licenses (Federal and state) and for forfeiture by the vessel of its fisheries endorsement. Vessels not documented will be prevented from being sold into any other commercial fishery.
7. Total cost could approach $25,000,000. Funding will be through the National Marine Fisheries Service $15,000,000 if appropriated funds and $10,000,000 provided by the Federal Financing Bank. Funds will be provided only to vessel owners who can document landings and their Value. Owners will be paid $125,000 for their permit packages and an additional payment equal to one year's gross landings value not to exceed a total of $450,000.
8. The Federal Financing Bank will be repaid with $10,000,000 split 50/50 between the recreational community and the longline industry.
9. The longline industry will repay its obligation through a surcharge collected at the dealer level. The recreational community will repay its obligation through the issuance of a Federal license to vessels fishing for highly migratory species in the closed areas. The bill establishes a system for states to voluntarily elect to pay the debt for their fishermen.
10. The bill will provide that the permits can be obtained at any post office, retail outlet, on the Internet or through a 1-800 number system. The permits will issue to the boat and will not be transferable.

11. Longline vessels will be prevented from reflagging or fishing in any other commercial fishery including state water fisheries.

12. The bill includes requirements for vessel monitoring devices and enhanced observer coverage.

13. The research program will include a special emphasis off the mid-Atlantic in the event of displacement there of existing vessels as a result of the closed area.

The areas chosen for closure are a result of research done by The Billfish Foundation, which identified hot spots for bycatch, and by the swordfish industry which identified areas where small swordfish catches are found. The data used to identify these areas shows that the closures will have a number of positive impacts on bycatch. The preliminary estimates are that the closures will reduce U.S. longline bycatch in the EEZ by 47 percent for sails, 32 percent for blue marlin and 13 percent for whites. In addition, they will have a positive impact on the bycatch of sharks, tunas, small swordfish, mahi mahi, wahoo and other species. The legislation will reduce the U.S. swordfish fleet by about one-third. Since these vessels also fish in other domestic fisheries from which they will be precluded, the buyout will have some positive impact on the red snapper, shark, grouper and mahi mahi fisheries.

Internationally, it will set a precedent allowing the U.S. to negotiate the international closing of open-ocean bycatch hotspots and small swordfish areas. These closures will further assist in reducing the international fleet exploitation of billfishes.

ASA, TBF and CCA have been praised and maligned for their efforts. Most of the criticism has been from groups that do not understand the legislation or are looking for solutions that are not attainable. I would like to address some of those criticisms.

"There is no conservation benefit." Approximately 52 percent of the total small swordfish bycatch reported by U.S. pelagic longline fishermen in the U.S. EEZ occurs in the three proposed closed areas. Similarly, approximately 31 percent of the total billfish bycatch reported by U.S. pelagic longline fishermen in the U.S. EEZ occurs in these three areas combined. In addition, these closed areas will reduce the longline catch of other species, including mahi mahi.

"The vessels have already left the areas being closed." Prior to entering into the MOU, The Billfish Foundation commissioned a study by Dr. Phil Goodyear to look at the biological effects of time and area closures on the reduction of bycatch in the tuna and swordfish longline fleets. Dr. Goodyear looked at thousands of data sets from longline vessels in the south Atlantic and the Gulf to determine where and when the greatest reductions could be achieved if areas were closed. That data was used to determine which areas should be closed. In addition, in the Gulf the objective was to address the area of the greatest billfish bycatch and the recreational and longline fleet interaction without displacing the longline fleet to new areas of the Gulf or the Caribbean.

"There will be displacement of the fleet to the mid-Atlantic bight." There are two issues here. The first is the impact of the vessels being bought out and the second is the potential for more effort in the mid-Atlantic as a result of the closed areas.

A substantial portion of the negotiation over the MOU was spent discussing how to avoid the displacement of the eligible vessels to any fishery. The provisions in the bill that restrict the vessels accepting the buyout from participating in any commercial fishery were a result of those discussions. Vessels will be required to forfeit all of their state and Federal commercial fishery permits. In addition, the vessels will be required to permanently forfeit their fishery's endorsement, which will restrict any subsequent owner from placing the vessel in a commercial fishery. The vessels are also prevented from reflagging. Since these vessels are in limited entry systems, this will reduce the number of licenses in the swordfish, tuna, shark and red snapper fisheries. None of these vessels will ever again carry a longline or fish commercially.

The remaining fleet is not likely to increase its activity in the mid Atlantic. Vessels not eligible for the buy out will be precluded from fishing in the East Coast closed area, but that does not mean they will be able to fish in the mid-Atlantic. Most of the remaining fleet fish in the closed areas during the winter when there is little activity in the mid-Atlantic. Closing some of the fleet out of the south isn't going to start a mid winter fishery.

This won't help get a rebuilding plan for swordfish." This bill is not intended as the exclusive measure to achieve a rebuilding plan for swordfish. The bill's aim is to reduce the harvest of small swordfish and billfish. However, it will greatly assist in the achievement of an Atlanticwide recovery that was just negotiated at the recent ICCAT meeting in Rio. ICCAT agreed with the United States that it would adopt a ten-year rebuilding program for swordfish. That agreement came at some substantial cost to the domestic swordfish industry. In addition to taking a quota

reduction, the domestic industry agreed to phase down its allowable discard of small swordfish. Without this concession by the industry, no deal approaching a ten-year rebuilding plan was possible.

Taken as a whole, the U.S. industry will take a quota reduction approaching 15 percent over the next three years, while other fishing fleets from the EU and Japan will take considerably less of a cut. I believe that the existence and the potential for eventual passage of this legislation gave the industry the will to make this sacrifice.

"Why not let NMFS close areas?" CCA strongly endorses the principle that the Councils and not the Congress ought to manage fisheries. Given that, you might ask why we are supporting a legislative approach to address longline bycatch when the National Marine Fisheries Service is in the process of proposing rules to do just that. The reason is that NMFS does not have the authority under the Magnuson-Stevens Act to accomplish what can be accomplished through these bills. As Penny Dalton will tell you, these bills go well beyond what NMFS can accomplish through a rulemaking.

NMFS can clearly close areas to longlining; however, in doing so it must take several factors into consideration, including the economic impact on the longline fishery and the biological impact on other fisheries if the closed areas result in the displacement of vessels. It has no authority to buyout displaced vessels and, therefore, would have to adjust the area it is proposing to mitigate the impact on the industry and other fisheries. This mix of considerations is best described by comparing the NMFS proposal for the Gulf of Mexico and the H.R. 3390/3331 Gulf closure. NMFS proposed to close an area in the Western Gulf from about Port Eads westward to the Mexican border for six months. This will have a significant biological benefit for billfish in the western Gulf and could have a positive impact on the spawning populations of bluefin tuna. It will, however, displace the entire western Gulf longline fleet to the eastern Gulf during that period. CCA members and anglers in Texas will enjoy substantially improved recreational billfishing and will be effectively free of any longline interaction. However, our members in Louisiana, Mississippi, Alabama and Florida will get to enjoy an even greater interaction with the longline fleet as longliners shift their effort to the east. Both of these bills are designed to prevent the lateral displacement of the fleet in the Gulf. By pushing the longline effort further offshore, it creates separation of the two activities and produces a positive conservation effect.

On the East Coast this is even more dramatic. These bills propose a permanent closure on the East Coast from Key West to North Carolina. It assumes that there will be a number of vessels displaced as a result and offers to buy them out of all commercial fishing rather than allow them to shift their effort. NMFS can close the same area or an even one larger, but when it does, it will simply send the effort elsewhere, either to the Gulf or the mid-Atlantic. The alternative would be to reduce the size of the closure, thereby reducing the potential for displacement but also reducing the conservation benefit. Neither of these two results is going to make recreational fishermen happy.

Mr. Chairman as you can tell from this testimony that the groups I represent support the Goss bill. We would be remiss however in not thanking you for your leadership and your efforts to balance the concerns of the multiple constituencies. We have tried our best to address those concerns in the Goss bill and think that approach has the best chance of ultimate passage. You help in continuing this legislation will be invaluable and we look forward to working with you.

STATEMENT OF MR. ERNEST PANACEK, MANAGER, VIKING VILLAGE DOCK, BARNEGAT LIGHT, NEW JERSEY

Mr. PANACEK. Thank you, Mr. Chairman and Members of the Subcommittee. I am Ernie Panacek, Manager of Viking Village commercial fishing dock in Barnegat Light, New Jersey. I am also proud to be Blue Water Fishermen's Association's Regional Director for the New Jersey area and a Director of Garden State Seafood Association.

I hope everyone recognizes this unprecedented step by our commercial fisheries substantially reduce unwanted regulatory discarding of undersize swordfish, billfish, and other highly migratory species.

All along we have stated that once we had a defined universe of participants under limited access, we would develop a progressive plan to further reduce the catches of unwanted fish. We initiated this intense effort by surveying fishermen, dealers, and related businesses to determine the most effective and supportable approach for this task. Fortunately, principal mainstream sportfishing and conservation organizations shared our vision of the benefits of working cooperatively to solve major domestic problems so we can then turn as united Americans to approach the international arena with a more practical method to effectively achieve the conservation needed for the future of all our fisheries.

Other groups, including the Recreational Fishing Alliance, attended initial negotiations, however, they insisted that only a total ban of U.S. pelagic longlining would satisfy their extremist view.

The cooperative parties recognized this as a counterproductive direction and continued to develop perhaps the most progressive and positive proposal that has ever been developed between competing fishery sectors.

Today, faced with NMFS' flawed competing regulatory proposal, it is tremendously important for Congress to pass S. 1911 and H.R. 3390 before the agency is forced to finalize its proposed rule.

Mr. Chairman, even though I appreciate that at its core your bill includes the cooperating parties' proposal, I am, however, concerned and will discuss the following differences in H.R. 3331 that I think undermine the intent and effectiveness of the courageous proposal embodied in Congressman Goss' H.R. 3390.

(1) I support the inclusion of the additional purpose in H.R. 3331 that reinforces the value and the future of the U.S. pelagic longline fishery. Thank you for your dedication to keeping this fishery alive.

I recommend Atlantic closed area coordinates that will correct the errors made by Senate Legislative Counsel that would cause unnecessary displacement and would ensure easier compliance and enforcement.

I strongly oppose any second buyout. Our fishery will need time to settle out and evaluate the results of this dramatic conservation measure already incorporated into H.R. 3390. We are confident that any additional bycatch reduction can be cooperatively investigated through the research program.

The mid-Atlantic buyout is not based on bycatch hotspots nor the importance of minimizing target catch disruption, thus, could needlessly and negatively impact this fishery. This buyout has not been developed by, and cannot be supported by, this fishery.

I oppose any unilateral quota reductions. Experience shows unilateral cuts result in taking fish away from the compliant American fishermen, leaving this fish available to less conservation-oriented foreign fleets.

I oppose the additional $5 million financial burden of an unnecessary second buyout. These are hard economic times for the U.S. pelagic longline fishery which suffered from reduced prices due to over three times more swordfish imports in 1998 than in 1996. If additional government revenues are available, it should go towards minimizing the socio-economic impacts on related seafood businesses dependent on the vessels that are eligible for the voluntary buyout.

I oppose an observer fee placed on a single Atlantic highly migratory species sector. The pelagic longline fishery already has copious amounts of accurate data while comparable information from other commercial and recreational sectors remain unknown.

H.R. 3390 also already addresses additional observers for its research program. The mid-Atlantic effort limit may be supportable if revised to specifically focus on hooks displaced from the closed areas as a monitoring guideline, but not as an additional restriction. Operational variables in this fishery should remain flexible for potential bycatch reduction methods that should be studied by the research program in H.R. 3390.

Finally, Mr. Chairman, I strongly and personally recommend the additional conservation measure of prohibiting ICCAT quota overages from being imported into the U.S. market as a tremendous advance for international highly migratory species conservation, and to level the playing field for the American fisherman.

In conclusion, I hope that this Subcommittee will find the courage and wisdom to move forward H.R. 3390 as soon as possible, to send a strong message to all global nations that the United States is fully committed to conserve these valuable resources for future generations and stands behind their American fishermen who lead the world in this effort. Thank you very much.

[The prepared statement of Mr. Panacek follows:]

Written Testimony
Of

Ernest Panacek, Manager
Viking Village Dock
19th Street and Barnegat Bay
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Before the

Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
United States House of Representatives

Atlantic Swordfish Conservation Legislation
February 8, 2000

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak to you about the U.S. Atlantic Pelagic Longline Fishery for swordfish, tunas, sharks and mahi-mahi. I am Ernie Panacek, Manager of Viking Village commercial fishing dock in Barnegat Light, NJ. Viking Village's fishermen catch a wide variety of fresh domestically-caught fish for American seafood consumers who do not catch their own. We proudly carry on this important heritage of our Nation's coastal communities. I've attached more extensive background information on Viking Village and the fishing community of Barnegat Light.

I am also proud to be Blue Water Fishermen's Association's (BWFA) Regional Director for the New Jersey area and a Director of Garden State Seafood Association. Mr. Chairman, as you know, our fishermen have always been very progressive and we have taken to heart your encouragement that we work with other fishery sectors to develop mutually beneficial resolutions to our fisheries concerns. We've done that. Once limited access was achieved, we initiated negotiations with principal sportfishing groups [formal Memorandum of Understanding and Cooperation (MOU) attached] to develop the pelagic longline bycatch reduction proposal embodied in HR 3390. I strongly support this bill and will only support improvements that can be agreed upon by all four of the original cooperating parties.

Congressmen Goss' and Tauzin's HR 3390 would achieve comprehensive and truly effective conservation benefits and minimizes fishing effort displacement, socio-economic disruption, and user group conflict. This bill would also initiate research necessary to evaluate potentially more effective gear or operational modifications to further reduce unwanted pelagic longline catches. This bill is based on scientific data reported to the NMFS by our fishery and the first-hand knowledge of these fisheries directly from the cooperating groups.

According to NMFS/SEFSC pelagic longline reported data, approximately 52 percent of the total small swordfish bycatch reported by US pelagic longline fishermen in the US Economic Exclusive

Zone (EEZ) occurs in the three areas detailed in HR3390. Similarly, approximately 31 percent of the total billfish bycatch reported by US pelagic longline fishermen in the US EEZ also occurs in these three areas. Closure of such "hot-spot" concentrations is expected to substantially reduce pelagic longline bycatch. In addition, retiring, rather than displacing, the fishing effort from these areas will ensure that these expected reductions are exceeded because eligible vessels also placed effort in other areas. I have heard of no other single fisheries management action with as much potential conservation benefit as the proposal embodied in HR3390. I would note, however, that this proposal is not designed to address all of the problems in managing Atlantic HMS fisheries, such as nursery area closures for bluefin tuna, or under-reporting by the recreational fishing sector.

Our primary objective is to reduce unwanted bycatch in our domestic longline fishery. We also share a desire to develop a more practical approach to Atlantic HMS conservation than the current wasteful regulatory discard measures. Each of the cooperating groups has been deeply involved in the International Commission for the Conservation of Atlantic Tunas (ICCAT) process. We know that U.S. recreational and commercial catches combined are such a small percentage of the overall Atlantic-wide harvest that actions by our fishermen alone will not make a difference. For effective conservation of any Atlantic highly migratory species (HMS), the cooperation and compliance of all Atlantic harvesters throughout the range of each stock is essential. We are also convinced that foreign fishermen will not discard edible fish and do not even recognize the meaning of "bycatch" or "regulatory discarding". Developing a more practical approach, such as identifying and closing "hot-spot" nursery and spawning areas could achieve greater conservation gains, especially if fishing effort is not diverted to other problem areas. Together, we hope that this legislation will serve as a practical and reasonable model for the U.S. to promote within the ICCAT forum. The other proposals before us cannot achieve these domestic or international goals nor a similar level of conservation gains.

