

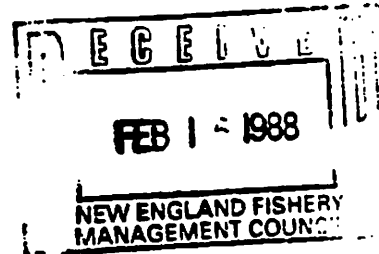


2. Reports
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

FEB 11 1988

F/EN2:SCS

Mr. David V.D. Borden
Chairman, New England Fishery
Management Council
Suntang Office Park 5 Broadway
Saugus, Massachusetts 01906



Dear Dave,

Thank you for your letter regarding the complex topic of fisheries law enforcement. You addressed many issues that are problematic for the Fishery Management Councils, the National Marine Fisheries Service (NMFS), NOAA General Counsel and the U.S. Coast Guard. We are constantly striving to develop better approaches.

Our Office of Enforcement developed an issue paper in May 1987 addressing the enforcement concerns of the NOAA Fishery Management Study (the Study) commissioned by Dr. Calio in 1985 and completed in June 1986. The study addressed many of the same topics as your letter. Therefore, I am enclosing a copy of the Enforcement Issue Paper, which may lay the groundwork for solutions to enforcement problems in the Northeast region and around the Nation.

We have not yet appointed special enforcement task forces to evaluate all existing plans and their management measures, as the issue paper suggests, because of the expense and personnel that would be required. But, I would like you to know of several decisions I have made recently to enhance our enforcement efforts in the Northeast region. While NOAA is currently preparing for major budget cuts due to the large Federal deficit and the inevitability of the Graham-Rudman-Hollings spending reductions, I have not cut back our enforcement program. In fact, the Northeast region recently hired three new agents and will be hiring two more in the near future.

As you are aware, I have reorganized the Office of Enforcement into a line organization. I am certain that restructuring enforcement will improve our effectiveness and efficiency nationwide. Positive, responsive changes in our law enforcement program affecting the New England and Mid-Atlantic Fishery



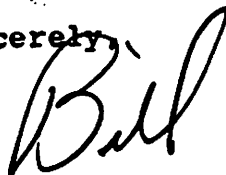
Management Councils have already begun. Although North Carolina is not within the Northeast region, a recent transfer of an agent into North Carolina to conduct Atlantic sea scallop inspections and investigations will improve compliance with this fishery management plan. Additionally, a new agent was hired in Virginia. These decisions were made by ranking national enforcement priorities and assigning a high priority to scallop enforcement in the southern range of the fishery. Our Enforcement Office has initiated an aggressive program by Northeast region Special Agents to provide increased training to U.S. Coast Guard air and sea platforms to help improve the effectiveness of those efforts. Also, a NMFS Special Operations coordinator is now fully functional in the Northeast, which will provide us with the ability to target organized illegal fisheries activities and mobilize available resources to address such situations.

On the question of sanctions for violations, we are in agreement that civil penalties alone are not a sufficient deterrent. The other available sanctions, catch and vessel forfeitures and permit suspensions or revocations, are powerful deterrents, but none of them can be imposed in a summary fashion. There is no debate among lawyers about whether the federal government can deprive a person of his property or his livelihood without due process of law.

Permit sanctions have been imposed more than a "few times" in the Northeast Region. NOAA has proposed or imposed suspensions in 16 multispecies cases, eight scallop cases, 16 surf clam cases, and three lobster cases. These cases take an extraordinary amount of attorney time, but they are worth the effort for selected cases of repeat or egregious violations.

I would appreciate your reviewing the attached issue paper and look forward to receiving your comments and thoughts on the enforcement remedies we have proposed. Morris Pallozzi and his staff are available and anxious to work with you and your staff on our mutual concerns.

Sincerely,



William E. Evans
Assistant Administrator
for Fisheries

Enclosure

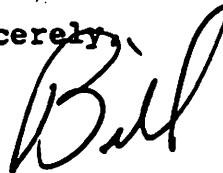
Management Councils have already begun. Although North Carolina is not within the Northeast region, a recent transfer of an agent into North Carolina to conduct Atlantic sea scallop inspections and investigations will improve compliance with this fishery management plan. Additionally, a new agent was hired in Virginia. These decisions were made by ranking national enforcement priorities and assigning a high priority to scallop enforcement in the southern range of the fishery. Our Enforcement Office has initiated an aggressive program by Northeast region Special Agents to provide increased training to U.S. Coast Guard air and sea platforms to help improve the effectiveness of those efforts. Also, a NMFS Special Operations coordinator is now fully functional in the Northeast, which will provide us with the ability to target organized illegal fisheries activities and mobilize available resources to address such situations.

On the question of sanctions for violations, we are in agreement that civil penalties alone are not a sufficient deterrent. The other available sanctions, catch and vessel forfeitures and permit suspensions or revocations, are powerful deterrents, but none of them can be imposed in a summary fashion. There is no debate among lawyers about whether the federal government can deprive a person of his property or his livelihood without due process of law.

Permit sanctions have been imposed more than a "few times" in the Northeast Region. NOAA has proposed or imposed suspensions in 16 multispecies cases, eight scallop cases, 16 surf clam cases, and three lobster cases. These cases take an extraordinary amount of attorney time, but they are worth the effort for selected cases of repeat or egregious violations.

I would appreciate your reviewing the attached issue paper and look forward to receiving your comments and thoughts on the enforcement remedies we have proposed. Morris Pallozzi and his staff are available and anxious to work with you and your staff on our mutual concerns.

Sincerely,



William E. Evans
Assistant Administrator
for Fisheries

Enclosure

1987

NATIONAL MARINE FISHERIES SERVICE

ISSUE PAPER

OFFICE OF ENFORCEMENT

NEW ENGLAND FISHERY
MANAGEMENT COUNCIL

FEB 1 1988

02 04 88

The NOAA Fishery Management Study (the Study) commissioned by Dr. Calio was completed in June, 1986. The Study's recommendations, if adopted, could have far-reaching, significant effects on future management of our nation's fishery resources. Its recommendations regarding enforcement are sensible. The Study lists the following inadequacies of enforcement measures:

- A. Fishery management plans include regulations that are difficult and expensive to enforce.
 - Councils must recognize enforcement costs of their regulations and consider more economical alternatives. For example, dockside enforcement is less expensive than at-sea enforcement, but is not practical in all cases.
 - Coast Guard and NOAA enforcement experts should provide timely advice on economical and effective enforcement measures. Councils should give greater weight to such advice.
- B. Funding does not allow effective enforcement presence.
 - NOAA, Coast Guard, and the Councils should accelerate their cooperative effort to devise cost-effective enforcement methods, including the use of available technology.
 - Accounting procedures for enforcement need to be consistent between Coast Guard and NOAA, and to be realistic so that fishery management costs are not inflated.
- C. The lack of permits and permit sanctions on domestic fishermen.
 - Federal permits should be required in every fishery and realistic permit sanctions should be applied to repeat violators and their boats.
- D. Incomplete preparation of cases, inadequate penalties for violators, and cases remaining in process for too long.
 - NOAA and the Coast Guard have already initiated discussions to improve the legal processes. These efforts should be accelerated and encouraged.
- E. Mitigation of fines and penalties.
 - Needless to say, the system cannot work if the one who has been properly tried, convicted, and fined is able through political influence, to have his penalty reduced or canceled.

