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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Enforcement Problems Hinder Effective Implementation Of New Fishery Management Activities

Under the Fishery Conservation and Management Act, plans are being developed to manage domestic and foreign fishing within 200 miles of the U.S. coastline.

Plans establishing quotas and other restrictions will be developed for 70 species of fish. GAO's review of two of the nine plans in effect showed that enforcement has been weak. Action is needed to strengthen enforcement of these plans and to avoid similar problems in future plans.



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To the President of the Senate and the
Speaker of the House of Representatives

Under the Fishery Conservation and Management Act, plans are being developed to manage both domestic and foreign fishing within 200 miles of the U.S. coastline. This report discusses problems that have prevented effective enforcement of the regulations implementing two of these plans and steps that need to be taken if the conservation and management goals of the act are to be achieved.

This review was undertaken to determine if the enforcement program is achieving compliance with the fishery management regulations.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretaries of Commerce and Transportation; the Chairmen, House Committee on Merchant Marine and Fisheries and Senate Committee on Commerce, Science, and Transportation; and the Executive Directors, Gulf, Mid-Atlantic, New England, Caribbean, Western Pacific, North Pacific, and Pacific Fishery Management Councils.

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Comptroller General
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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ENFORCEMENT PROBLEMS HINDER
EFFECTIVE IMPLEMENTATION OF
NEW FISHERY MANAGEMENT
ACTIVITIES

D I G E S T

Federal agencies responsible for enforcing restrictions under a new law to manage foreign and American fishing in U.S. coastal waters already are running into trouble.

Better enforcement of present plans is needed under the Fishery Conservation and Management Act of 1976, and steps should be taken to avoid similar problems in plans not yet issued.

These are GAO's conclusions after reviewing Federal efforts to enforce limits under two plans--one protecting cod, haddock, and yellowtail flounder; the other, surf clams and ocean quahogs. Conservation plans have been written for 9 of about 70 species which come under the act's protection.

DOMESTIC FISHING REGULATIONS
HAMPER EFFECTIVE ENFORCEMENT

Effective enforcement of some regulations requires impractical amounts of resources-- personnel, vessels, and aircraft--to prove that a violation took place.

Some regulations are confusing, making normal fishing within 200 miles of the U.S. coast almost impossible without breaking the new rules. Frequent changes in regulations also complicate enforcement.

State regulations controlling fishing in the 3-mile territorial sea have not been coordinated with Federal guidelines. Some States have no regulations. Federal enforcement authorities must determine where the fish were caught to prove a violation--an impossible task. (See p. 7.)

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ENFORCEMENT GOALS LACKING

The Coast Guard and the National Marine Fisheries Service--the agencies which enforce the law--have not set specific goals or decided what methods and how much staff and equipment are needed to meet their goals.

Guidance to enforcement agents emphasizes procedures--how to fill out forms--not overall goals and priorities. Because there are too few people to enforce the law, they are frequently transferred to help out temporarily elsewhere. Some Coast Guard workers do not have enough training in identifying fish. (See p. 15.)

BETTER COORDINATION NEEDED

Coordination is lacking within the National Marine Fisheries Service as well as between the Service and the Coast Guard.

The Service's statistics branch does not routinely provide catch information to enforcement agents; access to this data is needed for effective enforcement. Because agents have not been notified of changes in regulations soon enough, they have tried to enforce rules no longer in effect. (See p. 18.)

PENALTIES DO NOT DETER VIOLATIONS

The Service's penalty process is time consuming, and cases have not been processed as expeditiously as possible. Many cases have been pending since 1977, and closed cases were settled on the basis of compromise offers. Some delays can be traced to the fact that officials who handle violations and assess penalties have many other duties.

Penalties do little to discourage further violations. Although the law authorized fines up to \$25,000 per violation, and even forfeiture of the vessel and its catch, fines collected for groundfish violations generally have been less than \$500. Increasingly, fishermen are

tempted to violate the law because the profit to be gained far outweighs the penalty if they are caught. (See p. 21.)

RECOMMENDATIONS

The Secretary of Commerce should:

- Require that plans and regulations be revised to strengthen enforcement activity by (1) changing to dockside from at-sea enforcement where possible, (2) establishing landing limitations on a trip basis rather than a weekly basis, (3) establishing a single quota for each species regardless of where the catch was taken, and (4) limiting the number of nets a vessel can carry on board.
- Require that the practicability and feasibility of enforcement strategies and approaches be considered in approving all future plans.
- Encourage coastal States to regulate fishing in territorial waters and take preemptive action when their failure to do so prevents carrying out Federal fishery management plans.
- Direct the National Oceanic and Atmospheric Administration to (1) develop specific enforcement goals and strategies and identify the resources needed and (2) ensure that stiffer penalties are imposed and collection is pursued rigorously. (See p. 25.)

The Secretary of Transportation should direct the Commandant of the U.S. Coast Guard to see that staff engaged in enforcing fishing regulations receive adequate training, particularly in identifying violations. (See p. 25.)

AGENCY COMMENTS

While generally agreeing with GAO, the National Oceanic and Atmospheric Administration took issue with GAO's criticisms of its policies on temporary transfers of enforcement agents and ways of allotting agents' time. GAO believes these policies have resulted in little uniformity in enforcement methods, have impeded the development of expertise in each geographic

area, and have not corrected the underlying personnel shortages. (See app. I.)

Comments from the Department of Transportation were received too late to be incorporated into the body of this report. GAO's preliminary assessment, however, indicates the Department's comments have no adverse impact on the conclusions or recommendations. (See app. IV.)

The Commissioner of the Massachusetts Department of Fisheries, Wildlife, and Recreational Vehicles commented that GAO's report generally addresses the management and enforcement problems which have existed since the act's inception. The Governor of Maryland commented that the regional council is working to ease some of the enforcement problems in the fishery. (See apps. II and III.)

FOREIGN ENFORCEMENT

Since the Fishery Conservation and Management Act went into effect in 1977, the number of foreign vessels fishing the U.S. waters has decreased as has the volume of their catches. However, enforcement could be more effective in several ways.

There is no system to verify the accuracy of catch statistics reported by foreign vessels. As a result, foreign countries are not being charged the full fee due on the fair market value of their catch. (See p. 26.)

The high turnover rate of observers and the long time needed to train new ones hampers enforcement. Violations are not quickly or fully investigated because in the Northwest Atlantic observers must depend on the Coast Guard to write up violations and in the Northeast Pacific observers do not report violations until they return from sea--at times a delay of several months. In addition, Coast Guard personnel conducting foreign boardings have written up violations incorrectly or have failed to provide complete documentation. (See p. 29.)

RECOMMENDATIONS

The Secretary of Commerce should direct the Administrator of the National Oceanic and Atmospheric Administration to improve enforcement of foreign fishing regulations by:

- Improving the observer program by reducing the turnover rate so that observers can develop skills to perform both biological sampling and compliance duties and by assuring that foreign violations identified by observers are processed in a timely manner.
- Requiring that observer reports be used on a routine basis to verify the catch reported by foreign vessels.
- Making sure that penalties for violations are assessed and collected in a timely manner. (See p. 34.)

AGENCY COMMENTS

The National Oceanic and Atmospheric Administration agreed that measuring the amount of fish caught by foreign fishermen is difficult, but it did not believe that it was practical or necessary to determine precisely the catch of each foreign vessel. It also said the turnover rate among foreign observers was acceptable. (See app. I.)

GAO believes that even though foreign fishermen are not exceeding their catch allocations, failure to penalize them for submitting incorrect reports could cause problems in the future as foreign allocations are reduced. GAO also believes that the loss of 44 percent of the observers had to affect the foreign enforcement program because of the amount of on-the-job training required to develop proficiency.

