

## Living Marine Resources Enforcement

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

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

13                   LIVING MARINE RESOURCES ENFORCEMENT

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

16                   (General laughter.)

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

22                   (A PowerPoint slide presentation in

1 progress.)

2 DR. SANDIFER: First of all, necessary  
3 resources should be made available to the United States  
4 Coast Guard and a commitment made by the Coast Guard to  
5 return its living marine resources enforcement  
6 activities to or at least near pre-9/11 levels.

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

13 In that regard, we now come to this slide. At  
14 a minimum, funding for the joint federal-state law  
15 enforcement operations should be restored to 2001  
16 levels. In 2001, the Congress had elevated funding for  
17 these agreements in the National Marine Fisheries  
18 Service budget to \$15 million annually. I believe that

19 money was divided amongst 23 states for joint  
20 enforcement activities. In the 2003 budget, it is at  
21 half of that amount \$7 million. That is the  
22 recommendation to bring it back up.

1           Second, these joint enforcement agreements  
2           at the time are between state enforcement agencies in  
3           the National Marine Fisheries Service, and we believe  
4           that the United States Coast Guard should be included in  
5           the development of the agreements because the  
6           Coast Guard has a significant responsibility for at-sea  
7           enforcement activities.

8           Next slide.

9           (PowerPoint slide presentation in process.)

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

15           We recommend that these training centers,  
16           which are excellent, be funded to allow greater  
17           participation not only by Coast Guard personnel, but  
18           specifically by the National Marine Fisheries Service

19 enforcement agencies and state enforcement personnel.

20                   Within these training centers, emphasis should

21 be placed on a comprehensive approach to regional

22 enforcement and methods to enhance cooperative

1 enforcement efforts, that is, joining the state  
2 enforcement activities with the federal enforcement or  
3 federal with the states over a region to ensure  
4 region-wide consistent enforcement of federal fisheries  
5 regulations.

6           Finally, the training programs should include  
7 input from the National Marine Fisheries Services and  
8 state enforcement officers, and by that we mean two  
9 things: One, that the offices, both federal and state  
10 offices, be surveyed or contacted by some means to  
11 determine what they feel are primary training needs that  
12 might be in addition to what the Coast Guard provides.

13           Second, in some cases the National Marine  
14 Fisheries Service and/or individual state enforcement  
15 offices have special skills that they could use to  
16 becoming training officers and the Coast Guard could  
17 take advantage of those skills in the training centers.

18           Next slide.

19 (PowerPoint slide presentation in process.)

20 DR. SANDIFER: We suggest that the federal  
21 government encourage innovative ways of maximizing the  
22 effectiveness of existing enforcement assets including

1 innovative uses of technology, whether that be radar  
2 installations in sensitive areas like the Dry Tortugas  
3 or efforts to better coordinate sharing of information,  
4 coordinating enforcement information amongst agencies  
5 through electronic sharing of violation files and so on,  
6 and a focus on community outreach and education amongst  
7 the federal agencies and states.

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

14           This goes back to my first ones that I thought  
15 were missing, here we go again. Necessary resources  
16 should be made available to the Coast Guard and a  
17 commitment made by the Coast Guard to return its living  
18 marine resources enforcement activities to at least

19 pre-9/11 levels.

20 For those of you who saw today's "Washington

21 Post," an article in "The Post" covered the concerns

22 that we had very nicely regarding the Coast Guard's

1 abilities under Homeland Security to meet all of its  
2 mandates, and showed a 38 percent reduction in its  
3 living marine enforcement activities.

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

13 Thank you, Mr. Chairman.

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

16 CHAIRMAN WATKINS: (Shaking head.)

17 MR. EHRMANN: All right. Dr. Rosenberg?

18 DR. ROSENBERG: Thank you. A couple of issues

19 I would like to raise with regard to enforcement. I  
20 think that the recommendations that are here I certainly  
21 agree with in regard to, even though I was out of the  
22 room for a minute, the recommendation that reads, "At a

1 minimum, funding for joint federal-state law enforcement  
2 operations should be restored."

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

11 There needs to be a very clear definition of  
12 the roles of each of the agencies in living marine  
13 resource enforcement. It is not just fisheries, where  
14 the federal-state partnerships provide the dockside and  
15 increasingly on-the-water presence, but the National  
16 Marine Fisheries Service provides the investigative work  
17 largely and the Coast Guard provides the on-the-water  
18 offshore presence.

19                    Obviously, everybody works with the  
20    investigators, so it is not that clearly defined. I  
21    think that it is important to make sure that those roles  
22    are clear, and if there are problems in one area, that

1 you have the ability to compensate in another.