ITEMS A AND B - REGULATIONS DIFFICULT TO ENFORCE, INADEQUATE FUNDING

BACKGROUND

Historically, the role of enforcement in the fishery management plan (FMP) and regulation development process has been tangential. Enforcement advice given by National Marine Fisheries Service (NMFS) Regional Directors sitting as voting members on the Councils, Coast Guard enforcement representatives to the Councils, regional NMFS enforcement officials sitting on special enforcement subcommittees and NMFS Special Agents conducting reviews from the Washington, D.C. office frequently has not been followed for whatever reasons. Consequently, fishery managers have discovered that many plans contain measures that are difficult to enforce, expensive to enforce, not really necessary or, in some cases, all three.

These issues, when combined with the factors identified in the Study as those contributing to widespread disregard for our fishery regulations, make for complex problems with no simple solutions. Those factors include the highly competitive, free-access nature of most fisheries, economic pressures, low perception of detection, lower perception of punishment, peer respect for large catches, lack of understanding of the value of management and inadequate funding for enforcement. When the same managers who have shunned the advice and recommendations of enforcement officials for years realize that their plans are failing to achieve their goals, they search for reasons. In many cases, they decide that enforcement, or the lack thereof, is the problem. Without considering a change in management strategies, they usually go to work on "solutions." More enforcement, more money, higher penalties, and permit sanctions become the answers. They believe that increasing the law enforcement budget to apprehend and prosecute more violators will solve their problems.

Present funding, the Study concludes, does not allow an effective enforcement presence. We agree. Congress passed the Magnuson Fishery Conservation and Management Act (MFCMA) in 1976. At that time, NMFS employed about 80 Special Agents and operated on a budget of about \$7 million. Today, NMFS employs 96 agents and operates on a budget of approximately \$7.7 million. During this ten-year period, the Councils implemented 33 FMP's, many with enormous fiscal enforcement requirements. Frequently, enforcement comprises the most costly aspect of implementing an FMP. However, there is no direct limitation on the financial obligations which the Councils can create for NMFS, NOAA and the U.S. Coast Guard. Additionally, failure to develop procedures whereby the Councils, NMFS and Coast Guard work together to set

regional and national priorities for management while remaining within the budgetary limits of these agencies has led to strained, often ineffective enforcement.

In 1984 the NMFS Office of Enforcement developed and published in the MFCMA Operations Handbook an enforcement section entitled "Guidance for Fishery Managers." This section describes available enforcement modes, discusses their relative effectiveness and provides cost estimates for various aspects of each mode. It suggests strategies for gaining maximum compliance at minimum expense. Because it specifically anticipated the recommendations made by the Study concerning the suggestion that Councils consider enforcement alternatives, it is attached as Appendix 1.

In 1985, NMFS and Coast Guard enforcement officials developed and published the third NMFS/U.S. Coast Guard Joint Enforcement Study. This task group developed a new methodology for predicting enforcement resources and applied it to every FMP in place in January 1985.

The Joint Enforcement Study predicts both at-sea fishery resource requirements (in cutter days and aircraft hours) and shoreside requirements (in man-years) through a simple model. This study is used by the Coast Guard and NMFS in planning resource requirements to enforce all applicable fishery related laws and treaties.

The model uses vessel population data that reflect the actual participants in fisheries under regulation and the number of times per year they should be contacted at sea (through a boarding) or dockside (through an inspection) to determine enforcement resource requirements. The model considers the regulatory requirements of each fishery in determining the mix, or mode of at-sea and shoreside contacts required per year. To determine the total annual contacts required per vessel by fishery, users of the model must consider and evaluate the value of the gains derived from violating the regulations (called the incentive for non-compliance), the critical status of the fishery, the complexity of the regulations and other factors where appropriate.

The joint study task group gathered data on NMFS and Coast Guard resources devoted to individual FMPs for 1984 and compared these data to 1985 projections resulting from applying the new methodology used in the 1985 joint study. In many FMPs, the resources expended in 1984 and those projected for 1985 were extremely close. A copy of the Joint Enforcement Study is attached as Appendix 2.

Discussion:

Program effectiveness in fisheries law enforcement results from gaining the greatest compliance possible at the lowest cost. The term compliance means that violations in a fishery under regulation are occurring at a rate which:

- a) is much lower than that at which they would occur with no enforcement;
- b) is acceptable to the industry and the public; and
- c) contributes to the conservation goals established by the FMPs.

Compliance varies significantly from one fishery to another. It is affected by different input levels of fiscal and human resources, the enforcement modes chosen, and ultimately by the effectiveness of the enforcement effort itself.

Enforcement modes exist in two general categories: dockside and at-sea. The at-sea modes include observers, ship and boat patrols from which boardings and sightings are made, and aircraft patrol, both fixed wing and helicopter. The dockside modes include monitoring landings; inspecting dealers, processors, and shipping conveyances; and conducting covert and overt investigations.

With the exception of the observer mode, which is strictly an NMFS program, these enforcement modes are conducted by personnel and facilities of NMFS, the Coast Guard, and state conservation agencies that have entered into cooperative enforcement agreements with the two Federal agencies. Coast Guard efforts are predominantly at-sea, while NMFS and State efforts are predominantly dockside.

NMFS currently has cooperative enforcement agreements with 16 coastal States. In most cases, NMFS agents and state officers are cross-deputized to enforce each other's laws. Although the degree of cooperation varies from State to State, all States with agreements assist NMFS in enforcing regulations developed under the Magnuson Act.

The Study suggests that NOAA, Coast Guard, and the Councils accelerate their cooperative efforts to devise cost effective enforcement methods, including the use of available technology. New technology is sought out and examined routinely by NMFS and Coast Guard officials. Within the past year, experts from both agencies have studied the feasibility of using aerostats (hot air balloons and blimps), sonobuoys (sonar detection devices), satellites and fishing vessel transmit terminal (FVTT) devices. In every case except the FVTT, the technological systems studied had limited application and were too expensive to be practicable. We believe the FVTT may be an exception.

In its simplest form, the FVTT could be used effectively in any fishery off the U.S. coast. Observers would carry them onboard vessels and transmit the vessels' positions through a satellite. Because finding vessels in Alaskan waters is a problem to which many ship days and aircraft hours are devoted, the FVTT

concept may represent substantial cost savings in this fishery alone. At a minimum, the FVTT would reduce ship and aircraft searching responsibilities that now include locating and identifying authorized vessels. It would also enhance the effectiveness of Coast Guard cutters, allowing more time for boarding and less time for searching.

The Coast Guard is currently testing the FVTT on cutters in the Bering Sea off Alaska. The system consists of a local user terminal (LUT), a transmitter and a satellite. The signal received from the transmitter is displayed on the LUT screen. The LUT costs approximately \$75,000 and each transmitter is between \$2,000 and \$4,000, depending on its capability. The \$2,000 unit transmits position only. More expensive units can transmit both data and position information. The Coast Guard is testing both types. Once the tests are complete, we will review the evaluation data and recommend applications for the FVTT.