Congressman Sanford's HR3516 to ban U.S. pelagic longline within the EEZ, is unacceptable and would result in conservation losses because foreign fleets will capitalize upon the U.S. government-sanctioned removal of itself from the sustainable harvest and, thus, management of these internationally-shared resources. U.S. Atlantic HMS fisheries have already suffered the consequences of unilateral cut-backs. In 1990, the ICCAT recommended that the major swordfish harvesters (Spain and the United States) reduce their fishing mortality on North Atlantic swordfish by 15 percent. The U.S. implemented strict measures that actually reduced our catches by 38 percent while Spain reduced its catches 41 percent, by simply moving its large fleet to the South Atlantic. As a result of these actions, minor North Atlantic harvesters increased their catches from 6 to 26 percent. Canada also learned this lesson the hard way by unilaterally restricting their fishery to a restrictive swordfish quota in the early 1990's. Their reduced landings became their landings base when international catch reductions were established in 1996.

HR3516 would also deny American consumers their rightful access to their share of these Atlantic HMS produced by American fishermen. Pelagic longline fishing is an efficient method for the year-round harvest of these renewable resources. ICCAT's North Atlantic Swordfish Recovery Program includes country-specific total allowable catch limits and conservation measures that should rebuild the stock to maximum sustainable yield. U.S. pelagic longline fishermen have an excellent record of compliance with all international and domestic conservation measures. Eliminating pelagic longline is not a viable option internationally and should not be seriously considered domestically.

With regard to the NMFS's proposal, it would force southern fishermen to simply shift their fishing into inshore areas that remain available. NMFS's own analysis of their preferred option admits

to conservation losses for several important species while creating serious socio-economic disruption. Affected pelagic longline boats would need to uproot their home base and move to other regions. Families would need substantial time to resettle in housing and schools. Vessel operations would need to find dock space, freezer and other storage facilities. Related supply and service companies; including, bait, fuel, electronics, engine mechanics, seafood trucking and maintenance necessities would all be disrupted. These negative impacts created by the NMFS's proposed rule are unnecessary and will not achieve positive conservation objectives. If anything, the NMFS's proposed rule and its extensive public process has proven that the conservation gains that are in everyone's best interest can only be achieved by combining a voluntary buy-out with closing specific "hot-spot" problem areas.

Also, NMFS's closed areas unnecessarily extend into offshore waters where there is clean fishing. The NMFS's own scientific data show that "hot-spots" occur primarily in specific identifiable inshore areas. Closures outside 500 fathoms in the Gulf of Mexico or 250 fathoms in the Southeast Atlantic area are arbitrary and unnecessary. These offshore extensions guarantee fishing effort displacement by not allowing medium and larger vessels any option but to move to other coastal regions. Obviously, the HMS Division does not realize that viable pelagic longline fishing is not found in all ocean areas. These species are particularly sensitive to oceanic fluctuations and trends, such as temperature and bait availability. If the offshore side of the Gulf Stream is closed, the next generally viable area is offshore seamounts then the Mid-Atlantic Ridge. The affected U.S. fleet cannot safely fish these offshore areas. These negative actions will cause:

- Affected Southeast coastal vessels to move up the coast, above Cape Hatteras, during the summer and into the Caribbean or Eastern Gulf of Mexico during the winter.
- Affected Western Gulf of Mexico vessels to move to the Eastern Gulf or up the coast above Cape Hatteras during the summer and the Caribbean during the winter.
- Some of the largest vessels may enter the Distant Water Fishery to fish the Grand Banks of Newfoundland during the summer and Equatorial Zone during the winter; however, because they have not previously participated in these proven areas, we suspect individual vessel safety capabilities will be a major issue.

Some may think that closing just southern areas, thus forcing longline operations north, would benefit a commercial dock, such as Viking Village in New Jersey. It is my opinion that this theory is wrong. Forcing these small fiberglass vessels north will result in market gluts and crashes, especially prior to stormy weather. They will primarily fish more inshore waters and create greater conflict with the recreational fishermen and potentially cause much greater bycatch problems. These displacements would increase negative political pressure on the overall pelagic longline fishery. This fishery is a very important component of the overall seafood industry to many coastal communities. For example; in recent years, longline caught fish represent 30 to 40 percent of Viking Village's production and with restrictive measures in nearly every other commercial fishery and further measures pending, this production cannot be replaced. Take away this portion and our business cannot survive.

HR3390 can achieve enormous conservation gains by the closed area, voluntary buy-out and research approach taken. It is critically important that HR3390 be enacted and fully appropriated prior to the NMFS finalizing its proposed rule. If the NMFS finalizes their flawed proposed rule, fishing operations and families must be given at least one full year to make the necessary preparations (ie. Relocating the family household, children's educational arrangements, etc.) before implementing the rule. I'm sure it is no secret that the industry will have no choice but to challenge this final rule in court.

Mr. Chairman, I appreciate the attention you have always given to these important issues and the fact that the core of your bill includes the cooperative proposal embodied in the bill that I support. However, I am very concerned with several differences in HR3331 that I believe cripple the intent and effectiveness of our initiative. I sincerely hope that this process will result in a single bill moving forward as quickly as possible.

I have the following concerns and recommendations on the differences between HR3390 and HR3331:

1. **HR3331 Section 3. PURPOSES:** HR3331 includes the additional purpose *"to ensure a sustainable fishery and a sustainable United States pelagic longline fishery for the future,"* that I strongly support.

2. **HR3331 and HR3390 Section 6. HIGHLY MIGRATORY SPECIES CONSERVATION ZONES:** Both bills have similar Gulf of Mexico closed areas coordinates that are consistent with the scientific data and more important, the direct knowledge of these fisheries; however, the Atlantic conservation zone departs from the science and the understanding of the cooperative groups.

   The coordinates in both bills are derived from documents developed by the cooperating groups. HR3331 coordinates are taken from the formal Memorandum of Understanding and Cooperation finalized in August 1999. Consequently, the groups agreed that HR3390 Atlantic coordinates should be consistent with the U.S. EEZ through the Straits of Florida. Just prior to introducing S1911, Senator Breaux's personnel and Legislative Counsel made these changes; however, they inadvertently used the furthest point offshore of Charleston (MOU Point (G) 31° 00' N/78° 00' W) rather than the agreed upon western (MOU Point (H) 31° 00 N/79° 00 W). Using this offshore point (G) creates an unintended additional closed area wedge that is an important area for the remaining pelagic longline fishery. This additional area is unnecessary and would displace additional medium and larger vessels for no additional conservation or conflict resolution benefits.

   The scientific data and the experience of fishermen from this area bear out that for the Atlantic area both the bycatch and conflict problems are resolved when the closure boundary is set at or offshore of the Gulf Stream axis (depicted by a line of short arrows on the Atlantic area chart). Pelagic longline observer and logbook data indicate that the real problem is inside 250 fathoms. The following coordinates correct the mistake and resolve the intended bycatch problem.

   In addition, I suggest coordinates to smooth the remaining boundary while remaining offshore of the designated axis of the Gulf Stream and well outside 250 fathoms (in fact runs primarily along 350 to 400 fathoms). Smoothing this offshore boundary while maintaining straight lines will better facilitate compliance and enforcement and further eliminates unnecessary fishing effort displacement.

   I support the following Atlantic closed area coordinates for the final bill:

   1. 26 degrees 30 minutes north latitude, 82 degrees 0 minutes west longitude
   2. 24 degrees 0 minutes north latitude, 82 degrees 0 minutes west longitude
   3. 24 degrees 0 minutes north latitude, 81 degrees 08 minutes west longitude
   4. seaward extension of the Exclusive Economic Zone
   5. 27 degrees 52 minutes north latitude, 79 degrees 30 minutes west longitude
   6. 31 degrees 0 minutes north latitude, 79 degrees 0 minutes west longitude
   7. 33 degrees 0 minutes north latitude, 76 degrees 30 minutes west longitude
   8. 33 degrees 51 minutes north latitude, 78 degrees 33 minutes west longitude

3. **HR3331 Section 7 (k) MID-ATLANTIC BIGHT BUYOUT PROGRAM:** I strongly disagree with the inclusion of any additional buy-out program in the final bill.

   This fishery will need time to settle out from the dramatic steps already agreed to within HR3390. Until the primary closed areas, buy-out and research has been accomplished, it would be counterproductive to further diminish the ability of our domestic fishermen and American seafood consumers to utilize their full ICCAT quota. The addition of this provision will not enhance conservation.

   "Eligible if you have recorded landings of at least 40% swordfish in any one year between 1992-1999 in the MAB". Why the Mid-Atlantic? According to the NMFS data, this is not a juvenile swordfish "hot-spot". This criteria would primarily target directed swordfish vessels that fish outside this region (primarily the Grand Banks of Newfoundland) but return to Mid-Atlantic ports to offload. The Grand Banks fishery has a far lower percentage of undersized swordfish and billfish discards than any other area.

4. **HR3331 Section 7 (k) (2) and (3);** ***Deducting quotas commensurate with bought out effort:*** I cannot support any measure that would result in taking quota away from responsible and compliant fishermen and place it into the hands of foreign non-compliant fleets. This measure is a purely punitive gesture against compliant commercial fishermen, and sets an extremely poor precedent. This proposal actually undermines the U.S.'s abilities to acquire effective international measures.

   In recent years, the U.S. Pelagic Longline Fishery has experienced the consequence of quota closures. Unlike some other fisheries, our medium and larger size vessels are at sea for three to four weeks during one trip. Recalling vessels due to closures creates very expensive broken trips, market gluts and crashes plus additional regulatory discards during the closure. This circumstance has already forced many operations to fish in other oceans and/or reflag to less conservation-oriented countries. The international conservation program, the fish, and compliant fishermen and countries are the losers if the Congress forces vessels to leave this country.

   Until we can assess the effects of the dramatic measures we've already agreed to, no one knows if the remaining fleet will be capable of catching our ICCAT swordfish quota. Hopefully, our fishermen will have enough quota to conduct a year-round fishery and avoid the negative impacts of quota closures. It would be counter-productive to purposefully overcapitalize the remaining fishery by unilaterally reducing the quota.

5. **HR3331 Section 7 (k) (4);** *Total of 5 million dollars appropriated to pay for this second buy-out:* In my estimation, this fishery can only support its share of the compensation package embodied in HR3390. That permit holder buy-out will substantially reduce but not eliminate the socio-economic disruption to this fishery and the businesses that depend upon it.

   These are not the best economic times for this fishery. In recent years, U.S. Atlantic swordfish fishermen have willingly sacrificed more than 50 percent of their annual landings for conservation in order to reverse the decline of North Atlantic swordfish. The fishery now faces further cuts to comply with the 1999 ICCAT Swordfish Rebuilding Program, including the deduction of undersized swordfish discards from the U.S. country-specific quota. While we fought for and support the ICCAT quota cuts necessary to rebuild the stock, these additional reductions will have substantial short-term economic impact on our industry. In addition to these conservation sacrifices, more than

triple the volume of swordfish imports from all oceans entered the U.S. during 1998 compared to only two years prior, dramatically reducing market prices. Some of this product is "internationally pirated" Atlantic swordfish (other country's ICCAT quota overages) that the U.S. continues to allow into our marketplace.

If additional revenues are available, they should go toward minimizing the negative impacts to those fish dealers, ice, bait, tackle and other supply and service companies who depend upon the commerce generated by the 68 eligible fishing operations. If additional government moneys are spent, they should also go toward prohibiting ICCAT quota overages from entering the U.S.

6. **HR3331 Section 11 (a);** *Require 1% ex-vessel fee on fish harvested in MAB to pay for observers in MAB:* The research program in HR3390 already addresses pelagic longline observer coverage for all areas in addition to the existing observer coverage (basically only Atlantic HMS fishery with a timeline of observer coverage). This fishery cannot possibly afford to pay for observer coverage at this time. The pelagic longline fleet consists of relatively small vessels that operate on slim margins compared to factory processors on the west coast or foreign subsidized freezer longliners. The majority of the fleet are 45 to 60 foot owner-operated vessels that find it difficult to accommodate any additional people. It would be counterproductive to require an unobtainable level of observer coverage.

This measure is punitive, levied against a single sector of the fishery that already carries observers when requested and provides more scientific data than any other sector of Atlantic HMS fisheries. Despite adequate science to the contrary, it is only the unjustified fund raising rhetoric of extremists that paints a negative perception of this fishery. If all HMS fisheries had comparable data, it might be justified; however, we already provide copious amounts of reported and observed data while the catches, catch disposition, sizes, fishing mortality and catch per unit of effort (CPUE) of other commercial and recreational HMS fisheries remain unknown. I strongly disagree with this provision.

7. **HR3331 Section 12 RESTRICTIONS ON PELAGIC LONGLINE VESSELS IN THE MID-ATLANTIC BIGHT;** *In the months of June, July and August, shall not increase pelagic longline effort (defined as number of hooks and sets, length of line and soak time and days at sea) by more than 10% of average total effort in the mid-Atlantic bight from 1992 through 1997:* Again this measure appears to be purely punitive against a segment of a single fishery that has been responsible enough to step forward to substantially address its bycatch concerns. However, I believe that potential fishing effort displacement is a valid concern that should be closely monitored. This concern is minimal in HR3390 and maximum in the NMFS's proposed rule. (I question the credibility of some recreational extremists who had earlier on raised displacement concerns as their primary objection to the legislation but now support the NMFS proposed rule, which, of all the proposals, will cause the greatest displacement of all affected fishermen.)

This measure is also impractical. Sets, length of line and soak time are intricacies of this fishing method that need to remain flexible. These details of fishing operations may be used to reduce unwanted bycatch and will be studied along with other gear configurations and methods of gear deployment in the very important research program in HR3390.

Restricting "days at sea" is also impractical for this very diverse offshore fishery. Currently, a larger distant water vessel may steam 5 to 14 days one way to the most productive fishing grounds

on the Grand Banks of Newfoundland (summer) or Mid-Atlantic Ridge (winter). Bear in mind that, because of our smaller size vessels, the average U.S. pelagic longliner only fishes 78 days (fishing sets) per year as compared to 300+ days (fishing sets) of giant foreign freezer longliners. If days at sea are restricted, the fleet must fish much closer to port thus increasing fishing effort and bycatch, especially in the mid-Atlantic bight.

This measure may be supportable if revised to focus solely upon hooks as a more practical measure of effort and specified displaced hook effort from the closure areas as a monitoring guideline rather than a restriction and placed in Section 11 (c) of HR3390.

Mr. Chairman, I personally know that you have struggled to find an additional conservation measure for this bill. Even though some elements of this seafood industry would disagree and this is not a BWFA position, I personally strongly encourage you to consider an enormous step for Atlantic HMS conservation that has been universally supported by the recreational and many commercial fishermen, as well as the environmental industry. ***Prohibiting fish caught by foreign fishermen in excess of ICCAT conservation quotas from being imported into the U.S. would be a huge step for conservation.*** This would also finally signify our Nation's commitment to ensure compliance from foreign harvesters with the international programs as required of American fishermen.

