Living Marine Resources Enforcement

CHAIRMAN WATKINS: I will bring the meeting back to order.

Our first item after the break is living marine resource enforcement. Dr. Sandifer as chair of that committee will lead the discussion.

LIVING MARINE RESOURCES ENFORCEMENT

DR. SANDIFER: Bear with us, the Stewardship Working Group only has 53 more of these to go.

(General laughter.)

DR. SANDIFER: I want to bring your attention now after we finished the international issues to talk a little bit about enforcement-related living marine resources. A bullet has been left off of this slide, and I am going to read it to you so that you are aware.

(A PowerPoint slide presentation in
DR. SANDIFER: First of all, necessary resources should be made available to the United States Coast Guard and a commitment made by the Coast Guard to return its living marine resources enforcement activities to or at least near pre-9/11 levels.

Second, recognizing that even 9/11 enforcement efforts by the U.S. Coast Guard and other federal entities including the National Marine Fisheries Service were insufficient, then it is important to make broader use of cooperative state-federal enforcement agreements.

In that regard, we now come to this slide. At a minimum, funding for the joint federal-state law enforcement operations should be restored to 2001 levels. In 2001, the Congress had elevated funding for these agreements in the National Marine Fisheries Service budget to $15 million annually. I believe that
money was divided amongst 23 states for joint enforcement activities. In the 2003 budget, it is at half of that amount $7 million. That is the recommendation to bring it back up.
Second, these joint enforcement agreements at the time are between state enforcement agencies in the National Marine Fisheries Service, and we believe that the United States Coast Guard should be included in the development of the agreements because the Coast Guard has a significant responsibility for at-sea enforcement activities.

Next slide.

(PowerPoint slide presentation in process.)

DR. SANDIFER: The Coast Guard also operates I believe it is six -- five training centers for fisheries enforcement. These have not been sufficiently funded to date, nor have the training programs been made available to others on a broad scale basis.

We recommend that these training centers, which are excellent, be funded to allow greater participation not only by Coast Guard personnel, but specifically by the National Marine Fisheries Service
enforcement agencies and state enforcement personnel.

Within these training centers, emphasis should be placed on a comprehensive approach to regional enforcement and methods to enhance cooperative
enforcement efforts, that is, joining the state

enforcement activities with the federal enforcement or

federal with the states over a region to ensure

region-wide consistent enforcement of federal fisheries

regulations.

Finally, the training programs should include

input from the National Marine Fisheries Services and

state enforcement officers, and by that we mean two

things: One, that the offices, both federal and state

offices, be surveyed or contacted by some means to

determine what they feel are primary training needs that

might be in addition to what the Coast Guard provides.

Second, in some cases the National Marine

Fisheries Service and/or individual state enforcement

offices have special skills that they could use to

becoming training officers and the Coast Guard could

take advantage of those skills in the training centers.

Next slide.
DR. SANDIFER: We suggest that the federal government encourage innovative ways of maximizing the effectiveness of existing enforcement assets including
innovative uses of technology, whether that be radar installations in sensitive areas like the Dry Tortugas or efforts to better coordinate sharing of information, coordinating enforcement information amongst agencies through electronic sharing of violation files and so on, and a focus on community outreach and education amongst the federal agencies and states.

Most states already have federally-supported voting safety and recreational use programs, and this could be a conduit, a vehicle, for additional community outreach in education relative to compliance with federal and state resource regulations and laws. I believe that completes it -- oh, one more.

This goes back to my first ones that I thought were missing, here we go again. Necessary resources should be made available to the Coast Guard and a commitment made by the Coast Guard to return its living marine resources enforcement activities to at least
pre-9/11 levels.

For those of you who saw today's "Washington Post," an article in "The Post" covered the concerns that we had very nicely regarding the Coast Guard's
abilities under Homeland Security to meet all of its
mandates, and showed a 38 percent reduction in its
living marine enforcement activities.

This was based on a GAO report that we have
just gotten this afternoon. Stewardship staff will
spend some time dealing with this report to ensure that
we have got all of the necessary elements, but that is
the kind of thing we are talking about. Of necessity,
the security concerns have resulted in a very
significant, more than one-third, diminution in
fisheries enforcement efforts and that needs to be
fixed.

Thank you, Mr. Chairman.

MR. EHRMANN: Do you want to comment,
Chairman?

CHAIRMAN WATKINS: (Shaking head.)

MR. EHRMANN: All right. Dr. Rosenberg?

DR. ROSENBERG: Thank you. A couple of issues
I would like to raise with regard to enforcement. I think that the recommendations that are here I certainly agree with in regard to, even though I was out of the room for a minute, the recommendation that reads, "At a
minimum, funding for joint federal-state law enforcement
operations should be restored."

I would refer back to our Chairman's comments before that we should recognize that there needs to be a major effort in this area, not just getting back to previous levels, the same as with the science discussion, just getting back to 2001 levels with restoration of programs is I suppose okay, but what we really need to do is to dramatically expand that program because it leads to my second point.