Despite the possible benefits available to enforcement officials through technological advancements, no substitute exists for at-sea boardings, aircraft patrols, observers, and dockside investigations. There are strategies, however, that Councils, NMFS and the Coast Guard can employ to create more economical alternatives, thus reducing total enforcement costs.

Often, selecting enforcement modes and developing strategies is limited by annual appropriations, especially when no increases in appropriations occur as new FMPs are approved and implemented. The Study specifies that accounting procedures for enforcement between Coast Guard and NOAA need to be consistent and realistic so that costs are not inflated. NMFS officials track agent activity for all enforcement activities by the hour. Therefore, accounting for human and fiscal resources devoted to foreign fisheries, domestic fisheries, individual FMP, or any other activity is very accurate.

Accounting for Coast Guard resources is far more complicated. The Coast Guard's accounting system for fisheries enforcement involves separating this particular mission from a long list of multiple missions and justifying the associated costs. The General Accounting Office (GAO) recently conducted several studies of this complex accounting system. In 1984, a GAO audit of foreign fishing fees concluded that past accounting methods which provided totals only for direct expenditures on fisheries law enforcement were inadequate. GAO required the Coast Guard to add 18.7 million dollars in direct support costs and 40 million dollars in indirect support costs (personnel, administration and training) to their direct fisheries enforcement expenditures. This new GAO requirement nearly doubled the costs associated with Coast Guard enforcement of U.S. fishery regulations and made the costs appear to be grossly inflated.

In conclusion, while NMFS and Coast Guard officials agree that valid cost comparisons can be made only if both agencies determine costs in a like manner, the current methods for cost accounting are as consistent as is possible.

Clearly, fisheries managers have an obligation to limit or eliminate management measures and regulations requiring costly enforcement modes where possible. However, fisheries management is a complex issue. Finding and implementing management measures and regulations that are efficient and cost effective is always possible, but sometimes difficult to implement when an industry is opposed to effective regulation. The Study correctly states that dockside enforcement modes are less costly than at-sea modes, but are not practical in all cases.

Recommendations:

To the extent possible, management measures and regulations should concentrate enforcement efforts in the dockside mode. Where this is not possible, and a critical management measure contains regulations enforceable only by a particular mode, structuring the other regulations so that they too may be enforced by that mode may reduce or eliminate the need for other modes. The marginal costs of adding requirements to an existing mode are considerably less than the costs of adding a new enforcement mode to a fishery.

The following proposed strategies are offered as methods to increase effectiveness and lower costs. Specific examples are cited for each case:

Combine two or more modes into one where possible.

- The Mid-Atlantic surf clam FMP contains a management measure closing a large area off New Jersey because it contains large numbers of undersize surf clams. The Coast Guard, accompanied by NMFS agents or State Agents, conducts aircraft patrols and boat patrols to monitor compliance at a great expense. The same FMP contains a measure prohibiting the landing of undersize surf clams. This measure is effectively enforced dockside at a much lower cost. By eliminating the closed area, and increasing the dockside effort to monitor catches for undersized clams, we meet conservation goals and reduce enforcement costs.

- The Northeast Multi-species plan contains an important management measure which closes three areas in the Northwest Atlantic from February 1 to May 31. Haddock spawn in two of these closed areas. A majority of the haddock in the FCZ spawn in the closed areas during these four months. Every year, the Coast Guard commits two medium endurance cutters and approximately 5 flights per week to closed area surveillance. The total cost has been estimated at approximately five million dollars.

By eliminating the closed areas and prohibiting the catching, taking and possession of haddock during the same months, we could protect the entire spawning resource, shift to the dockside enforcement mode already in use for other management measures, and save approximately 5 million dollars.

Change gear restrictions to gear possession prohibitions.

- When gear types are restricted for certain fisheries, but carrying such gear on board the vessel is not prohibited, enforcement can only occur at-sea. If the gear can be rapidly changed from illegal to legal, even the best enforcement efforts conducted at-sea are ineffective.

- Most gear restrictions currently in place are extremely valuable conservation measures. Simple changes in regulations prohibiting the possession of illegal gear would enable enforcement agents to monitor compliance on the vessels at the docks. This would increase efficiency and reduce costs. In most cases, this could occur with very little disruption to normal fishing practices.

- One Special Agent in New England, where this is a problem in the Multi-Species Groundfish FMP, recently described a situation where the cutter he was aboard came upon a large concentration of groundfish vessels fishing on Stellwagon Bank east of Boston, MA. The cutter had to post a special lookout to avoid illegal liners and cod-ends floating in the water. The nets had been cut out and thrown overboard during the cutter's approach.

- A similar situation exists in the west coast salmon troll fishery. The regulations outlaw the use of barbed hooks, but allow their possession onboard. Barbed hooks can be changed so quickly that enforcement is impossible.

Eliminate incidental take provisions.

- Many FMPs contain incidental take allowances for species when their possession should be prohibited. An incidental take provision expressed as a percentage of the total catch onboard means agents must inventory entire offloadings and weigh every species to make the correct calculations. Monitoring compliance with incidental catch allowances at-sea is impossible unless the incidental species in the vessel's holds is so great that it exceeds the amount allowed if the remainder of the holds were filled with other species, for example, a visual inspection of a vessel's holds reveal that they are half filled with a species regulated by a ten percent incidental take.

In most cases, the incidental species is also a valuable species. Therefore, every incentive exists for a fisherman who may, in reality, have little or no bycatch of the restricted species to conduct a directed fishery until his incidental catch allowance is satisfied. By allowing incidental catches, no

incentive exists to avoid a protected species. If protecting a species is the objective of incidental catch allowances, ultimately the species will receive maximum protection at minimum costs through possession prohibitions.

As seen above, developing alternative strategies can result in the use of highly effective enforcement modes while keeping costs to a minimum. Relying on past experience to develop new strategies for new plans and to change outdated, ineffective strategies remaining in current plans will result in the most cost effective use of our fisheries law enforcement resources. To accomplish this, we recommend the following:

The NOAA Administrator appoint two special enforcement task forces, one for the East coast and Gulf, and one for the West coast and Alaska, to evaluate every FMP currently in place. The responsibilities of each task group would include:

- Identifying costly, ineffective management measures and regulations and
- Recommending more effective, economical alternatives.

Task Force representation should include:

East Coast

- (NMFS) Washington Office enforcement expert
- Northeast Region enforcement expert
- Southeast Region enforcement expert
- Coast Guard Headquarters enforcement expert
- COMLANTAREA (Coast Guard, Atlantic Area) enforcement expert
- NOAA General Counsel enforcement attorney (Regional or GCEL)
- One Fishery Management Council Enforcement Subcommittee Chairman
- NMFS scientist, Northeast Fisheries Center
- NMFS scientist, Southeast Fisheries Center

West Coast

- NMFS Washington Office enforcement expert
- Alaska Region enforcement expert
- Northwest Region enforcement expert
- Southwest Region enforcement expert
- Coast Guard Headquarters enforcement expert
- COMPACAREA (Coast Guard, Pacific area) enforcement expert
- NOAA General Counsel enforcement attorney (Regional or GCEL)
- One Fishery Management Council Enforcement Subcommittee Chairman
- NMFS Scientist, Northwest and Alaska Fisheries Center
- NMFS Scientist, Southwest Fisheries Center

Each task group, in forming their recommendations, would gather, assess and evaluate individual FMP information on:

- Active vessel populations,
- Number of Federal permits issued, if required,
- Number and types of regulations,
- Modes currently used to enforce the regulations,
- NMFS resources devoted to enforcement in 1986,
- Coast Guard resources devoted to enforcement in 1986,
- Attorney resources devoted to prosecution in 1986,
- Violation rates and prosecution results from FMP implementation to December 31, 1986.