The Customs Service implemented a system of prohibiting undersized Atlantic swordfish last year. A "Certificate of Eligibility" is required for each shipment. The necessary tracking of country of origin is already in place. ICCAT recommends country-specific Atlantic swordfish quotas for both North and South Atlantic swordfish stocks. I believe this conservation approach is GATT-defensible providing it adheres to the international standards of ICCAT conservation recommendations. It is really only a question of "political will".

I encourage the members of this Subcommittee to find the courage to take this step that should have been taken as a first step before any Atlantic HMS restrictions were placed on U.S. recreational or commercial fishermen. Our fishermen are responsible for only a minor percentage of the overall Atlantic-wide harvest of these international species. Ensuring compliance with the international conservation program is our only hope for achieving maximum sustainable harvest levels. Our Nation should not continue to ignore the fact that it has been a part of the problem by allowing conservation quota overages into our markets. If the addition of this measure would substantially hold-up passage of this important bill it should be placed in a separate bill and also enacted as quickly as possible.

Mr. Chairman and Members of the Subcommittee, thank you for allowing me to testify. I hope that you will find the courage to "do the right thing" for the fish we depend upon, for our truly compliant and worthy fishermen and related businesses and for American seafood consumers by quickly passing HR3390. Failure to do so will result in conservation losses for all. If you have any questions or need more information on these issues, please contact BWFA's Executive Director, Nelson Beideman or me.

Memorandum of Understanding And Cooperation

Parties

Blue Water Fishermen's Association
American Sportfishing Association
Coastal Conservation Association
The Billfish Foundation

Objectives

1. To achieve meaningful reductions in the bycatch and fishing mortality of undersized swordfish and all billfish species in the Atlantic and Gulf of Mexico pelagic longline fisheries within the U.S. Exclusive Economic Zone through the establishment of highly migratory species conservation zones that apply time-area closures to pelagic longline fishing based on the best available scientific information.

2. To provide compensation to U.S. pelagic longline fishermen substantially adversely affected by the establishment of HMS conservation zones and the application of time-area closures through a permit buyback program.

3. To prevent adverse impacts on the economics or conservation of potentially impacted non-HMS fisheries.

4. To conduct scientific research investigating pelagic longline fishing gear and methods that reduce billfish and other highly migratory species catch and mortality while maintaining the viability of the fishery.

5. To advance the principles of small, undersized swordfish and billfish bycatch reduction at ICCAT.

6. To promote a spirit of alliance, unity and mutual respect among the various sectors of the U.S. Atlantic recreational and commercial HMS fisheries.

Understanding

Recognizing the mutual interests of the parties in advancing the conservation and management of highly migratory species in the United States and internationally through ICCAT, and to achieve the aforementioned objectives, the Parties agree to the following:

Process:

1. To implement this Memorandum in good faith and in the spirit of full cooperation, and to take such steps as are necessary to avoid and prevent any circumstances that serve to undermine or diminish such cooperation including discouraging any attempts by non-parties to negatively impact, unilaterally disadvantage and/or eliminate those Atlantic HMS fisheries engaged in by the parties.

2. To engage and apply all available political, scientific, public relations and administrative assets to implement this Memorandum in as expeditious a manner as is possible.

3. To achieve Objectives 1, 2, 3 and 4 of this Memorandum exclusively through the enactment of such authorizing and appropriations legislation as is necessary during the full term of the 106th Congress.

4. To take such actions as are necessary and appropriate to ensure that any rulemaking or other form of administrative action does not supersede, preempt or interfere with this legislative initiative.

5. To oppose any legislation and legislative amendments that are inconsistent with the objective and specific details of this Memorandum.

6. To provide or secure in a timely manner any scientific, economic or other data that is necessary for the implementation of this Memorandum.

7. To work cooperatively with Congress, the Administration, and non-governmental entities to implement all aspects of this Memorandum.

Specifics

1. That the legislation shall establish an Atlantic swordfish/billfish conservation zone closed annually, year-round to the use of pelagic longline gear as described by the following coordinates of latitude and longitude.

(A) [North/South Carolina land border]
(B) [North/South Carolina border-- seaward extension]
(C) 33° 00' N/78° 00' W
(D) 33° 00' N/77° 00' W
(E) 32° 00' N/77° 00' W
(F) 32° 00' N/78° 00' W
(G) 31° 00' N/78° 00' W
(H) 31° 00' N/79° 00' W

(I) 24° 00' N/79° 00' W
(J) 24° 00' N/82° 00' W
(K) 25° 00' N/82° 00' W
(L) 25° 00' N/81° 30' W
(M) 26° 00'N/81° 30' W

2. That the legislation shall establish a Gulf of Mexico swordfish conservation zone closed to the use of pelagic longline gear annually from January 1st to Memorial Day as described by the following coordinates of latitude and longitude.

(A) 30° 00'N/87° 30' W
(B) 30° 00'N/86° 00' W
(C) 29° 00'N/86° 00' W
(D) 29° 00'N/87° 30' W

3. That the legislation shall establish a Gulf of Mexico billfish conservation zone closed to the use of pelagic longline gear annually from Memorial Day through Labor Day as described by the following coordinates of latitude and longitude.

(A) 26° '00 N/97° 10' W [approx loc. of US/Mex land border]
(B) 26° '00 N/96° 00' W
(C) 27° 30' N/94° 30' W
(D) 27° 30' N/90° 00' W
(E) 28° 00' N/90° 00' W
(F) 29° 00' N/88° 00' W
(G) 29° 00' N/86° 00' W
(H) 29° 40' N/85° 20' W [approx. loc. of Cape San Blas, Fla.]

4. That the legislation will provide for the establishment of a fishing permit "buyback" program for pelagic longline vessels to take effect at the same time as the swordfish/billfish conservation zones. The legislation will provide a process to buy all fishing permits from up to 60 eligible vessels on a willing buyer, willing seller basis. Vessels will be prevented from reflagging or fishing in any other commercial fishery including state water fisheries. Vessel owners will be compensated by paying them for all of their fishing licenses (federal and state). Vessels not documented will be named and barred from any commercial fishery. Vessels will be allowed to participate in any sector of the recreational fishery including as a charter boat.

5. That the legislation will provide no less than 50% of the total costs of a buyback program be paid by the Federal government through appropriations, and will provide the necessary authorities and mechanisms for half of the remaining total costs to be paid by a fee on the sale within the US of Atlantic swordfish and

the other half of the remaining total costs to be paid by recreational fishermen benefiting from the closed areas.

6. That the legislation will establish a Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program that identifies and tests a variety of longline gear configurations and uses in order to determine which are the most effective for reducing billfish bycatch mortality in the Gulf of Mexico yellowfin tuna fishery. The legislation shall require the precise design of this Program to be developed through a scientific workshop convened by NMFS, Southeast Fishery Science Center and that members of the pelagic longline and recreational billfish industries and their scientists will be included as part of the design team.

7. That the legislation will provide for: (i) the results of the Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program to be submitted as a report to Congress no later than 3 years from the date of the enactment of legislation; (ii) the restrictions on pelagic longlining in the Gulf of Mexico billfish conservation zone to sunset no later than 4 years from the date of enactment of the legislation; and (iii) for there to be a clear nexus between the report to Congress and the sunset so as to ensure a comprehensive reevaluation of the most effective and practicable means to reduce billfish bycatch and billfish bycatch mortality in the yellowfin tuna pelagic longline fishery in the Gulf of Mexico.

8. That the legislation will provide the necessary authorization and appropriations to cover 100% of the costs for the Pelagic Longline Billfish Bycatch and Mortality Reduction Research Program and, in addition, at least $400,000 to the NMFS Southeast Fishery Science Center for additional billfish and associated highly migratory species research.

9. That the legislation will ensure that any future considerations of time-area closures for pelagic longlining within the US EEZ are consistent with ICCAT recommendations, do not disadvantage US fishermen relative to the fishermen of other nations, and are justified by the best available scientific information. This paragraph is not intended as a vehicle to modify existing law.

10. That the legislation will ensure that NMFS is not precluded from conducting pelagic longline fishery research, including research involving the use experimental pelagic longline fishing gear, in any of the conservation zones at any time.

signed:

Blue Water Fishermen's Association
Date: 8/30/99

American Sportfishing Association
Date: 8/16/99

Coastal Conservation Association
Date: 8/20/99

The Billfish Foundation
Date: 24.VIII.99

A little bit about the problems in Atlantic HMS fisheries management.

Ernie Panacek, February 2000

I would like to take a few moments to clarify the mischaracterization of the US pelagic longline fishery. Contrary to the rhetoric of competing user groups, longline fishing is an ecologically sound and centuries-old method of catching fish. New England fishermen used the earliest version of bottom longline fishing gear, fishing out of tubs, which is still used to this day in an updated form to catch cod and other groundfish.

Surface or pelagic longline fishing for tuna and swordfish has been conducted in the Atlantic for more than 50 years and by US fishermen for nearly 40 years. The composition of the materials used has evolved over time, from heavy rope with large hooks to lighter monofilament with smaller hooks, in order to maximize the catch of tunas and swordfish. In the early days, fishermen kept virtually the entire multispecies catch for food. Inedible species, such as blue sharks, were released with the vast majority (greater than 90%) unharmed and alive.

Almost twenty years ago, US fishery managers made their first political management mistake, based on protecting the allocation of bluefin tuna for special interests, by requiring US pelagic longline fishermen to discard dead fish. Although the NMFS knew that Atlantic pelagic longline fishermen would have to waste perfectly good bluefin; they implemented this regulation in 1981. Thus began a continuous stream of similar "so-called" management measures requiring fishermen to throw away dead fish, next with billfish in 1988, undersized swordfish in 1991, large coastal sharks in 1992, and pelagic sharks in 1999. All pelagic fishing hooks, commercial and recreational, longline and rod and reel catch these species on an incidental basis.

Because the regulations required fishermen to throw back more and more of their daily catch, they had to use more hooks and fish longer. However, as every fisherman knows, just because you put a baited hook in the water, it does not guarantee that anything will bite the hook. Although an Atlantic pelagic longline fisherman within the EEZ puts an average of 611 baited hooks in the water each day, government observers document that only 30 hooks (less than 5%) catch anything at all. Of the average 30 hooked fish, 15 are kept and sold for food, 8 are released alive and unfortunately 7 are discarded dead, usually because the fisherman is required by law to do so.

The NMFS's management strategy of requiring discarding by pelagic longline fishermen, coupled with the fact that no other competing users must submit detailed catch and disposition data like longline fishermen have for more than 13 years, provides the fuel for competing user groups to portray pelagic longline fishermen as villains. It is obvious that allocation conflicts are at the heart of these attempts to make pelagic longline gear a pariah.

The International Commission for the Conservation of Atlantic (ICCAT) scientifically assesses Atlantic highly migratory species status and recommends total allowable catch (TAC) limits and other conservation measures to rebuild and/or maintain stocks at maximum sustainable yield levels. ICCAT's management tendency is toward country-specific quotas when overall catch reductions are necessary. In the U.S. recreational and commercial fishermen must restrain their catches to comply with our country's allowance. The commercial sector is strictly regulated under access controls, quota monitoring and quota closures while the recreational sector fights against permits, reporting, monitoring and any measures other than loosely tracked bag limits that would hinder its primary objective to continuously expand recreational opportunities. Regretfully, extremist among the recreational sector continuously seek to rob quota from the commercial sector using any and all tactics.

These allocation factors are at the core of most fishery management conflicts.

RESOLUTION 99-149

RESOLUTION OF THE BOROUGH OF BARNEGAT LIGHT,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
SUPPORTING THE DEVELOPMENT AND IMPLEMENTATION OF
FISHERY MANAGEMENT PLANS BY THE
NATIONAL MARINE FISHERIES SERVICE

WHEREAS, Barnegat Light has had a commercial and recreational fishing industry since the 1900's; and

WHEREAS, the commercial fleet has evolved since the 1930's from two open boats serving an offshore pound and a fleet of single manned seaskiffs to the current fleet of 7 scallopers 18 longline and 20 net boats; and

WHEREAS, the recreational fishing fleet has grown from a few boats tied to a Borough owned dock to nearly 300 distributed in five marinas; and

WHEREAS, the individuals involved in our fishing industry and the businesses that support it, provide the critical financial and human support that makes Barnegat Light a viable year-round community, contributing to the unique character that distinguishes it from other New Jersey coastal communities; and

WHEREAS, the mutually supportive relationship between the fishing industry and residential community is complex and not clearly understood; and

WHEREAS, some **"flag of convenience ships"** and ships from certain foreign countries are harvesting fish that migrate throughout the Atlantic basis with no regard for regulations designed to maintain sustainable fisheries for those species being harvested; and

WHEREAS, the National Marine Fisheries Service (NMFS) in the US Department of Commerce, promulgates fishing regulations that have a direct effect on our commercial and recreational fishing industry and thereby, on our community as a whole; and

WHEREAS, our town's commercial and recreational fisherman will successfully compete against fisherman from any other nation as **long as everyone abides by the same effective and equitable rules and regulations governing fishing activities.**

NOW, THEREFORE, BE IT RESOLVED that the Borough of Barnegat Light recognizes the importance of maintaining a healthy and vigorous fishing industry and supports efforts by the NMFS to maintain and/or reestablish sustainable commercial and recreational fisheries for all of the species sought by our fisherman; and

BE IT FURTHER RESOLVED that the Borough of Barnegat Light encourages legislation that would require the NMFS to develop and implement fisheries management plans and programs based upon adequate peer-reviewed science and data from the most recent years of commercial and recreational catch and survey data; and

BE IT FURTHER RESOLVED that the Borough of Barnegat Light encourages legislation that would require the NMFS to determine, on a yearly basis which, if any, countries are allowing vessels operating under their flags to fish out of

compliance with regulations governing our migratory fisheries, and would curtail the importation of any migratory fish species from those countries; and

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Governor Christine Todd Whitman, members of our state legislature, our legislators in Washington and other fishing communities along the New Jersey Coast.

DATED: NOVEMBER 10, 1999

MOTION: MORRISON
SECOND: GIBBS
VOTE: AYES: GIBBS, MORRISON, SPARK, REYNOLDS, HOWARD
NAYS: NONE
ABSENT: WARR ABSTAIN: NONE

I, **GAIL J. O'DONNELL,** Clerk of the Borough of Barnegat Light, do hereby certify that the foregoing resolution is a true copy of a resolution adopted by the Mayor and Council of the Borough of Barnegat Light on this 10th day of November, 1999.

Gail J. O'Donnell
GAIL J. O'DONNELL, Borough Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Borough of Barnegat Light this 10th day of November, 1999.

Gail J. O'Donnell
GAIL J. O'DONNELL, Borough Clerk

New Jersey Fishing

Viking Village, Inc.

Large swordfish on the deck of a Viking Village longliner

19th and Bayview, Box 458
Barnegat Light, NJ 08006
Phone 609-494-0113
Fax 609-361-9536

Viking supplies seafood to the world

Did you know that Viking Village is one of the largest suppliers of fish and seafood on the Eastern Seaboard? Barnegat Light is not the sleepy little fishing town that most people think. Each year over 4 million pounds of seafood are packed out over the commercial dock of Viking Village and shipped not only locally, but to many parts of the world.