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ABBREVIATIONS

FCMA	Fishery Conservation and Management Act
GAO	General Accounting Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration

CHAPTER 1

INTRODUCTION

The Fishery Conservation and Management Act (FCMA) of 1976 (Public Law 94-265) extended U.S. fisheries management jurisdiction to 200 miles from the territorial sea baseline (the fishery conservation zone). The major purposes of FCMA are to (1) conserve and manage the fishery resources off U.S. coasts, (2) support development of international fishery agreements to conserve and manage highly migratory species, (3) promote domestic fishing under sound conservation and management principles, and (4) provide for fishery management plans to achieve and maintain, on a continuing basis, the optimum yield ^{1/} from each fishery. A fishery is one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which is identified on the basis of geographical, scientific, technical, recreational, and economic characteristics. These management plans and implementing regulations authorized by FCMA are to protect the fishing stocks from overfishing and to rebuild overfished stocks. FCMA prohibits foreign fishing if the domestic vessels have the capacity to catch the optimum yield of the fishery.

The U.S. Coast Guard and the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) enforce the regulations to implement these fishery management plans. Both foreign and domestic fishing regulations, developed by NMFS, have been enforced since March 1977 (FCMA's effective date). Domestic enforcement activity has increased and will continue to increase as new fishery management plans are developed and implemented. About 70 fishery management plans will be developed.

The Coast Guard and NMFS were given joint enforcement responsibility under FCMA. The Coast Guard, which has responsibility for enforcing all Federal laws on the high seas and navigable waters of the United States and its possessions (14 U.S.C. 2), uses its cutters, patrols boats, and aircraft to conduct the at-sea enforcement of foreign and domestic fishing regulations. NMFS' enforcement agents accompany the

^{1/} Optimum yield is defined as the amount of fish that (1) will provide the greatest overall benefit to the Nation, particularly for food production and recreation, and (2) is determined on the basis of the maximum sustainable yield, modified by relevant economic, social, or or ecological factors.

Coast Guard patrols when possible and conduct dockside inspections and investigations. In addition, NMFS administers an observer program over foreign fishing vessels, in which NMFS employees are placed on foreign vessels to monitor their activity. The Coast Guard and NMFS use four basic enforcement approaches:

- Coast Guard aerial surveillance flights to determine what vessels are fishing in the fishery conservation zone, if any vessels are fishing where fishing is prohibited, and what type of fishing gear is being used.
- Coast Guard vessel patrols to identify the vessels fishing in an area and board specific fishing vessels to examine the catch to determine if violations have occurred.
- NMFS observers assigned to foreign fishing vessels to gather scientific data and report any violations of regulations observed.
- NMFS dockside inspections of domestic fishing vessels to examine fishing gear, the catch, logbooks, and landing records to determine compliance with FCMA regulations.

REGULATIONS DEVELOPED TO CONTROL FISHING

FCMA emphasized local development of fishery management plans by establishing eight regional fishery management councils. Voting members of each council include the principal fishery management official in each State in the council's region, the NMFS regional director, and individuals selected by the Secretary of Commerce from lists submitted by State Governors in the council's region. The councils, which are federally supported through the Department of Commerce, prepare fishery management plans for both domestic and foreign fishing in the fishery conservation zone. These fishery management plans must include, among other things:

- the necessary and appropriate conservation and management measures,
- a description of the fishery,
- an assessment of the present and probable future condition and the optimum yield of the fishery, and

--an assessment of U.S. fishing vessels' capacity to harvest the optimum yield of the fishery and the portion remaining that can be made available for foreign fishing.

If the Secretary of Commerce approves these plans, she then promulgates the regulations to implement them. The GAO report "Progress and Problems of Fisheries Management Under the Fishery Conservation and Management Act" (CED 79-23, Jan. 9, 1979) discusses the activities of these councils.

Regulation of domestic fishing

The regional councils have identified approximately 70 fisheries for which management plans need to be prepared. At the time our review began in July 1978, only three plans had been approved and implemented:

- Atlantic groundfish (cod, haddock, and yellowtail flounder) (Mar. 1977).
- Commercial and recreational salmon troll fisheries off the coast of Washington, Oregon, and California (Apr. 1977). 1/
- Surf clams and ocean quahogs (Nov. 1977).

Generally, implementing regulations for these plans restrict fishing operations by imposing catch quotas, specifying the type of gear to be used, prohibiting fishing in certain areas or during certain seasons, and requiring submission of reports by both fishermen and fish buyers or processors.

In addition, since late 1978, the following plans have also been approved and implemented:

Northern anchovy	(Sept. 1978)
Groundfish-Gulf of Alaska	(Dec. 1978)
Tanner crab	(Dec. 1978)
Atlantic herring	(Dec. 1978)
Stone crab	(Mar. 1979)
High seas salmon off Alaska	(May 1979)

1/ Our review did not include enforcement of the salmon plan because court decisions involving Indian fishing rights complicated the enforcement effort. Our report "The Pacific Fishery Management Council's Role in Salmon Fisheries" (CED 79-4, Nov. 9, 1978) describes development of the salmon plan and discusses the Indian fishing rights issue.

Atlantic groundfish regulations

Because of the depleted condition of the cod, haddock, and yellowtail flounder stocks, regulations for Atlantic groundfish were implemented in March 1977. The depleted condition of these stocks was caused in part by the large foreign fishing fleets that began fishing off the New England coast during the early 1960s. Since implementation, numerous changes have been made to the plan and the regulations, and the fisheries have been closed several times when quotas were exceeded.

The latest regulations, effective January 1, 1979, established quotas for a new fishing quarter beginning January 1, 1979. These regulations specified the quantity of cod and haddock that could be caught by four different categories of commercial fishing vessels in two fishing areas (Gulf of Maine and Georges Bank) during each quarter of the year. The quantity of yellowtail flounder that could be caught was the same for all vessels. Generally, catch limits were established for the amount of each species that an individual vessel can land during a fishing week.

In addition to the quotas, the regulations closed two spawning areas to fishing for groundfish from March through May and imposed limitations on the types of gear that may be used in fishing for groundfish by specifying a minimum mesh size in fishing nets.

Surf clam and ocean quahog regulations

Because of overfishing in the surf clam fishery, which is concentrated in the middle Atlantic area (New York, New Jersey, Delaware, Maryland, and Virginia), a management plan was prepared and regulations were implemented in November 1977. Ocean quahogs were also covered by these regulations because, as the surf clam catches decreased, fishermen were diverting their effort to the ocean quahog fishery. However, because of a lack of economic demand for this product, this fishery has not yet presented a regulatory problem.

Quotas were established for surf clams and ocean quahogs. Fishing for surf clams is restricted to a set number of hours per week, and a moratorium prohibiting the entry of additional fishing vessels into the surf clam fishery has existed since November 1977. If the restriction on fishing hours does not succeed in keeping the total catch below the quotas, the fishery is closed for the remainder

of the time period. The surf clam fishery was closed in March and December 1978 for a total of 4 weeks.

Restrictions on foreign fishing

Because the councils were not able to prepare fishery management plans before FCMA's effective date, the Secretary of Commerce prepared preliminary management plans and implementing regulations for those species of fish for which foreign vessels were expected to request fishing permits. These preliminary plans will be replaced as the councils prepare fishery management plans and the Secretary of Commerce approves and implements them.

Foreign countries must have entered into a fishery agreement with the United States and each vessel must obtain a permit to fish in the fishery conservation zone. Under FCMA, the total allowable level of foreign fishing is that portion of the optimum yield for a fishery that cannot be harvested by domestic vessels. For example, in the preliminary management plan for Atlantic mackerel, the optimum yield for the fishery in 1977 was determined to be 88,000 tons. Because it was estimated that the U.S. commercial and domestic fishing vessels had the capacity to harvest 19,000 tons, the remaining 69,000 tons represented the total allowable level of foreign fishing for Atlantic mackerel.

While specific implementing regulations vary for each management plan, in general they provide that

- foreign vessels must inform the Coast Guard and NMFS when they plan to begin or terminate fishing operations;
- fishing operations are limited to certain portions of the fishery conservation zone, during specified periods of time, using designated fishing gear; and
- fishing vessels must maintain a detailed log of the amount and type of fish caught and submit periodic reports to NMFS.