The alternatives recommended by the task groups should include projected enforcement resource requirements and verifications by NMFS scientific experts that the alternatives chosen will achieve the conservation goals and objectives identified in each plan.

Once each task group formulates its recommendation and alternative management strategies, it must decide, based on the condition of the stocks and the likelihood of recovery under the existing management regime (with information supplied by NMFS scientists) whether to request a secretarial amendment or request that the responsible Council consider the proposals and prepare an amendment. Each proposal will contain, to the extent possible, the following:

- A compilation of current conservation measures, implementing regulations and all associated enforcement costs,
- An explanation of alternative measures or regulations chosen including projected costs and benefits, and an effectiveness analysis,
- A plan to compare newly implemented alternatives with the existing regimes to monitor the effectiveness and make any changes or adjustments as necessary.

Implicit in creating the Task Group is the idea that its recommendations will be acted upon. At present, there is no mechanism which requires the approval of such a group prior to implementing or continuing with a particular management regime. Without such requirements Councils will remain free to implement or maintain costly or unenforceable regulations.

ITEM C - PERMITS AND PERMIT SANCTIONS

The Study states that "Federal permits should be required in every fishery and realistic permit sanctions should be applied to repeat violators and their boats."

Background

All Federally regulated fisheries in the Northeast Region and some of the fisheries in the Southeast and Alaska Regions currently require Federal permits. Up to now, NOAA has approved a permit requirement whenever a Council has included it in its FMP, but has not insisted on such a measure as a necessary tool of fishery management.

The General Counsel's Office has used permit sanctions (revocation, suspension, imposition of conditions, or denial) to a limited extent, mostly in the Northeast Region and in the foreign fisheries, both to collect final civil penalties and as a direct punishment for violations. There are at least three reasons permit sanctions have not been used more widely: (1) they are not available in fisheries where no Federal permit is required; (2) even when sanctions are available, attorneys are concerned that they can put a fisherman out of business in Massachusetts but not in California; and (3) respondents fight much harder against imposition of permit sanctions than against assessment of monetary penalties.

Discussion

Civil penalties alone are not an adequate deterrent to the violation of fisheries regulations. It has been demonstrated that the penalty necessary to offset illegal gain from certain violations (given the low detection rate) is many times the \$25,000 maximum penalty under the Magnuson Act (Frailey and Taylor, "Rationalizing Sanctions for Fisheries Violations," June 1986). A recent case from Alaska illustrates this conclusion. Overages of high-value sablefish were discovered long after the fish had been offloaded and sold, so that the fish or proceeds could not be seized. In almost every instance, the value of the sablefish exceeded \$25,000.

Permit sanctions have the advantage of being relatively swift -- once the agency review process is completed, the sanction becomes immediately effective. A respondent faced with a permit sanction must obtain an injunction to prevent it from coming into effect -- a slim probability at best. By contrast, if a respondent refuses to pay a civil penalty, the agency must persuade an Assistant U.S. Attorney to file an action to collect the penalty. It is not uncommon for penalty collection cases to languish in some AUSA's in-basket for months or even years. Another advantage of the permit sanction is that it can have an economic impact greater than the statutory maximum penalty. The cost to the fisherman involves more than just lost profits -- he must continue paying fixed costs (mortgage and insurance payments, docking fees, etc.) and his relationships with buyers, suppliers, and crew are disrupted. The terms of a permit sanction also prohibit the fisherman from using his vessel in any Federal fishery or performing any maintenance on the vessel during the sanction. We have observed a psychological effect on fishermen from a threatened permit sanction that goes far beyond anticipated financial loss. Perhaps enforced idleness and the public nature of the sanction make it particularly unpalatable. Procedural obstacles to the use of permit sanctions have been removed. The delegation of authority and NOAA's procedural regulations have been revised to make the permit sanction process parallel with the civil penalty process. Regional attorneys

initiate the process by sending a Notice of Proposed Permit Sanction. If the respondent wishes a hearing, the ALJ issues a decision imposing the sanction, which can be changed only by appeal to the Administrator.

Recommendation

We recommend that NOAA prepare a rulemaking, under the authority of section 305(g), that imposes the requirement of a Federal permit on each fishery under Federal management.

ITEM D - CIVIL PENALTY PROCESS

The study identifies as deficiencies "incomplete preparation of cases, inadequate penalties for violators, and cases remaining in process for too long." The only recommendation is that the Coast Guard and NOAA continue their efforts to promote better case documentation.

Background and Discussion

The issue of case documentation probably can be traced to a paper discussing the high rate of dismissals for cases made by the Coast Guard in Alaska fisheries (Frailey, "Problems of Case Management," October 1985). Improved training for Coast Guard crews has ameliorated that problem.

It is difficult to address charges of inadequate penalties and lengthy process without specifics from the Study group. The two issues are related, of course, since assessing higher penalties ensures that more respondents will demand hearings and resist settlement. Our penalty schedules and settlement practices are under constant review in an attempt to balance the need for stiff penalties against the need for quick resolution of cases. We could collect higher penalties faster only if we had more enforcement agents, more attorneys, more ALJs, and more money for hearings and related expenses.

ITEM E - MITIGATION OF FINES AND PENALTIES

The Study opines that "the system cannot work if the one who has been properly tried, convicted, and fined is able through political influence, to have his penalty reduced or canceled."

Recommendation

Strict adherence to the agency's ex parte regulations would eliminate any appearance that agency decisionmakers are susceptible to political influence in handling enforcement cases.

CONCLUSION

Widespread disregard for fisheries laws and management measures implemented by regulations that are impracticable, impossible or difficult to enforce are primary obstacles to achieving the fundamental objectives of conservation and fair allocation as specified in many of our nation's fishery management plans. Fisheries managers who have avoided this subject in the past now realize that many FMP goals are beyond their reach due to costly, difficult to enforce or ineffective regulations. We now know that gaining compliance with our fishery regulations often comprises the most costly aspect of FMP implementation. With so many plans floundering and fish stocks declining under Federal management, now is the time to review our FMPs. We must adequately anticipate the costs of enforcement, make fully informed choices between alternatives and be prepared to pay for the needed enforcement.