Viking Village is home port to seven scallopers, 10 longliners and about nine inshore-fishing net boats. Each boat is independently owned and uses Viking Village for pack-out, marketing and sale of the catch.

A group of Scandinavians who immigrated here in the 1920s originally named it Independent Dock. They chose the Barnegat Light area because it reminded them so much of their homeland, where they were fishermen. Over the years, many types of seafood have been brought in. Today, the majority of the catch consists of scallops, tuna, swordfish, tilefish and different kinds of in-shore fish, such as

weakfish, monkfish, blues, shad and dogfish. Codfish, once a major catch, have been virtually fished out of local fishing grounds, mostly because of the foreign trawlers that were allowed to fish here in the 1960s and '70s.

The scallopers bring in about 555,500 pounds per year. The boats are out for eight to ten days at a stretch with an average crew of seven. The boats tow the ocean floor with a chain mesh for a period of time after which the chain mesh is winched on board; the crew removes the meat from the scallop shells. Recently, a market has been found for the red roe of the scallop. It is carefully boxed and iced at sea, and most of it is shipped to France, where it is served in only the finest restaurants.

Longlining, as the name implies, involves the use of a "long line" and a series of baited hooks. Longliners bring in many types of fish, including bigeye and yellowfin tuna, tilefish, and swordfish. At Viking Village alone they account for about I, 174,000 pounds per year. The bigeye tuna, sometimes weighing in over 250 pounds, can bring up to $20 per pound wholesale in the Japanese markets. It is considered a delicacy because of its high fat content, which the yellowfin cannot equal. Tilefish were once considered extinct in the 1950s but had made a come back in the 1970s. Today's catch of tilefish is only about 5 percent of what was landed in the '70s.

The net boats are smaller vessels used to catch blues, weakfish, monkfish, dogfish and shad. Unlike longliners and scallopers, net boats return to port after a day's catch. Dogfish is a relatively new commodity to pass over Viking Village's docks. Once considered only a trash fish, they now are caught and shipped to Europe and China. The fins are used by the Chinese, and the body of the fish is shipped to France and England to be processed into what is know there as "Fish 'n Chips."

Since new markets have opened up, now only 40 percent of Viking Village's catch is shipped to the Fulton Fish Marker in New York City. The remainder is shipped up and down the East Coast with a good percentage going over seas. Some local restaurants and seafood dealers, such as Wida's, Surf City Fishery, Beach Haven Fishery and Cassidy's Fish Market, are direct purchasers of Viking Village's products.

Ernie Panacek, manager of Viking Village, stresses how all of the boats strive to bring in only high quality products. Considerable money is spent on upgrading refrigeration and other storage both on the boat and at the dock. Each boat captain is responsible for the quality of his catch. The higher the quality he brings to port, the higher his paycheck.

Viking Village and the boats docked there employ about 200 people, making it one of Long Beach Island's larger businesses.

Karen Larson

Note: For directions on how to get to Viking Village from your location, you can use the Mapquest site. We've provided a link below. You will need the

Mr. SAXTON. Ernie, thank you very much.
Mr. Stone.

STATEMENT OF MR. RICHARD B. STONE, SCIENCE ADVISOR, RECREATIONAL FISHING ALLIANCE

Mr. STONE. Thank you, Mr. Chairman. I am Richard Stone, Science Advisor for the Recreational Fishing Alliance. I am here to present statements for the RFA and the National Coalition for Marine Conservation on the issues of time and area closures that are now being proposed by both the National Marine Fisheries Service and members of Congress.

The organizations that I am representing have been advocating extensive longline area closures to protect undersize swordfish, billfish and oceanic sharks since 1996, and are pleased and encouraged that such measures are being seriously considered and are likely to be implemented in the near future. Unfortunately, differing approaches to instituting the closures are dividing the attention of the fishing and environmental communities.

Congressional intervention carries with it two controversial changes in the management of large pelagic fish: it effectively transfers authority for managing the Atlantic pelagic longline fishery, now and in the future, from NMFS to Congress; and it links implementation of conservation measures in this fishery to financial compensation on the industry's terms. We do not think it is appropriate or necessary to completely change the interactive, highly migratory species management process that most of the organizations involved here and Congress helped put into place.

With the HMS Advisory Panels and the cooperation with the U.S. ICCAT Commissioners and Advisory Committee, we believe the process is improving. The NMFS proposal for time/area closures is a good example. Congress should not step in and derail this process now.

We appreciate the Committee taking the time to hold this hearing and getting input into this process because failure to resolve critical differences between the two approaches and unite the fishing and conservation communities in common purpose could undermine the conservation benefits that would ultimately derive from either proposal. This would short-change the resource and the fishermen who look forward to the benefits of recovered stocks.

I will highlight some of the comments from the organizations that I represent, and also submit additional comments from the RFA and a position paper from the NCMC. They do not object per se to a buyout program, but are concerned that it is putting the cart before the horse in this case. The attachment of a buyout to the closures is touted as a preferable approach to the NMFS proposal because (a) it would remove effort from the fishery, thus decreasing the likelihood of increased bycatch rates in the areas left open to longlining, and (b) it has the support of the longline industry, which makes it more likely to be adopted.

As with the NMFS proposal, the size and duration of the closures alone have the potential to reduce overall longline effort. Any added reduction in effort due to the buyout offer is uncertain mainly because its purpose is not effort reduction per se, but economic relief.

It is possible that only those boats too small or too attached to their home port to move to other regions, or those that are struggling financially, will take the buyout offer and that the more mobile and financially solvent vessels that do threaten continued bycatch through redirected effort will remain active.

More importantly, there is nothing in the bill that would prevent the boats remaining active in the fishery from increasing fishing effort and thus replacing the bought-out effort. While assumptions about the effects of displaced effort are uncertain under any scenario, an increase in effort is likely since the remaining vessels would end up with a larger share of the available landings.

The conservation benefits of the proposed closed areas appear similar, but we would support the NMFS proposal for the South Atlantic which is slightly larger and beginning the closures in the Gulf of Mexico at least on May 1 rather than Memorial Day. The NMFS Technical Report dated October 1 clearly shows that discards of billfish increase dramatically in May in the Gulf. Larger closures appear to be needed in the Gulf of Mexico and we understand that the Gulf of Mexico Fishery Management Council has recommended closing the entire Gulf for part of the year.

We support additional research and monitoring as proposed in the bills and suggest that it should not be limited to billfish, but include all species of concern. Under the proposed bills, however, NMFS is to report the results after four years to Congress with recommendations for legislation. The effect of this provision and the intent of the legislation is to take management authority for the U.S. pelagic longline fleet away from NMFS and give it to Congress.

Research and monitoring will be critical to the success of any bycatch reduction plan based on time and area closures. Since these longline area closures are experimental in nature, and monitoring, evaluation and adjustment may be necessary, it is important that the information be available on a real time basis and that NMFS have the flexibility to make needed adjustments quickly. The proposed legislation would preclude any follow-up action to make adjustments, except under emergency conditions, until at least 2004, and then only by an Act of Congress. We think that is not in the best interest of conservation.

We do agree with the concept of amending the Atlantic Tunas Convention Act to allow the Secretary the option of reducing the amount that the United States may harvest of its allocation or quota by the amount of capacity affected by the buyout and keeping it in a conservation reserve until the stock recovers. Any share allocated to the United States by ICCAT would not be changed by this action. This way the U.S. fishermen will not be disadvantaged in the long run.

In summary, legislation is not necessary to implement the time and area closures and achieve the conservation benefits that would derive from them. That can and should be done through the regulatory process established by Congress under the Magnuson Act, and with which NMFS is complying. If Congress deems it necessary, it could follow implementation of the regulations with legislation to provide relief to those vessels that can demonstrate sub-

stantial adverse economic impacts as a direct result of the regulations.

If the legislative route is pursued, then we suggest modifying Congressman Saxton's bill, and would insist that all language restricting future regulation of the U.S. longline fishery by NMFS be removed. Additional comments pertaining to this approach were submitted. We stand ready to work with Congress, NMFS, and others on trying to resolve the different approaches being considered.

Mr. Chairman, thank you and your Committee for its help on these issues.

[The prepared statement of Mr. Stone follows:]

STATEMENT OF RICHARD STONE, SCIENCE ADVISOR, RECREATIONAL FISHING ALLIANCE

Mr. Chairman, I am Richard Stone, Science Advisor for the Recreational Fishing Alliance (RFA). I am here today to present statements for the RFA and the National Coalition for Marine Conservation (NCMC) on the issues of time and area closures that are now being proposed by both the National Marine Fisheries Service (NMFS) and Members of Congress.

The organizations that I am representing have been advocating extensive longline area closures to protect undersize swordfish, billfish and oceanic sharks since 1996, and are pleased and encouraged that such measures are being seriously considered and are likely to be implemented in the near future. Unfortunately, differing approaches to instituting the closures are dividing the attention of the fishing and environmental communities. Congressional intervention carries with it two controversial changes in the management of large pelagic fish: it effectively transfers authority for managing the Atlantic pelagic longline fishery—now and in the future—from NMFS to Congress; and it links implementation of conservation measures in this fishery to financial compensation on the industry's terms. We do not think it is appropriate or necessary to completely change the interactive, highly migratory species (HMS) management process that most of the organizations involved here and Congress helped put into place. With the HMS Advisory Panels and the cooperation with the U. S. International Commission for the Conservation of Atlantic Tunas Commissioners and Advisory Committee, we believe the process is improving. The NMFS proposal for time/area closures is a good example. Congress should not step in and derail this process now.

We appreciate the Committee taking the time to hold this Hearing and getting input into this process, because failure to resolve critical differences between the two approaches and unite the fishing and conservation communities in common purpose could undermine the conservation benefits that would ultimately derive from either proposal. This would short-change the resource and the fishermen who look forward to the benefits of recovered stocks.

I will, highlight some of the comments from the organizations that I represent, and also submit additional comments from the RFA and a position paper from the NCMC. They do not object, per se, to a buyout program, but are concerned that it is putting the cart before the horse in this case. The attachment of a buy-out to the closures is touted as a preferable approach to the NMFS proposal because (a) it would remove effort from the fishery, thus decreasing the likelihood of increased bycatch rates in the areas left open to longlining, and (b) it has the support of the longline industry, which makes it more likely to be adopted. As with the NMFS proposal, the size and duration of the closures alone have the potential to reduce overall longline effort. Any added reduction in effort due to the buy-out offer is uncertain, mainly because its purpose is not effort reduction per se but economic relief. It is possible that only those boats too small or too attached to their home port to move to other regions, or those that are struggling financially, will take the buyout offer and that the more mobile and financially solvent vessels (that do threaten continued bycatch through redirected effort) will remain active. More importantly, there is nothing in the bill that would prevent the boats remaining active in the fishery from increasing fishing effort and thus replacing the bought-out effort. While assumptions about the effects of displaced effort are uncertain under any scenario, an increase in effort is likely since the remaining vessels would end up with a larger share of the available landings for swordfish, tunas and sharks.

The conservation benefits of the proposed closed areas appear similar but we would support the NMFS proposal for the South Atlantic which is slightly larger

and beginning the closures in the Gulf of Mexico at least on May 1st rather than Memorial Day. The NMFS Technical Report dated October 1, 1999 clearly shows that discards of billfish increase dramatically in May in the Gulf. Larger closures appear to be needed in the Gulf of Mexico and we understand that the Gulf of Mexico Fishery Management Council has recommended closing the entire Gulf for part of the year.

We support additional research and monitoring as proposed in the Bills and suggest that it should not be limited to billfish, but include all species of concern. Under the proposed bills, however, NMFS is to report the results, after 4 years, to Congress with recommendations for "legislation." The effect of this provision, and the intent of the legislation, is to take management authority for the U.S. pelagic longline fleet away from NMFS and give it to Congress. Research and monitoring will be critical to the success of any bycatch reduction plan based on time and area closures. Since these longline area closures are experimental in nature, and monitoring, evaluation and adjustment may be necessary, it is important that the information be available on a real time basis and that NMFS have the flexibility to make needed adjustments quickly. The proposed legislation would preclude any follow-up action to make adjustments, except under emergency conditions, until at least 2004, and then only by an Act of Congress. We think that is not in the best interest of conservation.

We do agree with the concept of amending the Atlantic Tunas Convention Act to allow the Secretary the option of reducing the amount that the United States may harvest of its allocation or quota by the amount of capacity affected by the buyout and keeping it in a "conservation reserve" until the stock recovers. Any share allocated to the United States by ICCAT would not be changed by this action. This way the U.S. fishermen will not be disadvantaged in the long run.

In summary, legislation is not necessary to implement the time and area closures and achieve the conservation benefits that would derive from them. That can and should be done through the regulatory process established by Congress under the Magnuson Act, and with which NMFS is complying. If Congress deems it necessary, it could follow implementation of the regulations with legislation to provide relief to those vessels that can demonstrate substantial adverse economic impacts as a direct result of the regulations. If the Legislative route is pursued, then we suggest modifying Congressman Saxton's Bill (H.R. 3331) and would insist that all language restricting future regulation of the U.S. longline fishery by the NMFS be removed. Additional comments pertaining to this approach were submitted as an attachment. We stand ready to work with Congress, NMFS, and others on trying to resolve the different approaches being considered. Thank you.

ADITIONAL COMMENTS BY THE RFA IF THE LEGISLATIVE APPROACH IS USED

Like the NCMC, we are skeptical that changes in the legislative approach can be made through alterations to the bills currently before Congress, if for no other reason than that the likelihood of the longline industry supporting a bill modified to satisfy our concerns may be slim to none. As we stated in our testimony, legislation is not necessary to implement the time and area closures and achieve the conservation benefits that would derive from them. That can and should be done through the regulatory process established by Congress under the Magnuson Act, and with which NMFS is complying.

If the Legislative route is pursued, then we suggest modifying Congressman Saxton's Bill (H.R. 3331) and would request that all language restricting future regulation of the U.S. longline fishery by the NMFS be removed. Responsible NMFS fishery managers, with the help of the APs, ICCAT Commissioners and ICCAT Advisors, and the interactive, public input process, must retain the discretion to evaluate the effectiveness of time and area closures in reducing longline bycatch and to take additional domestic actions in the future, including alternative closures and gear modifications, as part of the regulatory framework established under the FMPs for billfish, tunas, swordfish and sharks.

In SEC. 5, the term "AFFECTED STATE" should be eliminated since all States will be "affected" to some extent and should be part of the repayment process of any buyout proposal.

In SEC. 7, language should be added, that makes it clear that any action by the Secretary to reduce the amount that the U.S. may harvest of its allocation or quota by the amount of capacity reduction affected by the buyout should be kept in a "conservation reserve" and that any share allocated to the U.S. by ICCAT would not be changed by this action. This gives the Secretary the same flexibility as Chairman Saxton's Bill. Further, it broadens the scope to include all areas and establishes a

conservation reserve. It does not give up the conservation savings to any other ICCAT contracting party.

As we stated in our testimony, we support additional research and suggest that it should not be limited to billfish, but include all species of concern. Also, it should not be limited to closed areas. The Secretary should be allowed to make any changes in the management regime shown necessary by the research results and report to Congress on progress but not have to wait for Congress to determine what management actions are necessary.

We would have more specific, detailed comments if the legislative approach is used.

