Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

Testimony of

Jerry F. Schill, President

of the

North Carolina Fisheries Association, Inc.

before the

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Thank you, Mr. Chairman and members of the Subcommittee. My name is Jerry Schill and I serve as President of the North Carolina Fisheries Association, Inc., a private non-profit trade association representing the interests of its 1,500 member commercial fishermen, seafood dealers, and processors. NCFA was organized in 1952, and I have had the position for nearly 12 years. I served as a member of the South Atlantic Fishery Management Council from 1989 to 1995.

A few days ago, I heard a Congressman make the comment that the law is a teacher as well as a boundary setter. We all know about the law being a boundary setter. Americans can usually tell by reading the law what boundaries they must stay within. That is, IF the law is written in language that can be understood.

But what about the law being a teacher? As a non-lawyer, I can only assume that it has more than one dimension. First, is the obvious in knowing that if one takes the time to learn a specific law, he or she can appreciate the rationale for it. If one understands, but not necessarily agrees with, the law, they more readily accept it, albeit grudgingly. Second, is the element of punishment if the law is disobeyed. Although ignorance of the law is no excuse, after one is found guilty of violating that law, the corresponding punishment should be an excellent teacher for the future.

Unless you're the National Marine Fisheries Service.

In 1996 the North Carolina Fisheries Association and the State of North Carolina sued the U.S. Secretary of Commerce over a proposed regulation. We prevailed in that suit, but more importantly than winning was what the court found about the attitude of the agency under the Secretary's purview. (NMFS.) Very simply, NMFS believes that the end justified the means.

In 1997 and 1998 our organization and the State of North Carolina found it necessary to file suit again. And again we prevailed.

Although the '96 litigation did not specifically result in finding the Secretary guilty of violating provisions of the Regulatory Flexibility Act, our latter legal action did. Allow me to provide you with some of the quotes from Judge Robert Doumar of the federal district court in Richmond, Virginia.

FROM THE COURT'S ORDER & OPINION, dated September 28, 1998:

"……the Court finds that the Secretary of Commerce acted arbitrarily and capriciously in failing to give any meaningful consideration to the economic impact of the 1997 quota regulations on North Carolina fishing communities. Instead, the Secretary has produced a so-called economic report that obviously is designed to justify a prior determination."

"Judging by this correspondence, the Secretary's designees consciously ignored the Fisheries Service's own data and selected a flawed methodology…….under any "objective" analysis, the economic effects are devastating if not ruinous."

"Overall, the Secretary's own compiled data is contradictory and confounding."

"…….the Secretary has obscured the findings in his Economic Analysis in order to try and justify an untenable position."

"The Secretary's conscious refusal to recognize the economic impacts of his regulatory actions calls into question the agency's willingness to consider less severe alternatives."

"Essentially, the Secretary argues that whenever the agency elects to certify its regulatory action, the agency has a green light not to consider alternative ways to minimize economic impacts as provided under Section 604(a)(5). Surely, Congress has not intended for administrative agencies to circumvent the fundamental purposes of the RFA by invocation of the certification provision. If, however, the Secretary's position is correct, he could certify no economic effects when every commercial fisherman in the state is in bankruptcy."

"In any case, the Secretary is mistaken in the belief that his own regulatory requirements override the statutory provisions under National Standard 8. Legal constraints on the Secretary's decision making emanate from the statute, not from the agency's own regulations."

"….the Secretary's actions have been in clear violation of the Magnuson Act and the RFA."

"The Secretary's authority to set quotas should serve as a regulatory guidepost for the conservation of the fishery. It should not be used as a buzzsaw to mow down whole fishing communities in order to save some fish. The Magnuson Act and the RFA were specifically enacted to avoid such a situation from happening."

"In imposing this sanction, the Court admonishes the Secretary that it is not amused that his agency has failed abysmally to follow the prior orders of this Court."

Mr. Chairman, for the record, I have included the entire Court's Order & Opinion.

In summation, this is not just about violating the Regulatory Flexibility Act or certain provisions of the

Magnuson Act. It's about an attitude that permeates the National Marine Fisheries Service. While those of us in the private sector are expected, and rightfully so, to abide by the law, the agency not only violates those same laws, but gets away with it. They rationalize that attitude by inferences that the judge is some kind of renegade or less than competent.

Because this attitude is the result of a character flaw within the agency, more litigation can be expected. For example, the Magnuson Act calls for management measures to be fair and equitable to all user groups. In many cases they are not, and are lawsuits waiting to be filed.

The agency needs to be much more aware of Congressional intent. As cited by the Court, they do not need to be supplementing the intent of Congress with their own version of what should be done. And the only way that can be accomplished is a trip to the wood shed by Congress.

Let's call it bureaucratic tough love.

Thank you.

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