ENFORCEMENT

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

SUNTAUG OFFICE PARK, 5 BROADWAY (ROUTE 1)

SAUGUS, MASSACHUSETTS 01906

1/8/88 7
D G 777

SAUGUS 617-231-0422

FTS 8-223-3822

January 8, 1988

Dr. William E. Evans
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Washington, DC 20235

Dear Bill:

Several months have now passed since the New England and Mid-Atlantic Councils discussed marine fisheries enforcement at their Williamsburg, VA meeting. The subject of enforcement has, of course, been frequently discussed by the Councils in relation to plan development and plan effectiveness, and it is not surprising that the Councils would be willing to devote an entire session of their joint meeting to hearing from the principal enforcement officials about current and anticipated policies and programs. Regrettably, with the exception of Alan McGroary's description of the enforcement strategy he is employing in Massachusetts, little new ground was broken by the presentations, and as a consequence, the fundamental question of how marine fisheries enforcement relates to fisheries management, and vice versa, remains problematic.

The New England Council has long recognized that industry compliance with management measures is related to the inherent acceptability of the measures themselves, the probability that a violation can be detected, and the penalty that is associated with the violation. A Council may develop management measures that are competent to achieve its management objectives, technically enforceable, and acceptable to the industry, but there are clear limitations on a Council's ability to produce an acceptable level of compliance with fishery regulations. It is clearly the role of NOAA/NMFS and the Coast Guard to provide both the enforcement regime and the penalty/administrative structure that supports an effective management program. In this regard, let me assure you that the Council members and I have the highest respect for the enforcement and administrative professionals who are working for the agency.

A major frustration of the New England Council is that enforcement has not kept pace with the promulgation of regulations over the last 10 years, whether they be attendant to the Magnuson Act or the myriad of other marine or fisheries related statutes. For its part, the Council publicly discussed enforcement and accepted its responsibility for ensuring effective management through the design of technically enforceable management measures as far back as 1980. Since that time, the Council has attempted to develop measures that spread the enforcement responsibility across the available shore-side and at-sea resources, preferring not to disproportionately burden either. In this effort, the input of enforcement professionals has always been considered.

and vessel seizures, are far more effective in promoting compliance than are civil penalties, because in the former case the costs imposed on fishermen for violations are certain and immediate.

In spite of the fact that permit sanctions are possible, they have only been imposed a few times in the Northeast Region. I do not advocate indiscriminant application of permit sanctions, but I do suggest that they be applied sooner, particularly for egregious violations. It may also be possible, in some well-defined cases, to seize a permit when the infraction is detected (e.g., in the case of documented use of a net liner). I appreciate that there may be considerable divergence of opinion on the legal issues raised by the use of permit sanctions. However, in order to advance our thinking on this issue, it may be appropriate to convene a conference to examine the legal impediments to the application of permit sanctions, as well as to explore new ways to streamline the administrative process attendant to the imposition of penalties and fines.

In the Council's communication with Secretary Baldrige last April, the point was again made that every effort should be made to provide additional funds for NMFS enforcement programs, and to seek the widest possible enforcement effort by federal and state agencies to achieve maximum and efficient use of all existing enforcement resources. Unfortunately, Dr. Calio's brief response to the letter made no reference to the fact that there presently exist no federally-funded cooperative agreements with state enforcement agencies in the Northeast, and he was only able to cite last year's NMFS reorganization as facilitating improved enforcement. Council members were pleased to hear from Morris Palozzi that a budget initiative has been submitted that might add 3 million dollars and 10 positions to the national enforcement program, but with or without that augmentation, we are still unclear how the reorganization has improved or is likely to improve the enforcement program in the Northeast region.

In my view, the dialogue between the Council and NOAA/NMFS on this issue over the years has been characteristically one-sided and devoid of any meaningful feed-back to the Council decision makers. The Councils are not agency constituents with an annoying penchant for raising troublesome issues; the Councils are full partners in the fishery management process with authority for making decisions that may be supported or compromised by the action or inaction of the enforcement entities. The Councils deserve to benefit from well-considered and well-reasoned responses to the issues they raise, and most importantly, from the opportunity to engage in a constructive dialogue on how to address the major cooperative management issues that confront us. It is time that we mutually embrace the need to begin that dialogue in earnest.

I read Robin Alden's sobering editorial (attached) in the recent issue of Commercial Fisheries News with mixed emotions. Unfortunately, her characterization of the enforcement/compliance situation in New England is probably correct; it certainly is typical of the private views of many industry representatives with whom I have spoken. Many of these people seem

EDITORIAL

What would it take to fix enforcement?

What would it take to fix enforcement?

Look at our current system: Conspicuous consumption marks the lives of many fishermen known to be the ones who disregard the fishing laws; fishermen throughout the region, in many fisheries, are fishing unchecked on illegal product, learning daily that it pays to ignore the law; and enforcement action is taken against people who are trying to obey the law while the flagrant violators go untouched. This system rewards

lawbreakers. Right now, the fisherman who lands a big catch of small hake with a shrimp net, or peewee flounder or small pollock with a liner, or 60-count scallops from a new patch is a highliner, not a crook; and the market for his product is good. But the fisherman using large mesh, or sitting out the undercount scallop bonanza, or steering clear of the closed area is considered less of a fisherman because he's not landing the volume.

Face it, this means our whole system of management is not actually working. If we all don't own up to this - National Marine Fisheries Service (NMFS), New England Fishery Management Council, and fishermen - the

situation will get worse. Crime will pay and the political system will be torqued by those who gain from disregarding the rules.

Without effective enforcement, any management is a sham and a waste of the money and effort it takes. This is true no matter what type of management we use - from quotas (which we tried and could not enforce) to mesh size (which we're having a hard time with) to meat counts (which seem to be selectively enforced, letting the blatant violators go untouched) to any form of limited entry.

How can we get serious about solving this? First, more agents, guns and force alone won't solve the problem. The system must reinforce rather than erode the power of the law by building social pressures for compliance just as the overall moral norms of our society keep most of us from raping and pillaging. The fisherman catching undersized product must be the outcast, not the hero; and it must not be possible to profit untouched from the sale of illegal product. We have neither.

To build this support, not only must all groups participate in making the rules, but someone must also be accountable for their success or failure. Right now, the

back simply never stops anywhere.

The council, NMFS, NMFS scientists, fishermen, and enforcement agents can all blame each other for the failures of the management system or its enforcement. Each group has a raft of legitimate excuses about why the problems are not its fault. And no one has the responsibility to fix them.

The fishery can no longer afford to be content with excuses or plans that work only on paper. If we can't put accountability into the existing system, then we must change it to make it work - or give up on this expensive attempt to manage.

It is a tremendous step for this

paper to challenge the current system. We have always been strong supporters of the council system. We still support regional council management. We still believe in that basic American value that those who are ruled should participate in making the rules, and therefore sign on to upholding them. But the system must be accountable.

The current widespread and worsening breakdown in compliance and respect for both the management rules and the enforcement effort and the obvious real costs of this breakdown demand that we not stop until we have found a solution.

Robin Alden

Enforcement

~~4~~ Groundfish 2/5/86⁷

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

SUNTAUG OFFICE PARK, 5 BROADWAY (ROUTE 1)

SAUGUS, MASSACHUSETTS 01906

FTS 8-223-3822

SAUGUS 617-231-0422

February 5, 1988

Dr. William E. Evans
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Washington, DC 20235

Dear Bill:

Since I last wrote you on the issue of marine fisheries enforcement, there has been considerable discussion on the subject within the industry, most probably as a consequence of Robin Alden's editorial in the December issue of Commercial Fisheries News. The February issue of CFN contains both a commentary on the problem of non-compliance and an open letter to the Council and NMFS, which requests immediate action to either enforce existing regulations or rescind them.