In addition, the regulations specify the total quantity of each species of fish that can be caught by each foreign country. The net result of FCMA and the regulations has been a reduction in the number of foreign vessels fishing within the fishery conservation zone and in the total quantity of fish they have harvested. Reported foreign catches decreased from 2.3 million metric tons in 1976 to 1.7 million metric tons in 1977.

SCOPE OF REVIEW

We reviewed the Coast Guard and NMFS enforcement programs for the Atlantic groundfish and surf clam and ocean quahog fishery management plans. We examined manuals, reports, and case files and met with officials at the Coast Guard and NMFS headquarters; the Coast Guard's New York Area Office; the First, Fifth and Seventeenth Coast Guard Districts; and the NMFS northeast region. In addition, we examined the enforcement of foreign regulations in these areas and met with several of the NMFS observers who participated in the observer program for foreign fishing vessels in the North Atlantic. We also met with officials of the New England, Mid-Atlantic, and South Atlantic Regional Fishery Management Councils; the States of Maine, Massachusetts, New Jersey, Maryland, and Virginia; and various fishermen, fish buyers, and processors.

We reviewed the Department of Transportation's Office of Audit report on the Coast Guard fishery enforcement activities and discussed our audit approach with its office. The Department of Commerce had not done any audit work in the enforcement area at the time of our review.

Comments from the Department of Transportation were received too late to be incorporated into the body of this report. Our preliminary assessment, however, indicates the Department's comments have no adverse impact on the conclusions or recommendations. (See app. IV.)

CHAPTER 2

NEED TO IMPROVE ENFORCEMENT OF DOMESTIC FISHING REGULATIONS

Enforcement of regulations for the Atlantic groundfish and the surf clam and ocean quahog fishery management plans has been ineffective. We recognize that different conditions may exist in the different regions and that each fishery will have unique enforcement situations. However, if action is not taken to make sure that all implementing regulations are enforceable, problems will continue to affect the Nation's ability to meet the FCMA goals of conserving and managing U.S. fishery resources. Unless action is taken, we believe that enforcement will become an even greater problem because of the increased burden it will place on the available enforcement resources.

Enforcement of the groundfish and surf clam fishing regulations has been ineffective because:

- The regulations are difficult or impractical to enforce because (1) extensive resources are needed to document violations, (2) they are confusing and frequently revised, and (3) some States have not established adequate regulations for the territorial sea out to the 3-mile limit.
- NMFS and the Coast Guard have not developed an effective enforcement approach by establishing goals, devising strategies to achieve these goals, and identifying resources needed to carry out the strategies.
- Coordination within NMFS and between NMFS and the Coast Guard has been inadequate.
- Appropriate penalties have not been assessed in a timely manner.

REGULATIONS HAVE HAMPERED ENFORCEMENT EFFORTS

The regulations developed to implement the two fishery management plans have been difficult to enforce because (1) extensive effort is needed to document noncompliance with the regulations and (2) the regulations have been changed frequently and are confusing both to fishermen and enforcement personnel. In addition, because States have

jurisdiction over the territorial sea (from 0 to 3 miles) and have not adopted the same regulations, fishermen are able to evade Federal regulations.

Extensive effort needed
to enforce existing regulations

Enforcement has not been effective because some regulations require an extensive commitment of resources to provide adequate coverage. Because such resources have not been available, it has been extremely difficult to catch a violator and prove that a violation actually occurred. It generally is easier to enforce regulations at dockside rather than at sea, and we believe that significant improvements could be achieved if regulations were revised to emphasize dockside rather than at-sea enforcement whenever possible. Regulations also need to be written so as to minimize the time and effort required to document violations.

The current surf clam fishing regulations require enforcement at sea. Under the surf clam fishery management plan, a quota is established for the total quantity of clams that can be harvested in a quarter. Regulations implementing the plan specify the number of hours each vessel may fish during a week. If the total quota is harvested before the end of the quarter, the fishery is closed for the remainder of the quarter. To determine if fishermen are complying with these regulations, enforcement agents must be able to monitor their activity while they are at sea.

The Coast Guard and NMFS have been unable to conduct the amount of surveillance needed to prove that a vessel is fishing during unauthorized times. Most enforcement personnel believe that clam fishermen are fishing several hours before and after their authorized fishing periods, and we have been told this by various clam fishermen also. In fact, one fisherman estimated that as many as 65 percent of the clam fishermen are fishing outside their authorized hours. To prove a violation, however, enforcement agents must actually observe the vessel harvesting surf clams in the fishery zone during an unauthorized time, and they have been unable to do this with available resources. NMFS agents have observed clam vessels leaving port early and returning late, but they cannot prove a violation because they do not see the clams being harvested. They are unable to get out to the fishing area because Coast Guard vessels and aircraft are not always available when needed. Under the Coast Guard's multi-mission concept, the vessels and aircraft have many other responsibilities in addition to fisheries enforcement and some of these, such as search and rescue and drug smuggling

cases, can take precedence over fishery enforcement. In addition, these violations generally occur at night when the smaller cutters which have been given responsibility for enforcement of the surf clam regulations are generally not in operation. Another problem is getting close enough to the fishing vessels to observe violations taking place. According to the Coast Guard, it attempted night patrols, but the fishermen detected its presence and were able to cease their illegal fishing in time to avoid being caught.

In one case, enforcement agents using a helicopter observed a vessel harvesting surf clams over an hour after its authorized time to fish. NMFS did not impose a penalty because the vessel captain claimed he could not raise the clam dredge because of an equipment breakdown. Because the vessel had not been boarded, NMFS could not refute the captain's statement, so it decided not to process the case.

NMFS personnel directly involved in surf clam enforcement discussed enforcement problems at the Mid-Atlantic Fishery Management Council's November 1978 meeting and informed the council that effective enforcement could never occur until the plan was revised to require dockside enforcement by imposing restrictions on the quantity of clams that each vessel can land. As an alternative, NMFS personnel suggested that the current system be improved by restricting fishing to daylight hours and requiring fishermen to notify the Coast Guard of any equipment breakdowns that prevent them from raising their clam dredge. At the time of our review, no action had been taken on this recommendation.

Regulations for Atlantic groundfish differ from those for surf clams in that they generally must be enforced at dockside rather than at sea. The quarterly quotas that are established under the groundfish management plan specify the quantity of (1) cod and haddock that can be harvested from the Gulf of Maine and from the Georges Bank by various categories of vessels and (2) yellowtail flounder that can be harvested from each of two areas of the fishery conservation zone. The regulations also limit the quantity of each species which can be landed by a vessel during a fishing week (Sunday through Saturday). If the entire quarterly quota, or the quota for a given vessel category, is harvested before the end of the quarter, further fishing for that species will be prohibited but each vessel can land certain quantities as incidental catch. The regulations also specify minimum mesh size for nets used for these fish species.

The mesh size restriction must be checked at sea. The Coast Guard has had trouble enforcing this because if it finds that a vessel is fishing with a mesh size smaller than permitted, it must be able to determine that the vessel was fishing for cod, haddock, or yellowtail flounder rather than nonregulated groundfish which are not affected by a mesh restriction at this time. Even the presence of cod, haddock, or yellowtail flounder on the vessel is not evidence of a violation because the mesh restriction does not apply to vessels that are fishing for another species but take certain amounts of these fish incidentally (as "bycatch"). To prove a violation, enforcement agents must determine that the amounts of cod, haddock, or yellowtail flounder exceed the bycatch limits imposed by the regulations. If vessels were allowed to have only one size net on board, the Coast Guard would only have to prove that the fishermen were not using liners inside the nets to reduce the mesh size and permit them to catch smaller fish.

The quotas that specify a separate quantity of fish that can be harvested in the Gulf of Maine as opposed to the quantity from the Georges Bank cannot be enforced because it is impossible to determine in which location the fish were caught without continuous surveillance of the fishing vessels. Such surveillance is impractical because of the cost to provide such coverage. Dockside investigations can verify the total quantity being landed but not the amount caught in each area.