CURRICULUM VITAE

RICHARD B. STONE

Sector—Marine Fisheries Consultant

PROFESSIONAL EXPERIENCE

1996–present— Sole proprietorship consulting company specializing in highly migratory species (HMS) management and research, fishery data collection, interactive management, dispute resolution, recreational fishery development, fishery management plan development, review and comment on fishery regulatory actions, research and management planning for artificial reef development (domestic and international), artificial reef plan development, and international aspects of HMS research and management. Technical Advisor for U. S. Advisory Committee for the International Commission for the Conservation of Atlantic Tunas (ICCAT), Advisory Committee member for the Atlantic Coastal Cooperative Statistics Program, and member of the steering committee to revise,, the U.S. National Artificial Reef Plan.
U.S. Government–Marine Fisheries Research and Management (32 years)
1992–1996: Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service (Department of Commerce)–Headquarters. Directed Atlantic HMS management and coordinated research and management budgets for Atlantic HMS. Developed and instituted an interactive research and management policy for HMS bringing outside fishery interests more into the HMS management process. Supervised and participated in the development of fishery management actions for HMS including fishery regulations, fishery management plans, amendments to plans, and fishery closures. Prepared draft National Oceanic and Atmospheric Administration/National Marine Fisheries Service (Agency) policy positions on FIMS, Congressional briefing documents and gave briefings on EMS at all levels of the Agency. Participated in international management of HMS as member of U.S. Delegation to Japan, Canada, and Mexico and to ICCAT meetings (since 1978). Agency expert on artificial reef research and management issues.
1976–1991: Recreational Fisheries Officer/Fisheries Management Specialist Headquarters. Coordinated Agency artificial reef activities, developed artificial reef policy, provided technical assistance to states and other countries on artificial reef development. Drafted marine recreational fisheries policy documents and coordinated or helped to coordinate marine recreational fisheries activities within the Agency. Served as key Agency contact with recreational fishing organizations and individuals. Set up task force to address recreational fishery data needs. Specifically developed Agency policy on artificial reefs through coordinating development of the National Artificial Reef Plan that involved bringing top artificial reef experts in the U.S. together to draft report. Worked with Sea Grant, The Sport Fishing Institute, and the Atlantic States Marine Fisheries Commission to develop an easily accessible data base for state and Federal artificial reef activities. Worked on HMS fishery management plans and drafted policy guidance for foreign fishing on HMS in the U.S. fishery conservation zone. Drafted, with the General Counsel for Fisheries, the Agency policy on managing billfish as a recreational fishery. Coordinated Headquarters ICCAT research and management activities. Served on steering committees for five international artificial reef conferences and chaired one.
1964–1976: Biological Oceanographer/Fishery Biologist—Sandy Hook Laboratory (NJ) and Beaufort Laboratory (NC). Directed artificial reef research for the Agency. Planned, conducted, and supervised scientific evaluation of artificial reefs to determine how and why fishes use reefs, comparative reef material efficiency, life histories of fishes using artificial reefs, and the effect of artificial reefs on recreational fishing. Collected and analyzed quantitative data on the increase in standing crop

of fishes in the area of a natural, patch reef after adding an artificial reef of similar size nearby in the Biscayne National Monument, Florida. Completed a study of population dynamics of fishes on artificial reefs off Murrells Inlet, SC and directed a study to compare sport fishing catch and effort data from man-made and natural habitats off Murrells Inlet, SC and New York/New Jersey. Supervised tagging studies on mackerels to determine seasonal distribution and developed a format for recording tag release and recovery data. Supervised and conducted aerial temperature surveys with infrared sensors to study the distribution and abundance of surface schooling fishes in relation to temperature patterns. Participated as technical/scientific advisor to state and local artificial reef committees. Prepared the Environmental Impact Statement for the use of Liberty Ships as artificial reef material off the Virginia Capes.

SELECTED PUBLICATIONS (FROM OVER 45)

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Stone, R.B., compiler. 1985b. National artificial reef plan. NOAA Technical Memorandum NMFS OF-6. U.S. National Marine Fisheries Service, Washington, DC.

Stone, R.B., J.M. McGurrin, L.M. Spreague, and W. Seaman; Jr. 1991. Artificial habitats of the world: synopsis and major trends. Pp. 31-60 in William Seaman, Jr. and Lucian M. Spreague, eds. Artificial habitats for marine and freshwater fisheries. Academic Press, Inc. San Diego, CA.

Stone, Richard B., C. Michael Bailey, Sarah A. McLaughlin, Pamela M. Mace. and Margo B. Schultz. 1998. Federal Management of the Atlantic Shark Fisheries. Elsevier, Fisheries Research 808, 1-7.

Ken Hinman
National Coalition for Marine Conservation

January 2000

Introduction

Time and area closures to reduce bycatch in the U.S. pelagic longline fisheries are now being proposed by both the National Marine Fisheries Service (NMFS) and members of Congress. The National Coalition for Marine Conservation (NCMC), which has been advocating extensive longline area closures to protect undersize swordfish, billfish and oceanic sharks since 1996, is pleased and encouraged that such measures are being seriously considered and are likely to be implemented in the near future. Unfortunately, differing approaches to instituting the closures – either through regulatory action by NMFS under the Magnuson Fishery Conservation and Management Act or Congressional legislation - are dividing the attention of the fishing and environmental communities. Although the area closures proposed by NMFS and featured in bills before Congress are similar in size and duration, Congressional intervention carries with it two controversial changes in the management of large pelagic fish: it effectively transfers authority for managing the Atlantic pelagic longline fishery – now and in the future - from NMFS to Congress; and it links implementation of conservation measures in this fishery – now and in the future - to financial compensation on the industry's terms.

Failure to resolve critical differences between the two approaches and unite the fishing and conservation communities in common purpose could undermine the conservation benefits that ultimately derive from either proposal; or, in the worst case, stall action on each indefinitely, thereby short-changing the resource and the fishermen who look forward to the benefits of recovered stocks. In the following paper, the NCMC examines current proposals to enact time and area closures for the U.S. pelagic longline fishery and concludes with a recommended course of action we believe meets the interests and concerns of all involved.

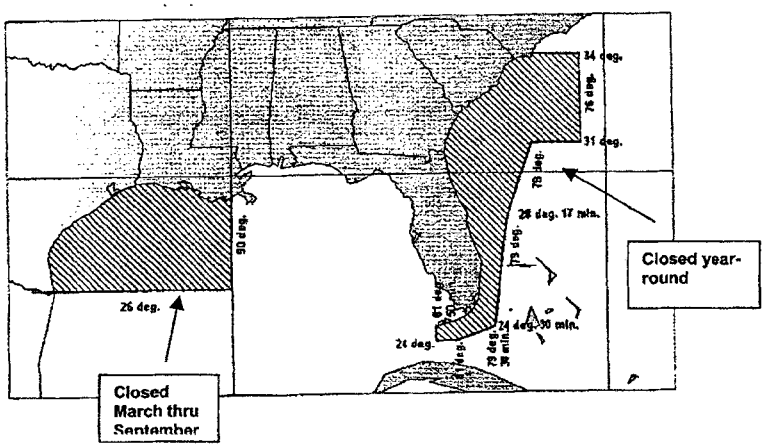
The Proposals

The NMFS Proposed Rule:

On December 15, 1999, the National Marine Fisheries Service issued a Proposed Rule announcing its intent to prohibit pelagic longline fishing at certain times of the year and in certain areas within the Exclusive Economic Zone (EEZ)of the Atlantic Ocean off the southeastern U.S. and in the Gulf of Mexico. These proposed area closures, according to NMFS, are "necessary to address pelagic longline bycatch and incidental catch of overfished and protected species."

The Proposed Rule, which could be approved and implemented by the Secretary of Commerce as early as May, would put nearly 200,000 square miles of U.S. coastal waters off limits to fishing for tunas, swordfish and sharks with pelagic longlines (see Map 1 below). Pelagic longlines, the predominant fishing gear in the commercial fisheries for these species, consists of a mainline between 20 and 40 miles in length, floated from the surface, from which hundreds and even thousands of baited hooks are suspended into the water column. Thousands of non-target and prohibited species, including marlins, sailfish, sharks, undersize swordfish, bluefin tuna, sea turtles and seabirds, are ensnared on the hooks, causing excessive and uncontrollable amounts of mortality and wasteful discards, while undermining efforts to rebuild overfished populations.

Map 1 – Longline Area Closures Proposed by NMFS



The NMFS Proposed Rule would amend the recently completed Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks and Amendment 1 to the Atlantic Billfish Fishery Management Plan. These FMPs were revised in May of 1999 to conform to new requirements of the Sustainable Fisheries Act (1996 amendments to the Magnuson Act), including a mandate to minimize bycatch in all fisheries. The Final FMPs, however, deferred adoption of longline bycatch reduction measures, promising future regulatory action.

In June, the NCMC, joined by the National Audubon Society and Natural Resources Defense Council, filed a lawsuit against the Secretary

of Commerce (National Coalition for Marine Conservation et al *v.* Daley), charging the government with violating the Magnuson Act's mandate requiring all FMPs to include measures to minimize bycatch. In a negotiated stay of the case, NMFS agreed to produce a Proposed Rule to address bycatch of billfish and undersized swordfish no later than December 15, 1999.

NMFS estimates the closed areas in its Proposed Rule could reduce bycatch by the following amounts:

Species	**Bycatch Reduction (%)**
Swordfish	40
Blue Marlin	22
White Marlin	20
Sailfish	40
Bluefin Tuna	60
Large Coastal Sharks	46
Sea Turtles	5

The above estimates assume no redistribution of fishing effort; in other words, they assume that fishing effort currently within the areas during the time of closure would not be transferred to areas left open to longlining. The size and duration of the closures are likely to result in a substantial reduction in fishing effort overall, although NMFS correctly expects that some redistribution of fishing effort may occur. The extent of redistribution and the effect on the bycatch reduction projections is unknown, however. Effort would not be redistributed randomly, since many of the vessels currently fishing out of home ports in southern coastal areas are generally of a smaller size and therefore are probably incapable of traveling to the open Caribbean, southwest Atlantic, mid-Atlantic region or Grand Banks, where longline fishing effort is currently moderate to heavy.

NMFS proposes to continue assessing alternative closed areas/sizes/times along with other strategies (e.g., gear modification) in order to achieve bycatch reduction and minimize vessel displacement and/or its effects on bycatch of various species. Still, the agency's proposal already has been criticized for not directly reducing effort in the pelagic longline fishery. Many of these critics are backing legislation that would close similar areas to longlining, as well as offer to "buy-out" up to 70 vessels in the fishery, although the legislative proposals are not intended or designed to reduce capacity but rather to provide economic relief for those who want it.

Proposed Legislation:

As long ago as last spring, when NMFS first announced its intention to pursue "large and effective" time and area closures to reduce longline bycatch, the longline industry (represented by the Blue Water Fisherman's Association) made it clear it would not accept a closed area of any size unless the government compensated impacted vessel owners. In private negotiations outside the NMFS plan development process, BWFA reached a *quid pro quo* agreement with three recreational fishing groups,[①] offering support for area closures in return for a government-sponsored buy-out of certain longline fishermen. Central to the agreement was for the four groups to jointly draft and support legislation as a substitute for regulatory action by NMFS, which they would actively oppose. Several bills to implement the area closure *cum* buy-out in the longline fishery were introduced in Congress in December, right before the NMFS rule was due to come out.[②]

Each of the bills would close approximately 160,000 square miles of offshore waters to longlining (see Map 2 on page 5) to reduce bycatch of swordfish and billfish. Vessels impacted by the closures would be offered financial compensation – $125,000 plus an additional amount up to $325,000 per vessel depending on the value of recent landings – for which the vessels would have to surrender their fishing permits and not allow the vessels to be used again for commercial fishing. The "buy-out" could cost up to $20 million and would be paid for by taxpayers (1/2), consumers through a tax on the sale of swordfish (1/4), and recreational fishermen through a license to fish for billfish and tunas in the closed areas (1/4). (The longline industry would bear none of the cost.)

The text of the bill does not indicate the anticipated reduction in bycatch resulting from the closures and, although it is assumed some number of vessel owners will accept the buy-out (it is voluntary, not mandatory), it is unknown how many would take the money and leave the fishery or how many would elect not to and move their operations into other areas.

The attachment of a buy-out to the closures is touted by its sponsors as a preferable approach to the NMFS proposal because a) it would remove effort from the fishery, thus decreasing the likelihood of increased bycatch rates in the areas left open to longlining, and b) it has

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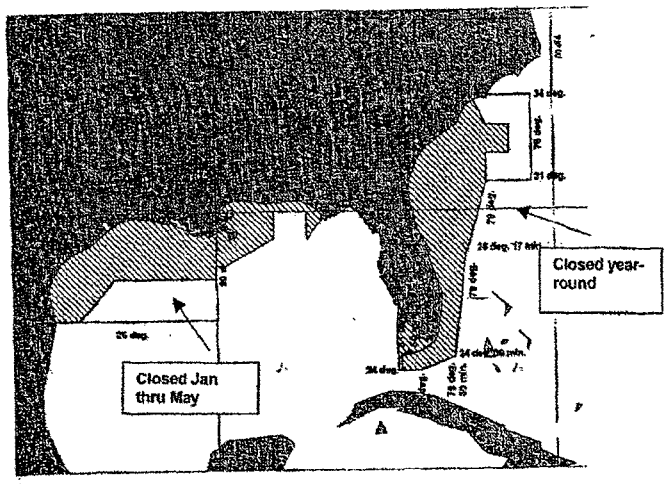
① American Sportfishing Association, Coastal Conservation Association and The Billfish Foundation.
② Sen. Breaux (LA) introduced S. 1911, the Atlantic Highly Migratory Species Conservation Act, and Reps. Tauzin (LA) and Goss (FL) sponsored a companion bill in the House, H.R. 3390. Rep. Saxton (NJ) is the author of a similar bill, H.R. 3331. A bill to prohibit all pelagic longlining in U.S. waters (H.R. 3516) was introduced by Rep. Sanford (SC).

Map 2 – Longline Area Closures in Proposed Legislation



the support of the longline industry, which makes it more likely to be adopted.

As with the NMFS proposal, the size and duration of the closures alone should reduce overall longline effort substantially. Any added reduction in effort due to the buy-out offer is uncertain, mainly because its purpose is not effort reduction *per se* but economic relief.

It is possible that only those boats too small or too attached to their home port to move to other regions, or those that are struggling financially (in other words, the effort that would not be displaced in any event), will take the buy-out offer; that the more mobile and financially solvent vessels (that do threaten continued bycatch through redirected effort) will remain active.[5] More importantly, there is nothing in the bill that would prevent the hundreds of boats remaining active in the fishery from increasing their fishing effort in terms of number of sets and hooks and thus replacing the bought-out effort.[6] In fact, an increase in effort is

[5] The BWFA does not represent many of the small-scale longline boats active in the south, so it is difficult to gauge the latter's support for this approach. A number of vessel owners have already expressed their opposition, not just to area closures, but to a buy-out as well.

[6] According to NMFS, the removal of 70 longline vessels from the fishery would leave 128 vessels permitted to target swordfish and another 218 vessels with permits to take swordfish as an incidental catch in the tuna and shark fisheries.

Mr. SAXTON. Thank you very much, Mr. Stone.

We are going to take about a five- or ten-minute recess. I apologize to the final two witnesses. We will be back in five or ten minutes.