It has become increasingly apparent to me over the last several weeks that the Council's objective concerns for adequate enforcement have failed to adequately represent the subjective reality of those individual fishermen who find themselves faced with the dilemma of either following the rules, and accepting reduced catches in the short term, or flaunting the rules (with virtual impunity) and benefitting economically at the expense of everyone else. Soon the industry will confront the Council and NMFS with the reality that no one can afford the luxury of obeying regulations solely in the name of principle. They will demand fair and equitable enforcement. We need to have answers, or at least hold out the hope that answers will be forthcoming in the near future.

We have not as yet heard from you on the issues that were raised in our January 8th letter. We are anxious to participate in a constructive discussion of ways and means to bring about industry compliance through effective enforcement, and are prepared to fully cooperate in the process of developing and implementing solutions. We urge your careful attention to this matter and again look forward to receiving your views in the near future.

Sincerely yours,
David V.D. Borden
David V.D. Borden
Chairman *by Dave*

Enclosure

600

Friend offers to help

Lack of enforcement troubles fisherman

The writer of this month's Commentary is Ted Ames, a dragger fisherman out of Stonington, ME.

— Editor

'Twas the tail end of a nor'wester that found me headed down to the shore to check my boat. Daylight had welcomed this October morning with a cold, stiff breeze that tore at the tops of the white caps in the channel. Boats sawed restlessly against the pilings of the wharf as the surge swept into the cove.

Hod's old green pickup was the only other vehicle around when I turned onto the wharf and parked. Hod was a quiet man; and a first-rate fisherman whose boat, the old *Westwind*, was tied up inside of me. She was a fine wooden dragger, slow and comfortable - slow as old Hod's drawl.

"Well, there's hope for this day yet," I thought. Hod always left his stove on this time of year, and I could almost smell the coffee. Slamming the truck door shut, I clumped across the wharf and climbed down aboard the *Westwind*. Sure enough, Hod was sitting in the wheelhouse, puffing on his pipe, and holding a steaming mug, just kind of staring forward out the window.

"Ahoy there!" I hollered, pounding on the door as I opened it, feeling a gust of wind tug at my grasp. "How's the coffee supply this mornin'?"

"Guess we kin squeeze a cup for you - help yourself," he said.

I rummaged around the locker and

fished out a cup that looked somewheres near clean. Then, taking the pot from the stove, I drowned the residue of pipe ashes and coffee grounds dried in the bottom of the cup with his strong, fragrant brew.

"Prices are sky-high," I said. "Cod was \$1.60 on the exchange yesterday. Gonna try it tonight? This wind's

COMMENTARY

supposed t' let go this afternoon."

"Nope. Ain't got time right now," Hod said in his slow, measured way.

"What's the holdup?" I asked. "That old engine of yours finally starting to croak?"

"Nope," Hod replied. "There's sumpin more important that's gotta be done, if I kin only figure out how t'do it."

"What's happened?" I asked.

An ominous tone had filtered into Hod's voice. He puffed briefly on his well-chewed corn cob pipe, brow wrinkled in concentration, eyes deep in thought.

"So much's been said about all these management programs that come from the New England management council and NMFS in the last few years that I tend to hesitate about adding my two cents worth. But things have gotten too far outta whack, and if the likes of us don't say something pretty soon, we're gonna be outta business."

"Well, it ain't good," I agreed, "but

is it all that bad? They've started the 5-1/2" mesh cod end now. That's bound to help, and in a couple of years it should be getting better. I think the long term outlook is pretty good."

"They ain't enforcing it," Hod said quietly.

"Well, they are some to the west'ard. They had quite a list in the *Commercial Fisheries* paper this month," I said.

"They ever measure your net, Ted?" said Hod.

"No," I replied, "the wardens don't have a measure, they told me."

"How many boats draggin' outta here this spring had the 5-1/2" net?" he asked. Then, before I could answer, he added, "Just us four. Ten other boats used the small cod ends 'til the middle of August."

"What kinda season did you have, sonny?" he continued. "Same as mine," he answered his own question. "Damned bleak, I know."

"But look't those other guys. Sam's got a new pickup, Jimmy cleared off all his back boat payments, Karl bought new winches - in cash. . . I could go on. What were they fishing? Small mesh. Right."

I too, felt the frustration of not wanting to break the law, and not want to go broke on account of it. "So what a' you proposing?" I asked. "That we cheat too?"

"No," said Hod. "I ain't gonna be forced into breaking the law. This mesh regulation is the only way we kin git our fish stocks up where they should be without havin' limited

entry shoved down our throats. Looks to me like we have to make this thing work or get forced out."

"Looks to me like we hafta fish small mesh liners on the sly or get out," I said, "cause we sure ain't gonna make those fish crats do the job."

"Dammit!" exclaimed Hod. "They can't shove this law on us and not enforce it! This is America! Everyone knows the regulation will help the whole industry - but who in hell is gonna obey it without any enforcement?"

Hod was really getting cranked up, now. Clouds of smoke rolled out of his old pipe like the exhaust of an old 4-71 with a broken piston. His half-empty coffee mug slopped a little with every gesture of his arms.

"Christ knows there's enough crooks in this world without turning the fish business into a training ground for the mafia! Without respect for the law, we're nothing more than a pack'a cutthroats! And there they are, sittin' in their goddamned plush offices all smug'n proud about savin' the industry from ourselves, drivin' the honest ones out an' - yes - even training our sons into disrespect for the law!"

Hod was on his feet now, sticking his face close to mine, and wagging his finger like Avery Kelly making an important point at town meeting. I'd never seen old mild-mannered Hod so wound up. I started to speak, but Hod touched up the volume another notch and barged right on.

continued on next page

Hod's letter

markets. This is depriving us, who believe in your attempts to improve fish stocks, of the right to a livelihood from the sea.

In order to prevent the hardship of such an unfair and un-American situation from continuing in our industry, we petition and implore your good offices to do your constitutional duty and protect the remaining groundfish stocks in the Gulf of Maine by properly and zealously enforcing the regulation concerning the 5-1/2" mesh cod end.

We take the liberty to inform you that 16 persons are not sufficient to enforce fishery regulations in the area between Chesapeake Bay and the Canadian boundary for all the 20,000-odd fishermen and boats fishing there literally hundreds of ports, and insist that, at the very least, an arrangement should be made to use the various fish agencies and your representatives.

After the hard-won fishing season ends, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

To: The New England Fishery Council, and National Marine Fisheries Service.

We fishermen recognize what your committees are trying to do to improve our fishing industry so that all of us have the opportunity to prosper. We also realize that it is a highly diverse industry, that makes passing regulations very complicated. We also are aware that our groundfish stocks have been fished to very low levels.

Many of us, realizing that protecting the spawning stock and seed is the only practical way we can get more fish, welcomed the new groundfish regulation requiring 5-1/2" mesh cod ends as an important step in rebuilding our traditional groundfish stocks.