Dockside enforcement of the landing restrictions has been complicated because the regulations specify weekly quotas rather than trip quotas for cod and haddock. If the vessel is at sea for more than 1 week, the catch is counted against the quota for any week in which fishing was conducted or the week during which it was landed. To determine if fishermen are exceeding weekly quotas, the agents must know when vessels leave and return to port. This requires that agents spend much time patrolling the docks to see which vessels are in port. One agent estimated that he spent an average of 14 hours a week doing this. To determine if the small vessels which make several trips in a week are exceeding their weekly quota, the agent must obtain copies of the processor's records of fish purchased for the entire week in order to compute the weekly catch of the vessel. Because the agent may not have investigated the offloading for each trip, he will have to accept unverified purchase records for some of the fishing trips. If quotas were established on a per trip basis, the agents would not have to spend as many hours gathering information about vessel fishing activities and would only have to be concerned with records for the trip they were investigating.

NMFS' ability to conduct an effective dockside inspection program is also limited by its small number of enforcement personnel and lack of appropriate equipment for conducting these investigations.

NMFS' northeast region has less than 30 enforcement agents located at the regional headquarters and 14 field stations ranging from Rockland, Maine, to Hampton, Virginia. These agents must conduct all of the dockside enforcement activity for the Atlantic groundfish and the surf clam and ocean quahog management plans in addition to enforcement of foreign fishing regulations and all of the other laws enforced by NMFS. Within the State of Massachusetts, five agents and one supervisory agent provide enforcement coverage over 1,600 miles of coastline, approximately 40 ports, and over 1,000 fishing vessels. These agents are located in field offices in Gloucester, Provincetown, and New Bedford. Their job is complicated by the fact that a fishing vessel can offload its catch at any of these ports or offload portions of its catch at several different ports. Because of the lack of administrative personnel in the field offices, agents often spend considerable time typing reports rather than carrying out investigations. For example, one agent estimated that about 10 percent of his time from September 1977 through August 1978 was spent typing investigative reports.

Agents are further hampered in covering all the ports in their area by the poor quality vehicles provided by the National Oceanic and Atmospheric Administration. Most of these vehicles are old, unreliable station wagons that are not equipped with radio communications equipment and often break down while agents are conducting investigations. For example, one agent reported that his Government vehicle had broken down four times in the past year and a half while he was conducting fishery investigations. During a recent investigation of the illegal transportation of surf clams, the NMFS agent's vehicle broke down while he was pursuing the suspect's truck. Because the vehicle had no radio, the agent could not obtain assistance and the investigation had to be abandoned.

The NMFS northeast region does not have enough resources to enforce the Atlantic groundfish and surf clam regulations adequately as they are now written. NMFS agents have spent so much time attempting to enforce these regulations that they are not able to carry out their responsibility to enforce other laws dealing with marine mammals and endangered species. We did not review enforcement of the other seven management plans currently in effect. However, if similar regulations, requiring extensive resources for effective

enforcement, are included in the implementing regulations for these plans or for the more than 60 plans being developed (18 of which could affect the NMFS northeast region), the existing enforcement resources will be spread even thinner and will have even less effect.

Enforcement complicated
by confusing regulations
and frequent changes

Certain regulations in the Atlantic groundfishery have been so confusing that in certain situations it may have been impossible to conduct normal fishing operations and not violate the regulations. For example, at one time, fishermen were not allowed to catch cod in the Gulf of Maine (a partial closure), but in legally trawling for haddock they could not avoid catching cod because many groundfish species are usually caught together. Because fishermen were also prohibited from discarding any cod inadvertently caught, there was no way to fish and still comply with the regulations. Under previous regulations--when cod and haddock could not be caught even as an incidental bycatch--fishermen were required to throw back any of these species caught. We were informed that this was not a practical solution either because these deep-sea fish die almost immediately when they are brought to the surface due to pressure changes. As a result, discarding them did not achieve the FCMA conservation goal.

In addition, frequent changes have occurred in the regulations which complicated enforcement efforts. As of March 1979, there had been about 35 changes in the groundfish regulations. Some of these changes involved the quota system established to control the amount of groundfish being harvested. The original annual quotas were replaced by quarterly quotas. In each case, however, the rate at which the species were being caught made it obvious the quotas would be exceeded. Sometimes this would result in a fishery closure, but in most cases the council would increase the quotas to avoid the adverse economic impact of a fishery closure. In addition, daily landing restrictions, which specified the amount a vessel could land for each day of fishing in order to spread the catching of the quota over the entire quarter, were changed to weekly limitations, and different quotas and limitations were established for different classes of vessels. The effect of these frequent changes has been confusing to fishermen who at various times have been (1) completely prohibited from catching cod, (2) prohibited from catching cod in certain areas, and (3) permitted only bycatches of cod of specified amounts. Fishermen and NMFS agents have

complained that it is difficult for them to keep up with the frequent changes and agree that some stability is needed in the regulations.

Lack of or different State regulations
impede enforcement efforts

Some States have no regulations for these two domestic fisheries covering their territorial sea, while others have regulations that differ from FCMA. As a result, enforcement personnel must be able to determine where fish were caught in order to prove a violation--an impossible task.

Maine imposes no restriction on amounts of cod, haddock, or yellowtail flounder that fishing vessels can catch in its territorial waters, while Massachusetts has established regulations that differ from those under FCMA. In both cases, however, fishermen are able to evade enforcement because of the difficulty of determining where the fish were caught. For example, it is possible for fishing vessels to catch thousands of pounds of groundfish illegally in the fishery zone (3 to 200 miles from the U.S. coastline) but report that they caught these fish in Maine territorial waters where there are no restrictions. NMFS agents believe many vessels are doing this, but the only completely sure way to prove that these vessels are violating FCMA regulations is to track them for the entire time they are at sea. In one case where this has been attempted, the effort has been very expensive and it has been difficult to maintain continuous surveillance for long periods of time.

Massachusetts limits the amount of cod, haddock, or yellowtail flounder that a vessel may have on board to stated amounts plus the quantity legally harvested outside its territorial sea. Therefore, it restricts the volume by which fishermen may falsely report catches illegally taken in the fishery conservation zone. However, because two different sets of regulations with different penalties exist, the fishermen will likely report that any amounts exceeding both State and Federal limits were caught in the area where the lowest penalty is imposed.

Most surf clams are caught 20 to 30 miles off the coast, but New Jersey has an inshore surf clam fishery that starts at the beach. New Jersey permits fishing 6 days a week but allows only 500 bushels of inshore clams to be landed each week. Because the FCMA regulations restrict the number of fishing hours per week but not the amount of clams that can be landed per trip, some New Jersey clammers may have exceeded their weekly quota for inshore clams and reported that the excess was caught in the fishery conservation zone. Because the

fishery is closed when the quarterly quota is reached, these incorrect reports contribute to the early closure and adversely affect fishermen who report their catch correctly. For example, all fishing for surf clams in the fishery conservation zone was prohibited from March 13 through March 31, 1978, because vessel and processor reports indicated that the entire quarterly allocation of 350,000 bushels had been caught by March 12, 1978. Closures under the FCMA regulations do not affect fishing in State waters.

FCMA gave the Secretary of Commerce preemptive authority to regulate a fishery within a State's territorial waters pursuant to a fishery management plan implemented under FCMA if (1) fishing is conducted predominately within the fishery conservation zone and (2) implementing that fishery management plan is substantially and adversely affected by that State's action or failure to take an action. The Secretary of Commerce has not yet taken action to impose regulations on fishing activities in a State's territorial waters.

Agency comments and our evaluation

The Commissioner of the Massachusetts Department of Fisheries, Wildlife, and Recreational Vehicles commented that our report generally addresses the management and enforcement problems which have existed since FCMA's inception. (See app. II.) He stated that he also believes that ineffective enforcement and unrealistic, complex regulations have been the prime cause of management problems to date and the States have not adopted consistent regulations because of this. Massachusetts adopted different regulations for cod, haddock, and yellowtail flounder because it believed the groundfish plan prepared by the regional fishery management council was unenforceable. The commissioner concurred with our position that vessel trip quotas would improve enforcement and pointed out that such quotas are included in the Massachusetts regulations. He pointed out, however, that the council developed the best management plan possible but, because it was restricted by the optimum yield and the requirement that it provide equity for everyone affected, the resulting regulations have been complex. He suggested that guidance should be provided to the councils on the enforceability of proposed regulations before the plan enters the formal review process and that the States should be encouraged to adopt regulations consistent with the council management plans only if the plans provide for effective enforcement.