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

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

17           The Congress has stated in some cases that  
18 they should not be allowed to use either the Department

19 of Commerce or even Coast Guard administrative law  
20 judges because they know something about fisheries, but  
21 you should only use Department of Agriculture judges who  
22 have absolutely no interest in fisheries and generally

1 throw the cases out.

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

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

15           There is probably nothing more irritating to  
16 fishermen than seeing a guy that they know has been  
17 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

1 funding, I think we need to recognize that it is not  
2 just the Coast Guard that has been impacted by 9/11. Of  
3 course, the state agencies have been enormously impacted  
4 by 9/11, and the National Marine Fisheries Service  
5 enforcement people have been enormously impacted by 9/11  
6 such that because they are FBI trained they go off on  
7 other missions. Those are incredibly important  
8 activities. We should not just think that the impact  
9 and therefore the funding remedies are restricted to  
10 Coast Guard, but it is across the board.

11 Thank you.

12 DR. SANDIFER: Andy, I agree entirely with  
13 your comments, and will ask, staff, that we pick these  
14 things up. The financial impacts are clear. The reason  
15 in part for so much emphasis on the Coast Guard is we  
16 actually had data that we didn't have before us on these  
17 others. Coming from a state, I can tell you very  
18 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

1        wording there that might help us put together the right  
2        statement and if there are any references that we should  
3        cite, that you provide those to us.

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

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

17               MR. RASMUSON: Yes, a segue into what you were  
18       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

1 know, we take their ships, confiscate everything and we  
2 toss them out. Of course, with the IFQ system it is  
3 pretty regulated there, too. However, the other areas  
4 like you are talking about don't have that.

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

12           Any boat over 75 feet has got a vessel  
13 monitoring system now, and they start policing  
14 themselves. The Admiral and I were talking about it  
15 this morning, about trying to self-police out in the  
16 Gulf with other violators, potential violators.

17           It might come to the fact that if a resource  
18 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

1 a recommendation.

2 MR. EHRMANN: Dr. Coleman?

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

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

18 A number of us have wrestled with these

19     problems in the past.  Simply pulling an individual's  
20     permit does not do any good, because the boat can be  
21     sold to the mother-in-law or the brother the next day  
22     for a dollar and it continues to operate, so you have to

1 have other mechanisms to work. Those are the kinds of  
2 things that we would suggest, rather than the basic law  
3 here be looked at.

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

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

18 MR. EHRMANN: Commissioner Hershman?

19 DR. HERSHMAN: I really have a question more  
20 than a comment. In reading this, it comes across that  
21 the fisheries, particularly the vessels that are out  
22 there on the water, are sort of operating independently

1 from other enforcement activities.

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

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

16           DR. SANDIFER: I don't know that we have got  
17 an answer for you, Marc, at this point.

18 DR. HERSHMAN: The VMS?

19 DR. SANDIFER: The VMS will, but that is

20 limited to certain vessels; it does not get to all

21 vessels. There is nothing other than perhaps the

22 Defense Department satellite data that will probably get

1 all vessels, and we are not likely to get those kinds of  
2 data in a way that we could use them anytime soon, at  
3 least that is my read. If you will wait until the  
4 vessel monitoring system discussion, I think that will  
5 deal with some of this.

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

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

12 Admiral Gaffney?

13 ADMIRAL GAFFNEY: Yes. I think I am just a  
14 little confused here. Up until this piece of paper,  
15 this "GAO Testimony," was put onto my desk a few minutes  
16 ago I thought the Coast Guard was in big trouble in this  
17 particular area, that this is a function that was being

18 shed.

19 This says on page 13 that they got a  
20 16 percent increase over FY'02 for marine environmental  
21 work. I am not sure what that means, if that is a true  
22 story or not, but they have got a \$45 million increase

1 in this particular area that we are interested in over  
2 the previous year, FY'02, the year of 9/11. I don't  
3 know what is going on here, but they got more money. We  
4 were just handed this, so I think we need to look again.

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

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

18 "The Coast Guard is now at or near its maximum

19 sustainable operating capacity in performing its  
20 missions. The agency has a finite set of cutters,  
21 boats, aircraft, and so forth." Even with more money  
22 dumped on it, even with \$45 million, it doesn't buy a

1 whole lot of those new assets nor a whole lot of  
2 additional people that could be tasked. Particularly  
3 without the big assets, as we discussed in our working  
4 group, regarding the true offshore fisheries  
5 enforcement, there is no substitute for a Coast Guard  
6 cutter out there. Nobody else has a Navy besides the  
7 Navy and the Coast Guard, and that is the problem.

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

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

18 I would just caution that I don't think that

19 marine environmental protection in fisheries or even  
20 living marine resource enforcement are the same thing,  
21 because of course all of the oil spill stuff goes in  
22 there, and so you are spreading across multiple

1 missions.

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