Many of us switched over to "legal" gear and have continued to use it, in spite of the fact that others have continued to fish with illegal, small mesh, and doubled cod ends.

Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

business. Unfortunately, what has occurred is the practice of a dual fishery, where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fisherman is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

could write a letter and get it published in the fishing paper, telling the fish crats what's happening, tell them what seems to be needed to fix it up, volunteer to help, somehow. Then maybe - just maybe - one of those fellas will realize what a terrible thing is happening down here and either change the law or enforce it."

"Jeez, Hod," I said, "I'm game, but I don't know if I have as much faith in the system as you. Do you really believe that they give a damn for us in Danvers, Mass. or Washington?"

"I sure hope so," replied Hod, "cause if they don't, they're going to drive the law-abiding fishermen out of business and turn the whole works over to the others. And that is against everything our country stands for - and yes, me, too."

"Here," said Hod passing me some papers filled with his close, neat writing. "Read this and see what you think. If you want to change any of it, we'll see to it. If it's okay, well, you know who to send it to."

Here it is, just as Hod handed it to me. I've read it through and think it's just fine.

If there's any of you groundfishermen or scallopers that feel like Hod, write a postcard to the paper. Just say you agree with Hod and include your name and town. We'll put the whole works together in a box and deliver it to Danvers. Maybe Hod is right. Maybe we don't have to be turned into crooks in order to make a living fishing.

If any of you want to send in letters or post cards, as Hod suggests, we will forward them to the council and NMFS. Send your cards to Commercial Fisheries News, PO Box 37, Stonington, ME 04681. Attention Hod.

"An' you know what I mean, too!" he shouted. "John Hakely's man, young Levi's been workin' them scrod cod off Seal Island all summer in that new boat of his. Said he was just gonna make a couple trips to get a start on that boat mortgage! Hell! A couple-a trips woulda been fine, but now look. He's got a taste of the big bucks and he's turned into one of the worst outlaws on the coast! And old John, who showed Levi everything when the boy fished with him, he's goin' broke 'cause he's like us - too damn honest!"

"Well, it's up to us - yes, you 'n me 'n the rest of us - t'get this thing back on even keel, fast! Do you think young Levi's gonna hesitate t'break the law again when he shifts to lobstering or scalloping? Hell, no! He's all puffed up thinking that he's found the right angle, an' the laws are for idiots like us - not him. They're makin' outlaws outta those kids!"

By this time, Hod's nose was about two inches from mine and both arms were flailing around, empty coffee mug in one hand, pipe in the other, and he was hollering like the Saddleback groaner in a line gale.

"Whoa, whoa, now," I shouted back. "Sit down and get a grip, Hod! Hod set back in his steering seat, face twisted and chin trembling in frustration and anger. Then, with a great sigh, the pent-up emotion drained from his face. The tension in his body faded away as he thrust his hands through his hair.

"Dammit, Ted, this is our country, too. What'd y'say, will you give me a hand with it? If it don't work, I'm going to sell the hell out. But I gotta try."

"Sure, Hod, sure.... But what can we do? Where do we start?"

"Well, I've been thinkin'. If we

Enforcement

~~4 Groundfish~~ 2/5/88⁷

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

SUNTAUG OFFICE PARK, 5 BROADWAY (ROUTE 1)

SAUGUS, MASSACHUSETTS 01906

FTS 8-223-3822

SAUGUS 617-231-0422

February 5, 1988

Dr. William E. Evans
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Washington, DC 20235

Dear Bill:

Since I last wrote you on the issue of marine fisheries enforcement, there has been considerable discussion on the subject within the industry, most probably as a consequence of Robin Alden's editorial in the December issue of Commercial Fisheries News. The February issue of CFN contains both a commentary on the problem of non-compliance and an open letter to the Council and NMFS, which requests immediate action to either enforce existing regulations or rescind them.

It has become increasingly apparent to me over the last several weeks that the Council's objective concerns for adequate enforcement have failed to adequately represent the subjective reality of those individual fishermen who find themselves faced with the dilemma of either following the rules, and accepting reduced catches in the short term, or flaunting the rules (with virtual impunity) and benefitting economically at the expense of everyone else. Soon the industry will confront the Council and NMFS with the reality that no one can afford the luxury of obeying regulations solely in the name of principle. They will demand fair and equitable enforcement. We need to have answers, or at least hold out the hope that answers will be forthcoming in the near future.

We have not as yet heard from you on the issues that were raised in our January 8th letter. We are anxious to participate in a constructive discussion of ways and means to bring about industry compliance through effective enforcement, and are prepared to fully cooperate in the process of developing and implementing solutions. We urge your careful attention to this matter and again look forward to receiving your views in the near future.

Sincerely yours,

David V.D. Borden

David V.D. Borden
Chairman *by DVB*

Enclosure

Friend offers to help

Lack of enforcement troubles fisherman

The writer of this month's Commentary is Ted Ames, a dragger fisherman out of Stonington, ME.

— Editor

'Twas the tail end of a nor'wester that found me headed down to the shore to check my boat. Daylight had welcomed this October morning with a cold, stiff breeze that tore at the tops of the white caps in the channel. Boats sawed restlessly against the pilings of the wharf as the surge swept into the cove.

Hod's old green pickup was the only other vehicle around when I turned onto the wharf and parked. Hod was a quiet man; and a first-rate fisherman whose boat, the old *Westwind*, was tied up inside of me. She was a fine wooden dragger, slow and comfortable - slow as old Hod's drawl.

"Well, there's hope for this day yet," I thought. Hod always left his stove on this time of year, and I could almost smell the coffee. Slamming the truck door shut, I clumped across the wharf and climbed down aboard the *Westwind*. Sure enough, Hod was sitting in the wheelhouse, puffing on his pipe, and holding a steaming mug, just kind of staring forward out the window.

"Ahoy there!" I hollered, pounding on the door as I opened it, feeling a gust of wind tug at my grasp. "How's the coffee supply this mornin'?"

"Guess we kin squeeze a cup for you - help yourself," he said.

I rummaged around the locker and

fished out a cup that looked somewheres near clean. Then, taking the pot from the stove, I drowned the residue of pipe ashes and coffee grounds dried in the bottom of the cup with his strong, fragrant brew.

"Prices are sky-high," I said. "Cod was \$1.60 on the exchange yesterday. Gonna try it tonight? This wind's

COMMENTARY

supposed t' let go this afternoon."

"Nope. Ain't got time right now," Hod said in his slow, measured way.

"What's the holdup?" I asked. "That old engine of yours finally starting to croak?"

"Nope," Hod replied. "There's sumpin more important that's gotta be done, if I kin only figure out how t'do it."

"What's happened?" I asked.

An ominous tone had filtered into Hod's voice. He puffed briefly on his well-chewed corncob pipe, brow wrinkled in concentration, eyes deep in thought.

"So much's been said about all these management programs that come from the New England management council and NMFS in the last few years that I tend to hesitate about adding my two cents worth. But things have gotten too far outta whack, and if the likes of us don't say something pretty soon, we're gonna be outta business."