The Governor of Maryland commented on our report that Maryland's regulations mesh with those implementing the

surf clam and ocean quahog management plan and that he believes that the regional council is working to ease some of the enforcement problems in this fishery. (See app. III.)

NOAA, in commenting on our report, (see app. I) agreed that the Atlantic groundfish and surf clam fishery regulations have been difficult to enforce. It pointed out that this has been caused by the complex conservation and management measures of the plans prepared by the regional fishery management councils and stated that it has started working to simplify these measures so that they can be enforced more easily. It also said that enforceability will be considered in future approval decisions. This conforms with the changes we identified as needed to improve enforceability of the fishing regulations.

NOAA generally disagreed with our concern over the amount of time field agents spend in performing certain administrative tasks. NOAA stated that because the agents are deployed in one- or two-person field stations, there are not enough administrative chores to justify hiring a secretary and other alternatives would not reduce the amount of time agents would have to devote to report preparation.

EFFECTIVE ENFORCEMENT APPROACH NEEDS TO BE DEVELOPED

NMFS and the Coast Guard have not yet developed an effective approach for enforcing domestic fishing regulations under FCMA even though the first domestic regulations, implementing the Atlantic groundfish management plan, went into effect in March 1977 and eight additional plans have since been added to their enforcement responsibilities. These agencies have not yet developed specific enforcement goals, developed strategies and techniques to achieve these goals, or identified and obtained the resources needed to carry out the strategies. The current enforcement activity consists mainly of sporadic responses to tips from informants or specific crises and varied investigative approaches developed by individual enforcement agents. As a result, neither NMFS nor the Coast Guard can determine the degree of compliance with the domestic regulations or ensure that they are being enforced uniformly in all areas.

The Coast Guard has a general goal of detecting and deterring 75 percent of all law enforcement violations within the period from 1981 to 1990, but it has not established goals for specific law enforcement activities, such as fisheries enforcement, that can be used to evaluate the adequacy of its enforcement activities. For the foreign

fishing enforcement program, the Coast Guard has established boarding and patrol standards for operational groups to use in planning their enforcement activities. Such standards enable the Coast Guard to estimate the amount of resources needed and evaluate the level of enforcement actually being carried out. Similar standards have not been established for the Coast Guard's domestic fisheries enforcement activities. If the domestic regulations are changed to emphasize dockside enforcement, the Coast Guard's responsibilities in this area would be somewhat reduced.

NMFS has also not established the percentage of all vessel unloadings that should be investigated or the frequency of investigations for individual vessels and processors needed to achieve compliance with the regulations.

In addition, NMFS has not determined the role of its agents or given them guidance on how to use their time most productively, to what degree they should concentrate their investigations on processors rather than individual vessels, and what intelligence information is needed for effective enforcement. As a result, each agent has developed his or her own investigative approach and established priorities for what should be done. Some intelligence data is gathered by individual agents, but NMFS has not developed an intelligence gathering and analysis system that provides all available data to the agents on a routine basis.

NMFS does not have an adequate number of enforcement agents and, as a result, it responds to problems as they arise by transferring agents from one geographical area to another. Because agents are frequently transferred temporarily to help cover such things as fishery closures, their ability to provide coverage in their original areas of responsibility is reduced. Sporadic enforcement also occurs because of NMFS's overtime policy. Because of the nature of enforcement work, a regularly scheduled tour of duty is not practical, so the special agent's basic workweek is the first 40 hours of work performed during the week. Because of budget restrictions, overtime is authorized only for emergencies and during fishery closures. In some cases, agents have worked their 40-hour week by Wednesday; because no overtime is authorized, no enforcement activity takes place for the remainder of the week.

NMFS has recently issued an enforcement manual for its special agents. The manual, however, primarily addresses procedural and organizational issues, such as how agents should complete investigative forms, the enforcement

organization, and the role of the NOAA counsel. It does not identify NMFS enforcement goals or give agents any guidance on priorities to be established for their different investigative activities.

In the spring of 1978, the Coast Guard and NMFS established a joint task force to review the current enforcement effort's effectiveness and determine an overall strategy for future enforcement. As part of this effort, NMFS prepared a draft report in December 1978, projecting the resources needed to enforce present and future fishery management plans based on the number of contacts needed per vessel each year. No action has yet been taken on this study. However, one enforcement official has stated that the current enforcement effort for the Atlantic groundfish plan indicates that the percent of landings to be monitored would be a better indication of the level of compliance to be achieved.

Enforcement has also suffered because many Coast Guard personnel are not trained in fish identification and do not understand the FCMA regulations. As a result, they have difficulty enforcing these regulations. NMFS agents have conducted surf clam identification briefings in the third and fifth districts, but the Coast Guard has conducted little domestic fishery enforcement training. As a result, Coast Guard personnel have improperly written up vessels for violations because of inadequate training. For example, three vessels were written up for license violations by the boarding officer of a Coast Guard cutter even though each vessel had a current and valid U.S. fishing license. In addition, because the Coast Guard's rotation policy and lack of a specialized law enforcement job classification, the experienced staff that have gotten on-the-job training and experience do not always remain in the enforcement area.

In our report on the Coast Guard's law enforcement mission "The Coast Guard's Role in Drug Interception--How Much Is Enough?" (CED-79-40, Feb. 12, 1979), we found that the Coast Guard does not have enough personnel with law enforcement training. Specific enforcement goals would enable the Coast Guard and NMFS to determine the number of personnel required and the amount of training needed to achieve the goals.

Agency comments and our evaluation

NOAA agreed with our position on the need to establish specific enforcement goals and indicated that it is developing such goals for each plan based on the number of

enforcement contacts per vessel needed each year. It preferred using the number of "enforcement contacts" as a specific enforcement goal because it believes that factor measures enforcement output best. We believe that specific enforcement goals should not be limited to the number of contacts with a vessel during a year. For some plans, such as the New England groundfish plan, the number of landings to be monitored might be a more appropriate method of estimating the amount of activities and resources needed to enforce the regulations.

NOAA stated that the current practice of moving agents from one geographical area to another was a sound way of dealing with temporary problems. Because most agents are deployed in one- or two-person field stations somewhat isolated from regional offices, they become the best source of intelligence on what is going on in that geographical location and are in the best position to determine how to allot their time.

We disagree that this is the best strategy for several reasons; in fact, it appears to be somewhat contradictory. First, because of a lack of guidance, each agent must develop his or her own approach to enforcement. There is little uniformity or consistency throughout the region. Second, transferring agents frequently detracts from the alledged advantage of having each agent become an expert on activities in one geographic region. In addition, the shortage of qualified agents appears to be a problem which will obviously grow worse as additional fishery management plans are approved. Moving personnel temporarily to meet constantly emerging crises does not appear to be an effective long-term solution.

COORDINATION WITHIN NMFS AND BETWEEN NMFS
AND THE COAST GUARD NEEDS TO BE IMPROVED

The different groups within NMFS do not always work together to achieve FCMA goals. The NMFS statistics branch compiles catch statistics that enforcement agents could use to identify subjects for future investigation or to document violations that have taken place, but a procedure has not been established to share this information routinely with the enforcement branch. In addition, in some instances Coast Guard and NMFS enforcement agents have not been informed of regulation changes in a timely manner and, as a result, have attempted to enforce regulations that were no longer in effect. Thus, the enforcement program's credibility with the fishing industry has been reduced.

Coordination among the various NMFS branches needs to be developed. In many cases, data that could be used to improve enforcement is available in other segments of NMFS but is not routinely made available to the enforcement agents. For example, NMFS statistical personnel obtain catch data from both vessels and processors but do not provide this information to enforcement agents.