There needs to be a very clear definition of the roles of each of the agencies in living marine resource enforcement. It is not just fisheries, where the federal-state partnerships provide the dockside and increasingly on-the-water presence, but the National Marine Fisheries Service provides the investigative work largely and the Coast Guard provides the on-the-water offshore presence.
Obviously, everybody works with the investigators, so it is not that clearly defined. I think that it is important to make sure that those roles are clear, and if there are problems in one area, that
you have the ability to compensate in another.

The second comment that I would make is there
isn't anything in here and it very well may be in the
body of the report, regarding let's call them penalty
schedules and sort of the means of actually enforcing
these rules. We are still using penalty schedules that
are quite old and a standard at least for the fisheries
law that says that penalties cannot be assessed at any
level greater than a demonstrated ability to pay.

I can assure you that it is not that difficult
for somebody to show that they have no ability to pay
and therefore their fines should be almost nothing in
some cases, and that concerns me. There have been
efforts in the past that have only partly been changed
to require administrative law judges for fisheries
enforcement cases.

The Congress has stated in some cases that
they should not be allowed to use either the Department
of Commerce or even Coast Guard administrative law judges because they know something about fisheries, but you should only use Department of Agriculture judges who have absolutely no interest in fisheries and generally
throw the cases out.

The penalties, in general, for lots of violations are quite low. I think that we need to highlight that an overall review of penalty schedules and assessments for major violations should be conducted and considered as a matter of policy, because these are incredibly valuable resources.

I think the minor infractions are not a problem. Major infractions, I can tell you as a regional administrator it is extraordinarily difficult to sanction a permit for fishing. Even somebody who has been caught in multiple violations with very little question about whether they were actually violating or not, you still cannot take away their fishing permit.

There is probably nothing more irritating to fishermen than seeing a guy that they know has been violating over and over and over again still on the
18 water unfairly competing with them when they are trying
19 to follow the rules. Consequently, I do think that an
20 overview of penalty issues and prosecutions is needed.
21 Thank you.
22 Oh, sorry I do have one more thing. On
funding, I think we need to recognize that it is not just the Coast Guard that has been impacted by 9/11. Of course, the state agencies have been enormously impacted by 9/11, and the National Marine Fisheries Service enforcement people have been enormously impacted by 9/11 such that because they are FBI trained they go off on other missions. Those are incredibly important activities. We should not just think that the impact and therefore the funding remedies are restricted to Coast Guard, but it is across the board.

Thank you.

DR. SANDIFER: Andy, I agree entirely with your comments, and will ask, staff, that we pick these things up. The financial impacts are clear. The reason in part for so much emphasis on the Coast Guard is we actually had data that we didn't have before us on these others. Coming from a state, I can tell you very truthfully how much impact has been on state agencies.
19    We will pick up that.

20    The overall review and assessment of penalty

21    schedules and sanctions clearly should be something we

22    would include. I would ask you if you have any specific
wording there that might help us put together the right
statement and if there are any references that we should
cite, that you provide those to us.

Also, even though we didn't talk about it in
this particular context, a number of us in the past have
run into issues where just getting the federal attorney
to take fisheries cases or living marine resource cases,
not just fisheries cases, to court has been extremely
difficult. You have to reach a very high hurdle level
to get them to do anything about it. Perhaps, you could
provide some input on that.

I think it would be helpful if we put all of
that in the enforcement arena, because those are all
conscerns we have heard before. I apologize for not
including them all here, but they are clearly things we
should include.

MR. RASMUSON: Yes, a segue into what you were
saying, Andy, the U.S. Attorney in our state before he
19 is even sworn in has to swear by the "Bible" that he
20 will enforce the Fisheries Act upon penalty of death.

21 (Laughter.)

22 MR. RASMUSON: Really, seriously. As you
know, we take their ships, confiscate everything and we toss them out. Of course, with the IFQ system it is pretty regulated there, too. However, the other areas like you are talking about don't have that.

The only other thing I was going to mention is that you could certainly include your next slide, the vessel monitoring system, with enforcement. That is what we have gone to, and it works. You recommend having the fishers pay for it. They balked at that and in lieu we had the federal government. It is not that expensive.

Any boat over 75 feet has got a vessel monitoring system now, and they start policing themselves. The Admiral and I were talking about it this morning, about trying to self-police out in the Gulf with other violators, potential violators. It might come to the fact that if a resource is valuable enough they could go onto the radio and turn
19    some of their fellow fishermen, or foreign fisherman in
20    our area, turn them in and have the Coast Guard go after
21    them. However, you have to have a tough, tough attorney
22    general and that is what we have. I think it should be
a recommendation.

MR. EHRMANN: Dr. Coleman?

DR. COLEMAN: I would be interested to know if your working group has looked at the existing laws concerning enforcement? Do you feel that there are adequate laws and they are just not being enforced? Is there a need to make changes in the existing laws, and so forth? I know that the Commission as a whole will be looking at the legal aspect? Did you all investigate that?