"Well, it ain't good," I agreed, "but

is it all that bad? They've started the 5-1/2" mesh cod end now. That's bound to help, and in a couple of years it should be getting better. I think the long term outlook is pretty good."

"They ain't enforcing it," Hod said quietly.

"Well, they are some to the west'ard. They had quite a list in the *Commercial Fisheries* paper this month," I said.

"They ever measure your net, Ted?" said Hod.

"No," I replied, "the wardens don't have a measure, they told me."

"How many boats draggin' outta here this spring had the 5-1/2" net?" he asked. Then, before I could answer, he added, "Just us four. Ten other boats used the small cod ends 'til the middle of August."

"What kinda season did you have, sonny?" he continued. "Same as mine," he answered his own question. "Damned bleak, I know."

"But look't those other guys. Sam's got a new pickup, Jimmy cleared off all his back boat payments, Karl bought new winches - in cash. . . I could go on. What were they fishing? Small mesh. Right."

I too, felt the frustration of not wanting to break the law, and not want to go broke on account of it. "So what a' you proposing?" I asked. "That we cheat too?"

"No," said Hod. "I ain't gonna be forced into breaking the law. This mesh regulation is the only way we kin git our fish stocks up where they should be without havin' limited

entry shoved down our throats. Looks to me like we have to make this thing work or get forced out."

"Looks to me like we hafta fish small mesh liners on the sly or get out," I said, "cause we sure ain't gonna make those fish crats do the job."

"Dammit!" exclaimed Hod. "They can't shove this law on us and not enforce it! This is America! Everyone knows the regulation will help the whole industry - but who in hell is gonna obey it without any enforcement?"

Hod was really getting cranked up, now. Clouds of smoke rolled out of his old pipe like the exhaust of an old 4-71 with a broken piston. His half-empty coffee mug slopped a little with every gesture of his arms.

"Christ knows there's enough crooks in this world without turning the fish business into a training ground for the mafia! Without respect for the law, we're nothing more than a pack'a cutthroats! And there they are, sittin' in their goddamned plush offices all smug'n proud about savin' the industry from ourselves, drivin' the honest ones out an' - yes - even training our sons into disrespect for the law!"

Hod was on his feet now, sticking his face close to mine, and wagging his finger like Avery Kelly making an important point at town meeting. I'd never seen old mild-mannered Hod so wound up. I started to speak, but Hod touched up the volume another notch and barged right on.

continued on next page

Hod's letter

To: The New England Fishery Council, and National Marine Fisheries Service.

We fishermen recognize what your committees are trying to do to improve our fishing industry so that all of us have the opportunity to prosper. We also realize that it is a highly diverse industry, that makes passing regulations very complicated. We also are aware that our groundfish stocks have been fished to very low levels.

Many of us, realizing that protecting the spawning stock and scrod is the only practical way we can get more fish, welcomed the new groundfish regulation requiring 5-1/2" mesh cod ends as an important step in rebuilding our traditional groundfish stocks. Many of us switched over to "legal" gear and have continued to use it, in spite of the fact that others have continued to fish with illegal, small mesh, and double cod ends.

Unfortunately, what has occurred is the existence of a dual fishery where the law-abiding fishermen are fishing large mesh gear while the others are fishing small mesh gear. Because of the lack of enforcement, this has created a situation where the law-abiding fishermen is being rapidly forced out of business, while those who break the law are being rewarded with good catches and ready

markets. This is depriving us, who believe in your attempts to improve fish stocks, of the right to a livelihood from the sea.

In order to prevent the hardship of such an unfair and un-American situation from continuing in our industry, we petition and implore your good offices to do your constitutional duty and protect the remaining groundfish stocks in the Gulf of Maine by properly and zealously enforcing the regulation concerning the 5-1/2" mesh cod end.

We take the liberty to inform you that 16 persons are not sufficient to enforce fishery regulations in the area between Chesapeake Bay and the Canadian boundary for all the 20,000 odd fishermen and boats fishing liberally hundreds of yards and miles that, at the very least, an arrangement should be made to use the various waterways and over representatives of the hard-working fishermen to help in any enforcement effort we can make. If this is impossible for some reason, a reasonably strict period of time, or respectively position and impact that the regulation is removed before we lose the fishermen at forced out of business.

Forest Carter
P.O. Box 100
Old Harbor, Maine

could write a letter and get it published in the fishing paper, telling the fish crats what's happening, tell them what seems to be needed to fix it up, volunteer to help, somehow. Then maybe - just maybe - one of those fellas will realize what a terrible thing is happening down here and either change the law or enforce it.

"Jeez, Hod," I said, "I'm game, but I don't know if I have as much faith in the system as you. Do you really believe that they give a damn for us in Danvers, Mass. or Washington?"

"I sure hope so," replied Hod, "cause if they don't, they're going to drive the law-abiding fishermen out of business and turn the whole works over to the others. And that is against everything our country stands for - and yes, me, too."

"Here," said Hod passing me some papers filled with his close, neat writing. "Read this and see what you think. If you want to change any of it, we'll see to it. If it's okay, well, you know who to send it to."

Here it is, just as Hod handed it to me. I've read it through and think it's just fine.

If there's any of you groundfishermen or scallopers that feel like Hod, write a postcard to the paper. Just say you agree with Hod and include your name and town. We'll put the whole works together in a box and deliver it to Danvers. Maybe Hod is right. Maybe we don't have to be turned into crooks in order to make a living fishing.

Ted Ames

If any of you want to send in letters or post cards, as Hod suggests, we will forward them to the council and NMFS. Send your cards to Commercial Fisheries News, PO Box 37, Stonington, ME 04681. Attention Hod.

"An' you know what I mean, too!" he shouted. "John Hakely's man, young Levi's been workin' them scrod cod off Seal Island all summer in that new boat of his. Said he was just gonna make a couple trips to get a start on that boat mortgage! Hell! A couple-a trips woulda been fine, but now look. He's got a taste of the big bucks and he's turned into one of the worst outlaws on the coast! And old John, who showed Levi everything when the boy fished with him, he's goin' broke 'cause he's like us - too damn honest!"

"Well, it's up to us - yes, you 'n me 'n the rest of us - t'get this thing back on even keel, fast! Do you think young Levi's gonna hesitate t'break the law again when he shifts to lobstering or scalloping? Hell, no! He's all puffed up thinking that he's found the right angle, an' the laws are for idiots like us - not him. They're makin' outlaws outta those kids!"

By this time, Hod's nose was about two inches from mine and both arms were flailing around, empty coffee mug in one hand, pipe in the other, and he was hollering like the Saddleback groaner in a line gale.

"Whoa, whoa, now," I shouted back. "Sit down and get a grip, Hod!"

Hod set back in his steering seat, face twisted and chin trembling in frustration and anger. Then, with a great sigh, the pent-up emotion drained from his face. The tension in his body faded away as he thrust his hands through his hair.

"Dammit, Ted, this is our country, too. What'd y say, will you give me a hand with it? If it don't work, I'm going to sell the hell out. But I gotta try."

"Sure, Hod, sure.... But what can we do? Where do we start?"

"Well, I've been thinkin'. If we