Draft regulations were published on January 19, 1978, to protect the confidentiality of statistics provided to NOAA. Although the draft regulations have never been finalized, they provided that statistics submitted under a fishery management plan would be safeguarded to ensure their confidentiality. These regulations permit this data to be used for enforcement purposes by providing that it can be disclosed within NOAA on a need-to-know basis. Disclosure of this proprietary information by NOAA employees is prohibited by 18 U.S.C. 1905. We believe that agents need to have access to such data in order to implement an effective enforcement program. The NMFS statistics people, however, have been reluctant to provide this information because they are unwilling to jeopardize the good working relationship they developed with fishermen and processors in order to get these statistics in the past when the fishermen were not required to submit such data.

The agents' inability to obtain catch statistics has prevented effective enforcement. For example, we were told that NMFS agents had never compared the quantity of surf clams offloaded with the amount shown on the weekly report vessel operators must submit because the agents were unable to get these reports. NMFS also had never compared individual vessel reports with the processor's report of the quantity purchased from the vessel.

With assistance from NMFS agents, we gathered catch statistics by observing catch offloadings in Virginia, Maryland, and New Jersey and compared them with the quantities reported by vessels and processors. This comparison showed that many fishermen are underreporting the amount caught or are not reporting at all. For example, of the 14 vessels observed offloading in September, 1978, 3 underreported their catch and 3 did not report anything. The processors underreported the amount purchased from four vessels (including all three vessels that underreported their catch) and did not report any purchases from two vessels.

Because of this underreporting or failure to report, NMFS is using inaccurate catch statistics to determine when the quarterly allocation has been caught and close

the fishery. NMFS enforcement agents have now been given access to the catch reports, but they must drive a considerable distance to review the original reports instead of receiving the data on a regular basis. This has effectively limited their use of the data. In addition, NMFS has not set up procedures or allocated resources to (1) observe offloadings and check the accuracy of reports, (2) compare vessel catch reports with processor purchase reports, or even (3) make sure that the vessels are submitting reports on time.

Another problem arises because NMFS and Coast Guard enforcement personnel have not always received regulation changes in a timely manner. The surf clam plan authorizes the NMFS Regional Director to change allowable fishing hours during a quarter based on the status of the quota being caught. The director is supposed to notify the Coast Guard and NMFS agents before the date of the change; however, we found that Coast Guard and NMFS agents were receiving change notices up to 1 week after the change occurred. Because they did not have the current regulations, personnel from Coast Guard cutters were boarding clam vessels and issuing citations, when in fact the clam vessel was authorized to be fishing. Such errors discredit the enforcement effort.

A similar problem existed in 1978 when the Regional Director granted an extra fishing day to those fishermen whose regular fishing day fell on Independence Day when no processor plants were open to purchase their clams. Groups of these vessels were permitted to use their extra day at different times during July and August. However, Coast Guard and NMFS agents did not receive notification of these changes. As a result, many erroneous citations were issued.

Agency comments and our evaluation

The Commissioner of the Massachusetts Department of Fisheries, Wildlife, and Recreational Vehicles took the position that if statistical reports submitted by the fishermen were used for enforcement purposes, fishermen would either refuse to submit reports or would provide inaccurate information to avoid self-incrimination. He suggested that effective enforcement could be achieved without negating the data's usefulness if simpler regulations, which are not dependent on catch statistics, were adopted.

We believe that use of these reports for enforcement purposes would not only enhance the enforcement effort but would also increase the accuracy of the data being provided. Fishermen do not have the option of refusing to submit the data; both the Atlantic groundfish and the surf clam plans

require them to maintain and submit this data. Any fisherman failing to comply with these regulations would be subject to a penalty. Furthermore, routine comparisons of a sample of observed catches with reported data would provide an indication of the accuracy of the statistical data which does not currently exist. Finally, fishermen would be less likely to submit inaccurate data if they were aware that enforcement agents might be examining their reports and imposing penalties if inaccuracies were discovered.

PENALTY SYSTEM HAS NOT BEEN A DETERRENT TO VIOLATIONS

NMFS' administration of the civil penalty system has not enhanced the effectiveness of the enforcement program because the penalties imposed do not deter violations. Penalties for violations identified and documented have not been assessed and collected in a timely manner. Many cases from 1977 are still pending, and in the few cases that have been settled, the violators paid very small penalties. Increasingly, fishermen are inclined to violate the regulations because the profit to be gained far outweighs the potential penalty if they are caught.

NMFS' processing of penalty cases has been untimely

Even though the civil administrative penalty process is lengthy because of its many steps and the time periods allowed for appeals and hearings, NMFS has not processed the penalty cases as expeditiously as possible. As a result, extensive periods of time have elapsed between the violation and imposition of the penalty. Many cases are still open, and the groundfish and surf clam cases that have been settled were closed when the violators accepted compromise offers made early in the process.

NMFS established a two-step process for administering the penalty system for FCMA violations. NMFS issues a notice of violation which describes the violation and identifies the penalty it is proposing. The respondent then has an opportunity to request relief, dispute the charge, or explain any extenuating circumstances before NMFS actually imposes the penalty with a notice of assessment.

NMFS was very slow to begin processing the paperwork required by the system. For the first violations of the groundfish regulations, which occurred soon after the regulations were implemented in March 1977, NMFS took 6 months to review the cases and send out notices of violation. In

one case, a vessel operator was found to be using illegal fishing gear on May 14, 1977. He did not receive the notice of violation until November 1977. He then filed a petition for relief and received a compromise offer which he paid in July 1978--14 months after the violation took place.

Many cases involving violations during that time period are still open because the violators did not accept the compromise penalty NMFS offered after the notices of violation were issued. For these cases, NMFS moved very slowly and did not issue notices of assessment (the second step in the process) until February 1979. As a result, none of the Atlantic groundfish violation cases have been through the entire administrative process.

The delays in processing penalty cases are partly due to other duties of the NOAA regional counsels who must process the violations and determine penalties. These counsels must also participate in writing fishery regulations, serve as legal advisers to the regional fishery management councils, and handle numerous other NOAA legal matters. No priorities have been established for handling these duties. As a result, long delays have occurred in processing penalty cases.

Inadequate penalties have been imposed on violators

Penalties imposed for groundfish and surf clam violations have been inadequate compared to the seriousness of the violations. While FCMA authorized civil penalties up to \$25,000 per violation and even forfeiture of the vessel and its catch, the fines collected for groundfish violations have generally been less than \$500. For those violations where the vessel harvested excess amounts of fish, the penalties collected have been much smaller than the value of the illegally caught fish. Because of the difficulty of proving violations of the surf clam regulations (see p. 8), the only surf clam penalty collected resulted from a minor logbook discrepancy. Enforcement officials and fishermen have stated that fishermen will not comply with the regulations until either substantial fines are levied or permit suspensions and revocations are imposed.

When the first violations of the groundfish regulations were processed, high penalties were proposed. For fishing without a license or fishing with illegal gear, the proposed penalty was \$2,500; for taking fish in excess of the amount authorized, the proposed penalty was at least twice the value of the excess fish depending on the percentage by

which the quota was exceeded and whether the violator had a history of similar offenses. After receiving numerous protests and petitions for relief, NMFS reevaluated the proposed penalties and offered to settle the cases for as little as 10 percent of the original proposed penalty. A reason for reducing the penalties was to save the time and expense involved in the hearing process. NMFS proposed penalties of \$2,500 for fishing without a license or using illegal gear but offered compromise penalties of \$500. In many cases, the penalties for taking excess fish were reduced to one-half the value of the excess fish.

Even with the low compromise penalties, not all of the violators accepted the offer and paid the penalty. Of the 84 vessels involved in violations from March 1977 through February 1978, only 38 accepted the compromise offer. The remaining cases were still unresolved as of June 1979.

To date, no action has been taken to revoke or suspend a fishing permit. NMFS has yet to pursue a case to determine the extent of its authority in this area even though it agrees that permit sanctions are needed to deter the more serious violations.