[Recess.]

Mr. SAXTON. Thank you for your patience, both members and witnesses and interested parties. We are going to proceed now to hear from Mr. Caputi. You may proceed, Gary.

STATEMENT OF MR. GARY CAPUTI, CO-CHAIRMAN, HIGHLY MIGRATORY SPECIES COMMITTEE, JERSEY COAST ANGLERS ASSOCIATION

Mr. CAPUTI. First, let me thank Congressman Saxton and members of the Subcommittee for inviting the Jersey Coast Anglers Association and the New Jersey Federation of Sportsmen's Clubs, with the combined membership of over 120,000 members, to comment at these proceedings. The comments are submitted on their behalf.

H.R. 3390 contains the measures negotiated by groups that represent a portion of the recreational community. The groups I represent today have a membership that exceeds CCA and TBF, yet their positions and concerns were not considered. Any claim that the process was representative of the majority of recreational fishermen, their opinions and concerns is inaccurate.

Time and area closures in the Gulf, while appearing extensive, fall inside the 500-fathom curve where pelagic longlining in recent years has been almost non-existent while leaving open other areas further offshore where longlining is still prevalent.

Satellite temperature charts of the region clearly show that the Gulf Stream and its currents fall outside the closed area, yet they are the very places experiencing the most longline pressure. They also attract the greatest concentration of endangered billfish.

Similar problems arise in the South Atlantic closed area. We have been advised that longline effort for swordfish, especially tuna, takes place along the eastern boundaries of the Gulf Stream. Satellite temperature charts reveal that the eastern edge of the Stream falls well outside the proposed close area in much of this region.

One of our major concerns with H.R. 3390 and H.R. 3331 is that if southern closed areas are effective, there will be a significant effort shift to the mid-Atlantic states, and the bill ignores those implications.

The mid-Atlantic is home to the largest fleet of private recreational and charter boats on the East Coast. Many fish offshore waters for tuna and billfish, and the economic importance of these fisheries is significant. More longliners in these waters will greatly increase ground conflicts between recreational and commercial fishermen. And the possibility of millions of additional longline hooks in the water each year will create huge increases in longline bycatch mortality of white marlin, the most overfished of the billfish species.

It will put increased pressure on yellowfin, bigeye and longfin tuna stocks determined to be fully utilized by ICCAT. In fact, NMFS was so concerned about yellowfin stocks in the Western At-

lantic that they placed a three-fish bag limit on recreational and charter fishermen recently.

The northward shift has been alluded to no the record by longline representatives at the public hearings and, as the Congressman stated, marinas in New Jersey have already been contacted by numerous southern based longliners inquiring about dockage.

H.R. 3390 contains no reduction in quota to match the number of boats bought in a buyout and, therefore, no real reduction in overall quota. If the quotas remain the same, every last pound of that quota will be landed by the smaller fleet, much of it from northern waters, we fear.

The remaining 75 percent of the boats, if 60 are removed, will be the beneficiaries of reduced competition and increased quota shares. Unfortunately, this makes the bill appear to be more of a relief package for the longline industry and a conservation bill for the resource, and it forces taxpayers and recreational fishermen to foot the bill.

The cost of the buyout is to be shouldered not by the remaining longliners, but by the taxpayers and recreational fishermen in the form of another new fishing permit. Just two years ago, recreational fishermen were burdened with a Federal tuna permit which originally cost $18, but this year will rise to $25. This bill imposes a second permit for fishing in the closed areas. Both permits are in addition to saltwater fishing licenses imposed by many states. We feel that both permits are unacceptable, and that issuance of recreational fishing permits and licenses should remain the domain of the states.

One of the most troubling aspects of H.R. 3390 is a four-year moratorium on future regulation. If the reductions in the landings of juvenile swordfish and the mortality of billfish, marine mammals and sea turtles are not realized through this legislation—and there are serious reasons to believe they will not be—the bill guarantees the longline fleet a four-year moratorium on further regulatory and legislative measures. We feel this is a recipe for disaster.

H.R. 3331 begins to recognize the concerns of conservationists and recreational fishermen that were ignored in H.R. 3390. In its present form, it does not provide the level of effort reduction desired, but it is a step in the right direction. It marginally addresses the northward effort shift, but in the long run, at present, falls short of being a conservation tool to reduce the mortality of juvenile swordfish and billfish.

H.R. 3516, introduced by Congressman Sanford, calls for the complete session of longlining and offers the greatest conservation benefit, and embodies a concept that more than 100 recreational fishing and conservation organizations already signed on to in support of just last year.

Concerning the NMFS time and area closures, we feel that they are the proper venue for doing so, and have the regulatory power under the Magnuson Act. In fact, time and area closures were the highlight of the Highly Migratory Species FMP developed after extensive participation. It was supported by a large number of recreational fishing and conservation organizations involved in the process, and could be in place for the 2001 fishing year.

NMFS regulation is the proper venue for such measures, and they include no buyout burden on the general public and no new permits for recreational fishermen.

If fleet reductions prove necessary, provisions in the Magnuson-Stevens Act allow for longline industry to buyout boats using special low-interest government loan programs that would be repaid by the sale of fish products caught by the remaining boats. The positive conservation benefit of boat buyout schemes to date is highly questionable. Look at the programs to aid New England groundfish fleet. The government has spent over $23 million to purchase 79 trawlers, $7 million in disaster relief for fishermen who still can't fish, and an additional $15 million on programs involving idle commercial fishing vessels. With over $45 million in taxpayer dollars spent already, the fisheries off New England are still in terrible shape and little, if any, reduction in fishing effort has been realized as a result of the buyout.

In summary, H.R. 3390 and H.R. 3331 appear to be focused on creating a compensation package for longliners and conservation is taking a back seat.

In our opinion, it is time to step back, look at the benefits and downsides of each approach being put forward. We should establish a forum where we can all put our heads together and do what is best for the resource, without taking punitive action against any group, especially recreational fishermen who we feel are being used as pawns in the process, pitting us against each other.

The proper venue for time and area closures is through NMFS, the mechanism already exists in the law. Further conservation efforts, if legislation proves necessary, must be hammered out between the longline industry and a far more widely representative majority of the recreational and conservation communities.

The members of the New Jersey Coast Anglers Association and the New Jersey Federation of Sportsmen's Clubs thank the Members of the Committee for the opportunity to voice our concerns. Thank you.

[The prepared statement of Mr. Caputi follows:]

STATEMENT OF GARY CAPUTI ON BEHALF OF THE JERSEY COAST ANGLERS ASSOCIATION AND NEW JERSEY STATE FEDERATION OF SPORTSMEN'S CLUBS

The Jersey Coast Anglers Association and the New Jersey Federation of Sportsmen's Clubs have a combined membership of one hundred fifty thousand concerned sportspersons.

The rush to post bills aimed at curbing longlining has reached a fever pitch with a total of three bills submitted in the House in recent weeks. They vary dramatically in their ability to reduce longline fishing effort; to reduce the horrendous problem of longline bycatch of white marlin, blue marlin, sailfish, marine mammals and endangered sea turtles; and to provide genuine conservation benefits by reducing the bycatch and harvest of juvenile swordfish.

Two bills, H.R. 3390 and H.R. 3331, include a proposed buyout of a portion of the longline fleet which burdens those not responsible for the damage done by this indiscriminate gear type with paying the bill to bail out those who participated in the fishery. The very individuals and companies that benefited financially for years from using these damaging fishing practices will be relieved of responsibility and economic loss. The bills will provide select longliners with an escape hatch paid for by the U.S. taxpayer and, amazingly, by recreational fishermen who have been paying the price of longline indiscretions for over two decades already. Recreational fishermen, and the wide-reaching industries supported by their activities, have suffered the loss of fishing opportunities and reductions in participation. This is due to the decimation of stocks of recreationally important billfish killed as bycatch by longline

fishing activities and the total loss of a once vibrant recreational fishery for swordfish, as that species has been overfished to record low levels. Even commercial harpoon fishermen have suffered a similar loss in their ability to participate in the swordfish fishery they once dominated for over one hundred years and which was still thriving until the introduction of industrial longlining. It took just two decades of longlining to put them out of business and forced the remaining boats to transfer effort to the beleaguered bluefin tuna stocks.

H.R. 3390

This bill was originally sponsored in the Senate by Senators John Breaux (LA) and Olympia Snow (ME) both recognized champions of commercial fishing. The house version, H.R. 3390, was then introduced by Congressmen Billy Tauzin (LA) and Porter Goth (FL). It contains the measures negotiated between the Coastal Conservation Association (CCA), the Billfish Foundation (TBF), the American Sportfishing Association (ASA) with the longline industries Blue Water Fisherman's Association (BWFA).

H.R. 3390 includes provisions for time and area closures in the Gulf of Mexicoland the south Atlantic and the controversial buyout of longline vessels previously mentioned in addition to a provision that defers any further conservation action for four years after adoption of the bill, even if the bill does not prove effective. The area closures, especially those in the Gulf, while appearing extensive, mostly fall inside the 500-fathom curve where pelagic longlining activities in recent years have been almost non-existent, while failing to close areas further offshore where longlining is prevalent. Similar problems arise in a portion of the South Atlantic closed area off South Carolina, Georgia and northern Florida. We have been advised that most longline effort for swordfish, tunas and dolphin, which accounts for a greatest percentage of billfish bycatch, takes place along the eastern boundaries of the Gulf Stream. This area falls well outside the proposed closure area.

If the proposed closure areas in H.R. 3390 do have a significant effect on the longlining effort in the Gulf and south Atlantic, there will be a significant effort shift to the north and the bill provides absolutely no protection for the mid-Atlantic region. These areas are home to the largest fleets of recreational fishing boats and charter boats on the East Coast and a shift in longline fishing effort there will cause extensive conflicts between the two user groups. Such an effort shift will put greatly expanded longline efforts and possibly millions of additional hooks in the water each year that will, potentially, create a huge increase in the bycatch mortality of white marlin, the most overfished and precariously balanced stock of all the billfish species. It will put increased pressure on the yellowfin, bigeye and longfin albacore tuna that are all, at present, determined to be fully utilized by ICCAT. In fact, NMFS was so concerned with maintaining the health of the yellowfin stocks, that they unilaterally placed a three fish bag limit on recreational and charter fishermen. Such an effort shift will increase the harvest of these fish by longliners. Further, NMFS own data indicates that any reduction realized in the harvest and bycatch mortality of juvenile swordfish through the closed areas will become insignificant if longline effort increases in the mid-Atlantic canyons, where juvenile swordfish are also present.

The cost of the buyout in H.R. 3390, estimated to cost $25 million or more, is to be shouldered by taxpayers; seafood consumers in the form of a tariff on all swordfish sold; and recreational fishermen in the form of a new fishing permit to be required for sportfishing boats venturing into the closed areas. No portion of the cost is to be paid by the remaining longliners who will benefit from the reduction in fleet size the buyout will attempt to make. Keep in mind that just two years ago recreational fishermen were stunned by the imposition of a Federal "tuna permit" unilaterally regulated into existence by the National Marine Fishery Service. It originally cost $18, but this year will rise to $25. A commercial fisherman can purchase a permit to longline from NMFS for only $50. This bill will impose a second permit for the privilege of being able to fish in the closed areas, on top of the one already in existence. These permits are in addition to saltwater fishing licenses that are imposed by growing number of states. How many times can the government "tax" people to fish for public resources? With the imposition of another permit, recreational fishermen will be paying more money for licenses and permits than the longliners, but no one is offering to buy their boats as the fisheries decline. This new permit is totally unacceptable.

The criteria for longline boats to participate in the buyout are extremely loose. It will allow owners of boats that have not participated in the fishery in recent years to get in on the big payoff. At the same time, H.R. 3390 contains no reduction in quota, and therefore no real reduction in overall fishing effort on the longliners that

remain in the fishery. If the quotas remain the same, every last pound of the quota will be landed by the remaining boats in the fleet.

The remaining boats, which comprise about 75 percent of the existing fleet if the buyout indeed removes 60 boats, will be the beneficiaries of greatly reduced competition and increased quota share as a result. It's a great deal for the longliners who sell and an even better one for those who stay in the fishery. Congress is going to force citizens and recreational fishermen to buy out a big chunk of their competition. Taxpayers, consumer and recreational fishermen will foot the bill and the remaining boats will each get a greater share of the same quota.

Therefore, in all honesty, H.R. 3390 does not reduce overall fishing effort and any reduction in bycatch is purely speculative. In effect, it forces taxpayers and recreational fishermen foot the bill to make the boats in the longline fleet more profitable and ultimately, more politically powerful. However, there is still another very troubling part of this poorly conceived bill. If, for any reason, the reduction in the landings of juvenile swordfish, the overfishing of billfish and the mortality of marine mammals and sea turtles through bycatch are not realized, and there are many reasons to believe they will not be, the bill guarantees the remaining longline fleet a four-year moratorium on any further regulatory or legislative measures. This is a recipe for disaster.

The Jersey Coast Anglers Association and the New Jersey Federation of Sportsman's Clubs can not support this bill for all of the above mentioned reasons.

H.R. 3331

The second bill, sponsored by Congressman James Saxton (NJ), chairman of the House Committee on Sustainable Fisheries, Oceans and Wildlife, mirrors H.R. 3390, but establishes a correlation in quota reduction corresponding to the number of boat purchased through the buyout. Though some mechanism, the quota reduction only comes into play for boats transferring effort to, or fishing in the Mid-Atlantic Bight area. H.R. 3331 recognizes the concerns of many conservationists and recreational fishermen that H.R. 3390, while having the potential to provide some conservation benefits in the Gulf and South Atlantic closure areas, will create a massive shift in fishing effort to the Mid-Atlantic region and further north. Such an effort shift is all but guaranteed by H.R. 3390 because most of the boats that will "volunteer" for the buyout money will most certainly be the least profitable and least mobile in the fleet. They will be boats that are only marginally in business at this point in time, if not already sitting idly at the dock. The remaining 75 percent of the fleet will consist of larger, more modern vessels capable of traveling great distances or shifting their base of operations into the mid-Atlantic region. They will be increasing operations in an area of the greatest concentration of recreational fishing boats, the states between North Carolina and New York, where grounds conflicts are sure to arise. In addition, the effort shift will place far greater pressure in areas where seasonal concentrations of white marlin are still found in U.S. waters. Note that that the white marlin is the most endangered and overfished of the billfish species and is in that precarious state due to longline bycatch over the past twenty plus years. It will further stress the critically important yellowfin tuna fishery that accounts for the most recreational participation in region.

While H.R. 3331 recognizes one of the flaws in H.R. 3390, it still does not do enough to address the many inadequacies of that proposed legislation. JCAA can not support this bill in its current form.

H.R. 3516

The third bill, H.R. 3516, introduced by Congressman Mark Sanford (SC) calls for the complete session of longlining in all U.S. EEZ waters. This bill is obviously the strongest and offers the greatest conservation benefit for both swordfish in U.S. waters and in reduction of bycatch mortality of all billfish, marine mammals and sea turtles. It embodies a concept that approximate 100 recreational fishing and conservation organizations had signed on in support of in just last year. As a result of the strategically timed introduction of H.R. 3390 which offers greatly watered conservation efforts, if any at all, H.R. 3516 is given little chance of advancing through the House. This is truly unfortunate.