DR. SANDIFER: Jim, we have not gone into the adequacy of the laws. I think most of us who have dealt with the fisheries issues believe that the regulatory structure and the legal structure is sufficient if we had the, as Andy pointed out, the appropriate penalty schedules in place and could actually sanction people by pulling permits.

A number of us have wrestled with these
problems in the past. Simply pulling an individual's permit does not do any good, because the boat can be sold to the mother-in-law or the brother the next day for a dollar and it continues to operate, so you have to
have other mechanisms to work. Those are the kinds of
things that we would suggest, rather than the basic law
here be looked at.

Frankly, much of this is the lack of both
enforcement manpower and the utilization of technology.
The next slide, as Commissioner Rasmuson has already
said, the vessel monitoring system is part enforcement
and part safety. We separated it out because it is a
specific technological application that has some clear
benefit here, but that is the kind of thing that will
eventually be subsumed. It is just a technical aspect
here and could come into use.

The reality is going to be, okay, so you
cought them by whatever method, what happens to them?
Do you, in fact, have both the people and the will to do
something? The people and the will part of it, the
penalty schedule, is what is lacking at this point.

MR. EHRMANN: Commissioner Hershman?
DR. HERSHMAN: I really have a question more than a comment. In reading this, it comes across that the fisheries, particularly the vessels that are out there on the water, are sort of operating independently.
from other enforcement activities.

Ever since 9/11, when we heard about "homeland security" and the increased role of the Coast Guard, we have also heard this concept of "maritime domain awareness," which means that we have a much better idea of everything that is going on out there.

I am wondering whether or not there is either a potential for or already some ways in which the different functions of monitoring the vessels out in the ocean might lead to a way in which more fisheries enforcement could take place in conjunction with other enforcement activities, or whether these are really totally separate and should be viewed separately, separate people, separate vessels, and that sort of thing?

DR. SANDIFER: I don't know that we have got an answer for you, Marc, at this point.
DR. HERSHMAN: The VMS?

DR. SANDIFER: The VMS will, but that is limited to certain vessels; it does not get to all vessels. There is nothing other than perhaps the Defense Department satellite data that will probably get
all vessels, and we are not likely to get those kinds of
data in a way that we could use them anytime soon, at
least that is my read. If you will wait until the
vessel monitoring system discussion, I think that will
deal with some of this.

DR. HERSHMAN: Well, maybe that is where it
comes up. Thank you.

MR. EHRMANN: Why don't we take
Admiral Gaffney and then go to that next slide, and if
there is discussion on either that slide or the previous
one, we will kind of put them together.

ADMIRAL GAFFNEY: Yes. I think I am just a
little confused here. Up until this piece of paper,
this "GAO Testimony," was put onto my desk a few minutes
ago I thought the Coast Guard was in big trouble in this
particular area, that this is a function that was being
This says on page 13 that they got a 16 percent increase over FY'02 for marine environmental work. I am not sure what that means, if that is a true story or not, but they have got a $45 million increase.
in this particular area that we are interested in over the previous year, FY'02, the year of 9/11. I don't know what is going on here, but they got more money. We were just handed this, so I think we need to look again.

I am sure there are problems in the Coast Guard because the ships they use to do this are being allocated for other things, even if they have got additional money. However, there does seem to be something strange here. Forty-five million dollars is a significant amount of money, page 13.

DR. SANDIFER: Paul, I am aware of that as we all just got this report before we were working on both testimony, information and yesterday or today's newspaper article. However, all of our discussions were done yesterday before that article even. I think if you look at page 14 of this report, what you will see is a little bullet at the bottom:

"The Coast Guard is now at or near its maximum
sustainable operating capacity in performing its
missions. The agency has a finite set of cutters,
boats, aircraft, and so forth." Even with more money
dumped on it, even with $45 million, it doesn't buy a
whole lot of those new assets nor a whole lot of
additional people that could be tasked. Particularly
without the big assets, as we discussed in our working
group, regarding the true offshore fisheries
enforcement, there is no substitute for a Coast Guard
cutter out there. Nobody else has a Navy besides the
Navy and the Coast Guard, and that is the problem.

ADMIRAL GAFFNEY: We may have to
re-characterize our complaints.

DR. SANDIFER: Yes, we may need to recast it
because I had not seen this. When we were drafting the
wording for the slide, I hadn't actually seen the
report. Obviously, this needs some wordsmithing. What
we are really concerned about is the actual diminution
of effort -- rather than resources, effort -- going into
fisheries and other living marine enforcement activities
and into search and rescue as well.

I would just caution that I don't think that
marine environmental protection in fisheries or even living marine resource enforcement are the same thing, because of course all of the oil spill stuff goes in there, and so you are spreading across multiple
missions.

MR. EHRMANN: Why don't we go ahead,
Commissioner Sandifer, and have the overview on the vessel monitoring system and then take any additional questions on that or on the previous group.