NMFS has also encountered difficulties with the FCMA provisions authorizing it to seize the vessel or its catch for certain serious violations. Because it must actually seize the catch instead of just the value of the catch, as it can under other laws such as the Atlantic Tuna Convention Act of 1975 (16 U.S.C. 971), NMFS must actually take custody of the fish and make arrangements to sell them. Because of delays involved in the process and the difficulty of disposing of the fish, NMFS no longer uses this procedure and is attempting to establish procedures to eliminate the difficulties. ✓

Agency comments and our evaluation

NOAA agreed that its civil penalty system has not been an effective disincentive to violators. To strengthen its efforts in this area, a NOAA task force recently recommended that (1) the two-tiered civil penalty process be changed to a one-step process, (2) a formal permit sanction procedure be adopted, and (3) unlawful fish catches or the value thereof be seized as a matter of routine. NOAA indicated that it intends to apply these changes on a national basis. NOAA has also detailed attorneys from other field offices to bring the New England groundfish civil penalty cases to administrative hearings as soon as possible. NOAA reports that these attorneys are actively working on 39 cases, and the first hearings are to be held in August 1979.

NOAA's efforts to bring the existing cases to hearing should increase the enforcement effort's credibility if the cases are successfully prosecuted. When the one-step process is implemented, future cases will be processed more promptly if the necessary resources are provided to do so. While the two-step process was more time consuming, the biggest factor delaying processing of past cases was the fact that extensive periods of time were allowed to pass between the various steps. Permit sanctions and fish seizures are serious penalties and will deter violations. In cases where monetary penalties are imposed, however, we believe action is needed to assure that assessed amounts are large enough to act as a deterrent.

CONCLUSIONS

Enforcement of the Atlantic groundfish and the surf clam fishery regulations has been ineffective because certain regulations require extensive enforcement resources, which have not been available, to provide adequate coverage and because the regulations themselves have been changed frequently and are confusing to both fishermen and enforcement personnel. In addition, effective enforcement cannot be achieved without uniform regulations applying to both the territorial sea and the fishery conservation zone. Such regulations would eliminate the requirement that enforcement agents must prove fish were caught in the fishery conservation zone in order to prove FCMA regulations were violated.

Goals have not been established to evaluate the adequacy of enforcement efforts, and strategies and resources needed to achieve these goals have not been determined. Current enforcement efforts have also been hampered by inadequate coordination within NMFS and between NMFS and the Coast Guard and by inadequate training of Coast Guard personnel.

The existing penalty system has been untimely and has not been a deterrent to illegal fishing. NMFS failure to assess appropriate penalties and its limited success in collecting them has inhibited enforcement efforts and encouraged fishermen to ignore regulations. Processing of penalty cases has been given low priority and, as a result, penalties have not been assessed in a timely manner.

Without effective enforcement, the FCMA goals of conserving and managing U.S. fishery resources cannot be achieved. As shown by our review of these two fishery management plans, effective enforcement is not possible unless (1) the plans and implementing regulations are

designed in a manner which facilitates enforcement by minimizing the resources needed and (2) the appropriate resources are ultimately provided. Unless these two issues are addressed, there is some question whether the remaining 60 plans should be developed and implemented.

RECOMMENDATIONS

While the problems identified during our review pertain to the groundfish and surf clam regulations, similar problems could affect plans for other fish species. Therefore, we recommend that the Secretary of Commerce:

--Require that existing plans and regulations be revised to strengthen enforcement by addressing (1) changing to dockside from at-sea enforcement wherever possible, (2) establishing landing limitations on a trip basis rather than a weekly basis, (3) establishing a single quota for each species regardless of where the catch was taken within the fishery conservation zone, and (4) limiting the number of nets a vessel can carry on board.

--Require that the practicality and feasibility of enforcement strategies and approaches are considered in the approval process for all future plans.

--Encourage States to regulate fishing in territorial waters and take preemptive action when their failure to do this prevents implementation of the Federal fishery management plans.

We also recommend that the Secretary of Commerce direct the National Oceanic and Atmospheric Administration to:

--Develop specific enforcement goals, devise strategies and techniques to achieve these goals, and identify the resources necessary to carry out these strategies.

--Ensure that stiffer penalties are imposed and that collection action is pursued vigorously.

We further recommend that the Secretary of Transportation direct the Commandant of the U.S. Coast Guard to assure that personnel engaged in fishery enforcement receive adequate training, particularly in identifying violations.

CHAPTER 3

FOREIGN FISHERY ENFORCEMENT IS GENERALLY SATISFACTORY BUT CAN BE STRENGTHENED

The number of foreign vessels operating in the fishery conservation zone and the volume of their catches have decreased significantly since implementation of FCMA on March 1, 1977. In addition, catch quantities allocated to foreign vessels are limited to those amounts that cannot be harvested by domestic vessels. As a result, foreign vessels have been allowed to fish for species such as hake, butterfish, mackerel, and squid but have been prohibited from catching species such as cod, haddock, and yellowtail flounder. Domestic landings of cod and haddock have greatly increased since FCMA was implemented. The groundfish management plan's impact on foreign and domestic fishing in New England is discussed in a previous GAO report "The Fishery Conservation and Management Act's Impact on Selected Fisheries" (CED-79-57, Apr. 3, 1979).

Foreign fishing in the fishery conservation zone is being controlled; however, our review of enforcement efforts in the NMFS northeast region identified areas where more can be done to strengthen the enforcement program in the North Atlantic. Under the existing enforcement approach, neither NMFS nor the Coast Guard confirms the accuracy of catch statistics reported by foreign vessels. Such confirmation is needed to ensure that foreign vessels are not exceeding their quotas. Although statistical catch data is compiled by NMFS observers aboard foreign vessels and is readily available, NMFS agents do not use it to check the accuracy of the vessel reports. Other problems that weaken the enforcement effort include high observer turnover, untimely processing of violations identified by observers, and the lack of sufficient training for Coast Guard enforcement personnel in identifying and documenting violation cases. In addition, a more vigorous penalty assessment system is needed for foreign violations.

SYSTEM NEEDED TO ASSURE ACCURACY OF VESSEL REPORTING

Although NMFS observers are stationed aboard foreign vessels and compile catch data, it is not compared with the vessel reports to verify their accuracy.

In the Northwest Atlantic, NMFS observers are assigned to a foreign vessel for periods that range from a few days

to several weeks. During their stay on the vessel, they monitor most of the vessel catches and compile statistics on the weight and composition of the catches observed. This data is summarized for each area in which the vessel fished and is reported to NMFS. During 1978, observers were assigned to 97 of the 110 foreign vessels that fished in the Northwest Atlantic. This represented 88 percent of the vessels fishing in the Northwest Atlantic, but because an observer is not assigned to a vessel for the entire time it is fishing, observers covered only 20 percent of the total fishing days for all foreign vessels.

To test the accuracy of vessel reporting, we selected a sample of 36 vessels and compared the catch reported with that reported by the observer. Although the observers' reports did not always correspond exactly to the timing of the vessel reports--Sunday through Saturday--our analysis indicated that 31 of the 36 vessels underreported either squid, hake, or butterfish. Thirteen of the 31 underreported two or more of these species. If the foreign vessels provide inaccurate reports of their catch when the observers are on the vessel, the problem probably exists when the vessels did not have an observer, but the extent of the underreporting could not be determined.

In isolated cases NMFS has used observer-reported data when a vessel is nearing its total allocation, particularly when a country's vessels are suspected of underreporting their catch. For example, in February 1978, NMFS closed the zone to fishing vessels of one particular country because the observer reports indicated that the squid allocation for that country had been met. This decision was based on observer reports because NMFS suspected vessels of that country were underreporting their catch. NMFS, however, does not routinely compare these reports to determine whether individual foreign vessels are properly reporting their catch, and no penalty has ever been imposed because of this underreporting in the northeast region.

To assure that foreign countries are submitting accurate reports, observer data will have to be collected from a significant number of vessels. As mentioned previously, observers were on foreign vessels only 20 percent of the time these vessels were fishing in the Northwest Atlantic during 1978. Various proposals for the level of observer coverage needed have been discussed, but a final decision has not yet been reached. We believe it would be unnecessary to have an observer on each foreign vessel for the entire time it is fishing in the fishery conservation zone because many countries have a good reputation for submitting accurate data.