NMFS Highly Migratory Species Fisheries Management Plan
Proposed Rule for Time and Area Closures

With all these legislative efforts underway, the National Marine Fisheries Service, in a recent public hearing announcement, detailed specifications for a proposed rule that would institute major time and area closures in the south Atlantic and Gulf of Mexico through the regulatory power granted them by the Magnuson-Stevens Act. The use of time and area closures to reduce bycatch of juvenile swordfish and billfish was actually the highlight of the Highly Migratory Species Fishery Manage-

ment Plan unveiled by NMFS last year after two years of development time. The time and area closures portion of the FMP was postponed while NMFS could further study longline logbooks to determine where such areas should be located to be effective. Now begins the public hearing process to gather additional information concerning the proposal so that it can be fine-tuned to accomplish its objectives. The time and area closure portion of the FMP was strongly supported by the majority of the recreational fishing and conservation organizations involved in the advisory process during the development of the FMP, including The Billfish Foundation, which has now shifted its effort away from the regulatory process to seek a legislative solution, including a costly buyout scheme.

NMFS detailed a total closure of the south Atlantic region from South Carolina through the Straights of Florida year-round and a seasonal closure of the entire western Gulf of Mexico from the Mexican border through Louisiana from March 1 through September 30 in the proposed rule. Following the procedures set out in the Magnuson-Stevens Sustainable Fisheries Act, passed by this body, NMFS is requesting public comment on the closure areas and timing and is in the process of holding public hearings. Once comments are reviewed, the final rule will be developed and implementation could be in place for the 2001 fishing year.

The importance of accomplishing the time and area closures through regulation, actually the correct venue for such measures, is that no buyout burden will be placed on the general public and recreational fishermen and no new permits will be required of recreational fishermen. Provisions in the Magnuson-Stevens Sustainable Fisheries Act allow the longline industry to buyout boats effected by the closure through special, low interest government loan program that would not burden taxpayers and recreational fishermen that would be paid back through the sale of fish products caught by the remaining boats. No legislative buyout is necessary, period!

The entire concept of boat buyouts to reduce fleet size, and, ostensibly, fishing effort is highly questionable when one looks at what has happened in New England in the past few years and what is occurring in the Pacific northwest right now. In New England, the government has spent over $23 million to purchase 79 commercial trawlers, $7 million in so-called disaster relief for remaining fishermen who can't still can't fish, and now an additional $15 million is being spend on questionable scientific research to be conducted by idle commercial fishing vessels. With over 45 million in taxpayer dollars spent already, the fisheries off New England are still in terrible shape and little, if any, reduction in fishing effort has been realized. Whose to say the results of a longliner buyout, which is actually a subsidy for the remaining boats in the fleet as well, will have any better results.

Summary

The NMFS proposed rule accomplishes time and area closures through the proper channels. It closes areas that longline, recreational fishing and conservation organization representatives, in the development of the HMS-FMP, agreed had to be closed, However, it stops short of spending millions of dollars to compensate longliners for their supposed economic loss, even though they are the cause of that loss in the first place.

In the case of H.R. 3390 and H.R. 3331, these legislative efforts appear to be more focused on creating a compensation package for commercial fishermen than conservation and protection for juvenile swordfish and decimated billfish stocks. We feel that it is not the place of Congress to micromanage fisheries. We find it disturbing that these bills contain provisions that prevent any regulatory action for an additional four years during which time the need to further protect these species and other marine animals could arise.

While H.R. 3331 begins the process of bring some measure of conservation to H.R. 3390, in its current form, it falls far short of the expectations of the majority of conservation and recreational fishing groups. With an open and constructive dialogue, this bill might be crafted into a real conservation bill and one simply aimed at conserving the longline industry and bailing out a portion of the fleet that is no longer profitable.

In the opinion of the Jersey Coast Anglers Association, it's time to take a step back and look at the motives of all the groups involved and the benefits and downside of each approach being put forward. We should establish a forum where we can put all our heads together and do what is best for the resource without taking punitive action against the recreational fishermen who, we feel, are being used as a pawn in this process, by pitting us against each other. The largest number of recreational groups have agreed that the proper venue for time and area closures is through the regulatory body charged by law with doing it, the National Marine Fisheries Service. The mechanism already exists in the law. While NMFS has a less

than stellar track record in the past, the agency appears poised to do the right thing without Congress getting in the way.

Further conservation efforts, if legislation proves necessary, must be hammered out between the longline industry and a more far more widely represented majority of the recreational fishing and conservation communities than were present at the negotiations that developed H.R. 3390. Any suggestion that the three groups involved in that process represent a majority of the recreational fishing and conservation organizations is simply not accurate.

Mr. SAXTON. Thank you very much.

Dr. Wilmot.

STATEMENT OF DR. DAVID WILMOT, EXECUTIVE DIRECTOR, LIVING OCEANS PROGRAM, NATIONAL AUDUBON SOCIETY

Dr. WILMOT. Thank you, Mr. Chairman. I appreciate the opportunity to testify today on behalf of the National Audubon Society. National Audubon Society is a national conservation organization with more than 550,000 members and, as a member of the Ocean Wildlife Campaign, has advocated for bycatch reduction measures in the pelagic longline fleet for years.

Minimizing bycatch and bycatch mortality is a fundamental element of conserving marine wildlife and rebuilding depleted populations of overfished and protected species. Large scale time and area closures are a necessary part of any bycatch reduction plan for the fleet, and we are pleased they are being seriously considered.

NMFS proposed rule, H.R. 3331 and H.R. 3390 all propose large area closures. In general, we concur with the areas selected because they include areas with the highest bycatch rates. We are studying the proposed rule in detail and will recommend adjustments in the borders of the closed areas.

It is difficult to evaluate the conservation implications of the area closures in the two bills because there is not a detailed analysis available. We do, however, suggest that the South Atlantic closure in the bills be expanded to include the entire Charleston Bump area, which is known to have high bycatch of juvenile swordfish.

It must be recognized that closures alone, even with a buyout, may not be sufficient to guarantee significant bycatch reduction because of the threat of displacement of fishing effort.

NMFS's analysis of its own proposed closures shows that at least some displacement is likely, and factoring in displacement has a major effect on the biological benefits of the closures. In order to have confidence that significant bycatch reductions are realized, we recommend that landings of vessels in closed areas—this is with or without a buyout—be subtracted from the overall pelagic longline quota. We propose expanding the effort in quota reductions detailed in H.R. 3331 beyond the mid-Atlantic to include the entire region. We also support changes as suggested in H.R. 3331 to the Atlanta Tunas Convention Act and the Magnuson-Stevens Act to accomplish this.

Providing for a quota reduction for longliners based on closures will not result in effort reduction for the remaining fleet or disadvantage U.S. fishermen. Commercial fishermen don't have to lose quota. Commercial fishermen don't have to lose quota because we can reallocate a portion of the swordfish quota from the longliners to commercial fishermen using selected gears—for example, harpoons or rod and reel. Give these men the opportunity to catch the

remaining swordfish quota. This would allow the quota to be caught while minimizing the risk of increasing bycatch.

The turtle situation has been raised. That is one of particular concern because the turtle bycatch in the New England area is so high, and if we have increased effort in that area, we likely will see that problem exacerbated.

In fact, commercial fishermen in the New England area have indicated to us that they will target swordfish with their selected gears, provided that big fish return to the region.

We strongly support NMFS efforts to publish a final rule, and we do not believe that NMFS is required to provide economic relief for needed conservation in management efforts, however, we could support legislation that establishes large scale time and area closures to significantly reduce bycatch, and includes a buyout, provided specific changes to existing legislation proposals are incorporated. We believe there is an opportunity to move forward with the legislation, and we welcome it.

We have additional issues that we would like to raise very briefly. I have provided detailed comments in writing that you have. The first one was raised this morning by Ms. Dalton and several other panel members. This is the four-year, or longer, prohibition on interim regulations. Monitoring, evaluation and adjustment are critical to the success of any bycatch reduction plan. Because of the uncertainty surrounding the effectiveness of time and area closures, it is essential that any bycatch reduction plan be designed from the onset to provide NMFS the ability to manage in a flexible and adaptive manner. We strongly oppose Sections 13 and 12 in H.R. 3331 and H.R. 3390, respectively, because they deprive NMFS of this flexibility.

We also oppose the prohibition on closures going into effect unless and until a buyout is completed. We believe closures must go into effect whether or not a buyout takes place.

The second issue is the need for onboard observers. Given the uncertainty surrounding any large scale time and area closures, we recommend that increased observer coverage should be mandated so that we can reliably determine the effects of the closures. In addition, we recommend the research program proposed in H.R. 3331 and H.R. 3390 be expanded beyond just billfish to include all species in geographic areas in the HMS and billfish FMPs. In addition, the conservation community should be included in all phases of the research programs development and implementation.

The third issue is the need for a vessel monitoring system, which is essential for enforcement of closed areas. NMFS' current requirement that all longline vessels carry VMS should remain in place. To do less would represent a rollback in current regulations.

In closing, H.R. 3331 and H.R. 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 Sub-

committee, and we look forward to working with you in the future. Thank you.

[The prepared statement of Dr. Wilmot follows:]

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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.

Mr. SAXTON. Thank you very much.

I would like to thank each of you for articulating your positions. It has been an interesting process to date.

If I may just reflect on what has occurred. For years, members of this Committee, including me, have anxiously awaited the rule that would provide for the limited entry as a prerequisite to implementing a conservation plan, buyout, what have you—closures, buyouts, et cetera. I was encouraged to a large degree when NMFS put the limited entry rule in place, and thought that we could move forward. But in moving forward, it seems to me that we have at this point several options. We can find a consensus, or not. And if we don't, then the legislation would proceed to run over somebody's interest—I am not quite sure whose it would be at this point because I don't see a consensus among the members of the Subcommittee either—or we could do nothing, I suppose, and I am not sure that that serves conservation's needs. And so in order to try to bridge the gap, I met over months with all of you and other interested parties, and listened to all sides, understand that we need conservation effort, understand that NMFS has an important role to play, tried to listen and move toward a consensus—incidentally, I didn't introduce my bill for talking purposes. I introduced my bill as a serious effort—and then we tried to take the proposal that was arrived at by three coalition members to my left and your right, and we tried to add some provisions to it to solve the problems of the mid-Atlantic Bight, which had to do basically with displacement.

We provided for a second buyout, which is optional. We provided for a 10-percent limit on increased effort by longline boats/fishermen, and we included a provision which said that displaced boats, if that is the correct term, could increase their days at sea in the mid-Atlantic Bight by no more than 10 percent of what they had done on average in the mid-Atlantic Bight between 1992 and 1997. I figured we were moving toward some kind of a compromise.

And so Congress broke right after we introduced the bill, and I left Washington with the intent of spending my break talking about this issue with all interested parties. First, I met with the longline fishermen, explained my provisions, talked about it for a couple of hours, explored possibilities, and at the end of the day there was no movement.

And I went and met with members of the conservation community, members of the recreational community. After about three and a half hours, there was movement toward more conservation and more stringent measures.

So my efforts in closing the gap had just the opposite effect, it broadened the gap. So we are not moving toward consensus. So that means that somehow or another, as chairman of this Committee, I have two other choices. Since we are not moving toward consensus, I can do nothing, or I can hold a series of hearings and see if a consensus develops, or I can try to develop a consensus among Members of this Committee which none of you are going to end up liking. So, I am a little frustrated with the process because we haven't seemed to move together in any meaningful way.

And so I guess my question is, inasmuch as we don't appear to be moving toward a consensus, and inasmuch as I doubt if the

Members of the Subcommittee are going to mark up something where there is no consensus, I guess my question is, to whoever wants to respond, where do we go from here? Mr. Stone?

Mr. STONE. Mr. Chairman, since no one else has spoken up, I will try just to say a few words. First, we are pleased with your attempt to try to come up with a consensus. I think, as I stated in my testimony, that it is important that we pull fisheries folks together, both the fishermen and conservation community, and try to solve bycatch problems. There is no question, it is a problem. However, there is a process—what the organizations I represent are concerned about is that by going through the legislative route, we are getting away from a process that has been set up, an interactive management process. There is an advisory panel. There is the ICCAT Advisory Committee. And what I would hope is that we could work within that process that is already set up and come up with something to solve the problem.

Now, it is going to be difficult, no question about it, but it is going to be difficult, as you pointed out, under any scenario, and it is just a concern of the groups that I represent that if we go with a legislative approach—what you are proposing, there is no problem with what you are proposing in the sense of the closed areas, the buyout, things like that. It is just that that takes the management authority really away from NMFS. It just disrupts the management process that has been put into place.

So, we would hope that it could be done somehow within the process that has been set up. Thank you.

Mr. SAXTON. Any other comments?

Mr. DELANEY. I will take a shot. Just to clarify, I said in my statement, I believe, that it was my understanding that the provisions, the additional provisions that were added to your bill were particularly for the purposes of discussion, but at the same time we have provided discussion on those issues. And in my testimony, I think we made clear that Blue Water Fishermen's Association is not supportive of the second buyback in the mid-Atlantic area. It does not support unilateral actions through amending the Atlantic Tunas Convention Act or through unilateral reductions in swordfish quota for a number of reasons we have articulated in our testimony. But at the same time, as my testimony indicates, we are very sensitive to your concern about displacement into the mid-Atlantic Bight and do feel, as I stated in my testimony, that we would like to work with you on the provision that specifically addresses monitoring and looking at the issue of increased fishing effort in the mid-Atlantic bight as a consequence of the closed areas, particularly those in the South Atlantic region.

So, we do see that area as a productive area for discussion, which I think there can be movement when we fully develop and further develop our thoughts and ideas about how most effectively to address that concern.

It is a very difficult issue to deal with in displacement, and about the only thing we can say with any certainty at this point is that any of the vessels who accept the buyback will not be displaced. Beyond that, we can offer you indications and assumptions that may be somewhat anecdotal based on our, and my client's extensive knowledge of the industry as to what is likely to occur. Until

the program is implemented, it is very difficult to predict precisely what will be the results of those time/area closures, and who will accept a buyback, and what vessels are capable of fishing where and where they will go.

So, to address that issue in a more general way seems preferable, such as the approach I think you took in section 12 of your bill. We would like to work with you, as I said in my testimony, on that provision to try to address that issue.

Mr. SAXTON. Thank you. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, as you had stated earlier, the attendance our friends at this hearing certainly a reflection of the complexity of the issue now before us.

We have got, obviously, four competing interests. You have got the conservationists. You have got the recreational aspects. You have got the commercial, and also the regulatory. I seem to hear interesting comments here that some of you are satisfied with NMFS performance, and I hear otherwise.

Do I get a sense from you gentlemen that you are satisfied with the current workings and functionings of the National Marine Fisheries in providing the resources and the things that are needful, whether it be commercial or recreational, in terms of its regulatory authority under current statutes, or do you feel that the current proposal is going way beyond what you would envision? I mean, I am just asking a general question here. If I could get some responses, please.

I am glad we have our friend here from ICCAT because I have some questions for Mr. Delaney as well.

Mr. HAYES. Let me see if I can answer at least from a coastal conservation standpoint this issue of administration versus doing this in a fashion which we propose, which is do it legislatively.

We don't think the National Marine Fisheries Service has either the capability or the legislative authority to do what we are trying to do in this legislation. They will tell you that they can create a buyout. Those set of regulations, I believe, have been about two and a half years in the making, have been designed for another buyout up in Alaska. They have no relationship to what is going on in this fishery or probably any other fishery than the one they are being designed for. Lord knows how long it is going to be before those regulations come out and set up a framework in which they can operate.

Secondly, in the Gulf of Mexico, this distinction that we made where we drew a line out to 500 fathoms and simply took that for about a 105-day period and just pushed those boats out, in some cases, 50 miles and in some cases about 125 miles.

The National Marine Fisheries Service is going to look at that proposal and they are going to publish a regulation that looks exactly like the one they have published, which says "We will close it all off of Texas, and for you Coastal Conservation Association members that live in Florida and Alabama and Louisiana and Mississippi, you lucky guys, you get what is coming because it is coming from Texas". We tried to design something that would prevent the displacement of those vessels, and we think we did that.

Now, if you were to look at what we did legislatively, or proposed legislatively, it is probably arbitrary from a purely scientific stand-

point, but it does solve the overriding problem. National Marine Fisheries Service has a standard by which it publishes regulations which doesn't allow it to be arbitrary. It has to do things based on science, and based on the impact that it would have on existing communities when they put those regulations in place. They can't draw that line, and that line is vitally important to us as recreational fishermen. We don't see how NMFS has the capability to do what is in the legislation.

I can tell you that one of the basic hallmarks of the Coastal Conservation Association is that we work inside the system, and we try to work with regulators. We are in 15 states, we have 17 state lobbyists. I can tell you, we are working inside the system in lots of places.

We don't normally come to Congress and ask Congress to do specific management measures. In fact, under normal circumstances, we would never take this route. We took this route because we don't think the Fisheries Service can do what needs to be done.

Mr. FALEOMAVAEGA. Mr. Wilmot?

Dr. WILMOT. I'd just like to very briefly add to this. On the buyout side, it may be true that NMFS is not in a position to be able to address this issue, but our biggest concern on this is that in looking at it, this is the beginning of a solution, not the end. This will potentially benefit conservation. Depending on how it is crafted, it could have a significant impact, but it is still only the beginning.

This is directed at a couple of species in particular, the billfishes including the swordfish. It is not looking at other species. For example, pelagic sharks. They are not overfished right now. They may be designated as overfished in the very near future.

The point is that we can't really anticipate all of the problems that are going to come up in the next short period of time that NMFS will need to be able to respond to. This legislation has very strong language that limits dramatically how NMFS will respond to this problem. The rhetoric is there. It is a first step. We know more has to be done. The language is very Draconian and holds back. NMFS needs the flexibility, and that is why I think in Mr. Stone's testimony and our testimony we feel it is essential that NMFS have this flexibility now and in the future to address this problem as it evolves.

I can promise you, this will not solve the bycatch problem of highly migratory species. None of us sitting here believe that. The key is, how best do we take the second step. And many of us fear that this will inhibit the second step that will be needed.

Mr. FALEOMAVAEGA. My sense in reading the provisions of the bill, there is no restriction that provides for NMFS to monitor and to analyze the situation, unless I am wrong on this.

Dr. WILMOT. The section 12 and 13 language that basically puts a four-year prohibition, a time-out as some have called it, actually raises the bar quite high, requiring that emergency action be taken by NMFS limiting it to actions on highly migratory species, not other species, including protected species such as turtles. So, we actually believe the language in sections 12 and 13 in H.R. 3390 and H.R. 3331, respectively, is very, very——

Mr. FALEOMAVAEGA. So your concern is that the language is not as inclusive of other species, but are more specific on these certain species that the legislation has addressed.

Dr. WILMOT. Correct.

Mr. FALEOMAVAEGA. Mr. Stone.

Mr. STONE. Just to elaborate a little bit more on what Dr. Wilmot said, we do believe it is very important to conduct the research and monitoring, and because of the flexibility needed, to look at what is happening.

We have all stated that we don't know exactly what is going to happen with the relocation or shift of effort or whatever, and so there could be some things that could be damaging to the other stocks. And they need to have the capability to move on it quickly, not to wait for four years to do something.

And to address your question about is NMFS doing a good job, I think a lot of people feel like NMFS doesn't do as good a job as it should, and it varies by species/groups that we are talking about. But we think that when NMFS does try to do something, that Congress can find ways. I know when I worked for National Marine Fisheries Service, they could find ways to put pressure on us to do certain things—other than through legislation is what I am talking about.

And so I think you have the capability to have influence, and there are things, such as the buyout and the research program, where there needs to be some help, but we are just concerned that the process remains interactive.

Mr. CAPUTI. Specifically to your question about whether we are comfortable with NMFS doing a good job, probably quite the opposite is true. NMFS, on its own with highly migratory species, has taken a long time to develop regulations for specific species. Those regulations now are being finalized with their time and area proposals which are supposed to be one of the highlights of that Fisheries management plan.

In different arenas, NMFS has done a better job and, unfortunately, in those arenas, the job being done is impacted politically. Take a look at the council system. I sit on the Mid-Atlantic Fisheries Management Council. We have a relatively balanced council as far as commercial, recreational and conservation membership. If you look at councils in other areas of the United States, those councils are heavily biased by one user group or the other, usually commercial. And the job that they do is impacted dramatically by that bias.

You only have to look to New England or some of the Pacific councils to see the type of situation that their fisheries are in and the reasons for those, and I think Congress could help NMFS do a better job by enforcing the Magnuson Act provisions that call for councils to be more balanced. So, in some cases, NMFS' job is impacted politically. In other cases, the job that NMFS does is impacted by competing pressures.

One of the things I would like to say is the proceedings that we are dealing with here today I think set the stage for us to do something in probably the most difficult Fisheries management arena there is, and that is pelagic fisheries. There are no simple answers. There never has been.

The Chairman, after many, many years of dealing with this, I am sure, can attest to that. But I don't see the process that has been started here with either of these bills or with what NMFS is doing as an end, I see it as a beginning. I would like to see the Chairman and this Committee put together a forum to continue the discussions and to continue the work that has been started between a wider range of recreational fishing groups, bring in the conservation community that in some cases has been left out of the process, and the commercial longliners, and see if we can't hammer out a more conservation oriented bill that still takes care of people economically.

Mr. HAYES. Can I take a moment to make a comment on this timeout provision. I think people, frankly, before they become overly critical of it, ought to read it because I think it is fairly explicit in what it says.

It was designed to ensure that the scientific research that is in the bill would be conducted before you made adjustments to the areas that are closed. That was its intent. Limitation in there doesn't limit the National Marine Fisheries Service from doing the research, conducting the research, doing the analysis. It doesn't limit anyone from coming back to Congress. If we could do that, wouldn't that be a wonderful thing. People would love us for that, but I think that is pretty unlikely. I don't think you could do that to yourself.

It doesn't limit the National Marine Fisheries Service from taking any other form of conservation regulation or measure that they deem necessary. They could adjust the hook size, the length of the lines, the soak times. There are all sorts of things the National Marine Fisheries Service could do.

What it does limit them to do, it says if you are going to adjust those time and area closures, then, frankly, you can't do that unless there is a resource emergency. They could even do that if they could demonstrate that there was a resource emergency.

Now, there are some consultation requirements in there. There are some requirements that they at least have to consult with commissioners, look at the ICCAT recommendations. There are things like that which are findings, essentially, and things that they would have to do, but it is not a raising of the bar that it is so high that you have tied the hands of the National Marine Fisheries Service.

Mr. FALEOMAVAEGA. Well, as you know, earlier I raised the issue of the boundaries that were drawn by the National Marine Fisheries Service as comparison to Congressman Saxton and Senator Breaux' sense of boundaries in this EEZ, if you will, and it is quite different, in my humble opinion, at least what I found here.

And the question I raise, was it because their studies were more scientific, or is it just by adjusting these boundaries? Was there any reason behind these differences? And I would like to ask Mr. Delaney if any of this has any impact on ICCAT's mission, or are we in compliance with ICCAT's function and everything that we expected it to be?

Mr. DELANEY. Thank you. I appreciate that question. First of all, the general concepts that we are trying to address here to substantially decrease our bycatch in small swordfish and billfish, I would

say, far exceed our requirements at ICCAT, our international obligation.

I would also note that the United States accounts for approximately 5 percent of the total harvest by all ICCAT nations, of ICCAT managed species, highly migratory species.

We cannot manage this resource alone. We can terminate all of our highly migratory species in the Atlantic Ocean, and it would have absolutely no positive conservation effect. In fact, I would strongly argue it would have a negative conservation effect because we would be turning our fish, our allocations, our quotas, back over to those nations to do a far worse job in terms of compliance in bycatch conservation. So, we are way, way ahead of the curve in terms of ICCAT with this proposal.

What the three main parties sitting here today agreed, though, was an important objective was to establish in the United States basically a model that we could take to ICCAT and advocate and say, "See, this is what we were able to accomplish through time/area closures in terms of bycatch reduction, we ought to apply these same ideas and principles on the international level to achieve far greater and what would be truly meaningful reductions in bycatch throughout the Atlantic".

We talk about big numbers here in this bill and in my presentation, big percentages of reduction in bycatch. That is in the U.S. EEZ. If you compare that to the Atlantic-wide effect, it is rather minimal.

What we need is international cooperation to do the very same things we have done on a very micro-scale here.

Mr. FALEOMAVAEGA. Do you suggest, Mr. Delaney, that we are not doing enough in pushing ICCAT to have a little higher standard than just for the United States and its fishing industry to do the same?

See, my problem here is I heard somebody mention about imported swordfish. If we are to consider our own local industry—of course, I know that we import about $7 billion worth of fish from foreign countries because we don't produce enough domestically—but there was some mention about imported swordfish. It gives me the idea that all other foreign countries are catching, they don't care whether it is small or big or whatever measures, as compared to the restrictions that we have set upon our own commercial fishing industry.

So, I suppose when we see this imported swordfish coming from other countries in Europe, it does raise a concern. If I were a commercial fisherman, I would be really ticked off.

Mr. SAXTON. If the gentleman would yield.

Mr. FALEOMAVAEGA. I would be glad to yield to the Chairman.

Mr. SAXTON. On that point, the United States has developed a great appetite for swordfish, and obviously that has created a good situation for commercial fishermen in this country, but it also has given rise to the importation of large amounts of swordfish.

And as Ernie suggested, we might want to look at doing something with that. As a matter of fact, we are in the process of drafting a bill which takes note of the fact that last summer NMFS, with the assistance of the Customs Service and other U.S. agencies, implemented a system which prohibits the importation of under-

sized Atlantic swordfish, and we are now looking at legislation which we will introduce under a separate bill because it will be referred to the Ways and Means Committee, that would prohibit fish caught by foreign fishermen and fleets in excess of ICCAT conservation quotas from being imported in the United States as well.

So, hopefully we will have the opportunity to leverage through that legislation some international conservation effect with regard to swordfish.

Mr. FALEOMAVAEGA. Mr. Chairman, I hope it will include the Pacific as well.

Mr. SAXTON. Ernie wanted to make a comment.

Mr. PANACEK. Yes, I just wanted to comment briefly on the import situation, too, just to convey that our American fishermen are very frustrated and they are very discouraged with that influx of foreign countries sending the swordfish in and reducing the American fishermen's prices to a great extent, when we are all involved, foreign countries and the United States, and the United States is trying to make that position that the American fishermen are doing the best they can to conserve this resource, and I think we have to pursue that, and we have to pursue it aggressively.

Mr. FALEOMAVAEGA. Thank you. Thank you, Mr. Chairman. Thank you, gentlemen.

Mr. SAXTON. Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I just wanted to ask Gary Caputi a couple of questions. Actually, I guess I can make them one question. I have your statement, but I obviously wasn't here when you and the rest of the panel made your statements orally.

With regard to the two bills, Mr. Saxton and Mr. Goss' bill, what evidence do you have that the closed areas in the Gulf of Mexico and off South Carolina, Georgia and northern Florida might be ineffective. And then following up on that, can you expand on your concerns about an effort shift to the mid-Atlantic region and the implications for the resource and the recreational fishing industry?

Mr. CAPUTI. Certainly, Congressman Pallone. I did have the opportunity to address those a little bit earlier while you were out of the room.

One of the businesses that I am involved in is a high tech business that provides satellite ocean temperature charts for recreational fishermen throughout the Gulf of Mexico, Florida, South Atlantic and the mid-Atlantic States. And one of the things that we have done—and we have provided Congressman Saxton with some of the information—was detailing specific charts that track the Gulf Stream, its currents, throughout the Gulf States, the Gulf of Mexico and the South Atlantic region.

And one of the areas that has been targeted in recent years by recreational fishermen and by longliners, are temperature gradients—and the Gulf Stream loop creates the largest temperature gradient. Areas of great temperature change have a tendency to amass bait fish and to amass specific types of target species like billfish and swordfish. And one of the rules of thumb that we used looking at the area closures was the location of the Gulf Stream and its loop currents in the Gulf of Mexico compared to where the breakoff line was at the 500-fathom curve for the proposed close

areas in the two bills, and noted that the Gulf Stream and its loop currents are well outside of those boundaries. So we feel that while possibly in years past the greatest bycatch of billfish and juvenile swordfish was more in-shore, in recent years longline activity seems to have been taking place further offshore along the edges of the Stream and in those loop currents. So that is one of the reasons that we made those comments, and we have provided that information to any number of sources around the table and on the Subcommittee.

Concerning the displacement, yes, there is any number of groups, the two that I am here commenting on today, the New Jersey Coast Anglers Association and the New Jersey Federation of Sportsmen's Clubs, we are seriously concerned with an influx of longline activity into the New York Bight, the mid-Atlantic Bight area in particular, because it is such a vibrant recreational fishery.

As you know, being a Representative from New Jersey, the canyon areas between North Carolina and off of Long Island, through that area, are prize recreational fishing destinations. We have had our pelagic fisheries that used to occur closer to short—bluefin tuna, pelagic sharks—pretty much decimated over the last 25 years, and hence the recreational fishery has moved further offshore into the canyons, and it depends heavily on yellowfin tuna and also white marlin and blue marlin which occur very heavily in those areas. And in recent years, surprisingly enough, a large number of juvenile swordfish are being caught and released by recreational fishermen through the canyon areas. So, an increase in longline activity in those areas is something that we really worry about and would like to see addressed in the bills.

H.R. 3331, Congressman Saxton's bill, begins to do that, and we would just like to see more discussion on that topic. Thank you.

Mr. PALLONE. And you said that information that you talked about earlier is being disseminated to everyone so they will all have it.

Mr. CAPUTI. Yes.

Mr. STONE. Congressman Pallone, if I could, I would like to say that the Recreational Fishing Alliance also is concerned about shift in effort, and that is one of the reasons why, as I said in my testimony, they would support Congressman Saxton's bill. Thank you.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you. I just want to thank all of you again for being here to share your thoughts with us today. Just by way of announcement, we had tentatively scheduled a hearing to accommodate Mr. Goss and people in Florida who are interested in this subject for February 23. Unfortunately, Mr. Goss can't make it that day, and so we will have to go back to the drawing board on that effort. So, that would have been the next step in the process.

We also are planning a Northeast hearing at some future date after the Florida hearing, so we will get back to all of you with regard to that information at a later time.

Unless there are other questions at this point, the hearing will be adjourned. Thank you very much again for being here.

[Whereupon, at 1:30 p.m., the Subcommittee was adjourned.]