Only minimal coverage would be needed for those vessels to make sure they understand the regulations and are continuing to keep accurate statistics. In addition, it would be impractical to employ enough observers to provide this coverage because the number of foreign vessels fishing in the zone fluctuates a great deal during the year. If this were attempted, at certain times a large number of observers would have no work at all. NMFS generally defines 100-percent coverage as having an observer assigned to each vessel at least once during the period when it is fishing in the fishery conservation zone. We believe this would be a minimum requirement with additional coverage provided for those vessels that NMFS suspects of inaccurate reporting or that have a history of violations.

Currently, the observer program is seriously limited by personnel ceilings and budget restrictions imposed on NOAA, even though the observer program's cost must be reimbursed by the foreign country. Further study is needed to determine what level of coverage is needed to (1) gather a sufficient amount of biological data, (2) obtain compliance with the fishing regulations, and (3) determine the accuracy of reports submitted by foreign countries. NOAA should also explore alternatives to see if program constraints can be resolved.

The Coast Guard is also unable to verify the accuracy of vessel catch reports. While the Coast Guard determines if the operator is correctly maintaining a logbook of the catch when it boards a vessel, it cannot verify the accuracy of figures recorded in the logbook because it lacks the expertise to estimate accurately the quantity of each species of fish on board. Gross inaccuracies in the logbook entry must exist before the Coast Guard can identify them during a boarding. For example, in one case the vessel log indicated that 0.2 tons of a particular fish had been caught; the Coast Guard found 19 tons in the hold.

The underreporting we identified by comparing vessel reports with observer reports does not seriously threaten the fish stocks involved because the total reported foreign catch is far less than the total foreign allocation. Therefore, even if the correct amounts had been reported, the allocation still would not have been exceeded. For example, the 1978 squid catch reported by foreign vessels totaled about 27,000 metric tons, only half of the total allocation of 54,000 metric tons. It is, however, a violation of the reporting and recordkeeping regulations that NMFS is allowing to go unpenalized, and it permits foreign countries to underpay their fees for fishing in the fishery zone,

which are based on total metric tons of reported fish catches. In addition, such underreporting could have more significance in the future as the domestic fishing industry's capacity to harvest these species increases and the amount allocated for foreign fishing is reduced.

Agency comments and our evaluation

NOAA, in commenting on our report, stated that it is neither practical nor necessary to determine precisely the amount and species composition of each foreign vessel's catch. It further stated that the allowable level of foreign fishing is established with the knowledge that no one, including foreign fishermen, can precisely estimate the size of the harvest during the fishing process. NOAA believes that a combination of three techniques--analysis of foreign catch reports, catch data compiled by the observers, and onscene logbook audits--can be extremely effective in determining actual foreign catches. NOAA admits, however, that these techniques have not been routinely applied in the NMFS northeast region because foreign fishing in this area has been so tightly controlled that it was not necessary. In fact, in 1977 and 1978 foreign fishermen were unable to harvest a significant quantity of fish allocated to them.

As noted above, we recognize that this underreporting of catches has not seriously affected fish stocks because the total foreign catch was far less than the allocation. As we pointed out, however, NMFS is allowing foreign fishermen to develop a practice of reporting incorrect information which could be a problem in the future if the level of foreign fishing is reduced and precise catch information becomes more important.

ENFORCEMENT CAN BE IMPROVED

Enforcement of foreign fishing regulations is generally carried out by the U.S. Coast Guard through its aircraft and cutter surveillance patrols and boardings of foreign vessels. While observers stationed on foreign vessels have no enforcement authority, they assist in achieving compliance by educating vessel operators in procedures and regulations required by FCMA and notify the Coast Guard when violations occur. The foreign enforcement program has been weakened by

--inexperienced observers resulting from high turnover rates,

--untimely processing of violations identified by observers, and

--lack of expertise of some Coast Guard enforcement personnel.

Observers assigned to foreign vessels in the Northwest Atlantic gather biological and catch data for NMFS scientists and assure that vessels are complying with foreign fishing regulations. They spend about half the year on foreign vessels for periods ranging from a few days to several weeks. The observers' expenses are paid by the country owning the vessel to which they are assigned. Because the number of foreign vessels fishing in the zone fluctuates and NMFS does not have work for observers when they are not assigned to foreign vessels, observers are subject to frequent layoffs. In addition, because the observers are not full-time Federal employees, they are not eligible for benefits such as leave, medical coverage, life insurance, and advancement. The observers told us that all of these factors have caused very low morale and contributed to high turnover. Recently, 7 of the 16 observers quit the program, and several of the remaining 9 observers indicated to us that they are unhappy with the job and may quit soon for the above reasons.

Because it takes several months of experience before newly hired observers become proficient in their job, high turnover diminishes the effectiveness of foreign enforcement efforts. Various proposals to reduce the observer turnover rate include (1) eliminating frequent layoffs by using the observers when they are not assigned to a fishing vessel to supplement the limited number of NMFS agents conducting dockside investigations and to brief inexperienced Coast Guard enforcement personnel on foreign regulations and (2) increasing observer job benefits by classifying them as part-time rather than intermittent employees.

Weaknesses also exist in the observer program in the Northeast Pacific. Observers assigned to foreign vessels in this area primarily gather scientific and statistical data, but they also monitor vessel compliance with foreign regulations. These observers, who are temporary employees hired on a trip-by-trip basis, spend up to 6 months on the vessels. This results in a lack of continuity of personnel and takes away from the expertise that permanent employees would develop.

An additional problem is that observers in the Northwest Atlantic have no enforcement authority and, if they note foreign vessel violations, they must contact the Coast Guard

to board the vessel and write up the violation. The violations identified by observers on foreign vessels in 1978 have included landing prohibited species, fishing in unauthorized areas, and improperly entering catch weight and composition in the vessel logbook. Observers have had difficulty getting the Coast Guard to write up these violations because some foreign vessels have poor quality communications equipment, which makes it difficult for the observer to reach a cutter. Furthermore, cutters are not always available. As noted in the previous chapter, cutters perform other missions, such as search and rescue efforts, which have priority or they may be out of service for repair and overhaul. In addition, when Coast Guard personnel board a foreign vessel in response to a call from an observer they have not always been willing to accept observer-documented problems or use the observer's expertise in identifying violations. For example, observers told us of instances when they had requested Coast Guard boardings because the foreign vessel was fishing too close to fixed-gear areas (such as lobster pots) or was incorrectly logging the catch, but the Coast Guard personnel did not write up the violations because they did not accept the observer's documentation and had not observed the incident themselves.

Violations noted by observers in the Northeast Pacific are not reported immediately to the Coast Guard for action. Instead, they are included in the report the observer submits to NMFS on returning from the vessel, which could be as long as 6 months after the violation.

As noted previously, the Coast Guard boards foreign vessels to make sure that they have a permit, are fishing in an authorized area, are properly logging their catch, and are not catching a prohibited species. Coast Guard personnel conducting these boardings at times have lacked training in fish identification and the fishery regulations necessary for effective enforcement. In several instances, the Coast Guard has either incorrectly written up violations or failed to provide complete information on the violation. For example, the Coast Guard cited an Italian vessel for using an improper net size which was later determined to be legal. In another instance, a violation case was dropped because the Coast Guard's documentation supporting the violation was incomplete.

Agency comments and our evaluation

NOAA commented that it does not believe that observers should be given enforcement authority because it would jeopardize their personal safety and interfere with their

ability to collect statistical data, which requires the crew's aid and cooperation. NOAA disagreed with our conclusion that the observer turnover rate has affected observers' ability to accomplish program goals. NOAA indicated that because this position requires prolonged sea duty, it expects a high turnover rate. NOAA believes the turnover rate in New England has been low, and when a number of the observers recently did quit, activities were not adversely affected because it happened at the beginning of a closed season and NMFS could recruit and train replacements before fishing resumed. It also stated that the high turnover rate in the Pacific has not been a problem because tours at sea in that area are exceptionally long.

Although observers may not need enforcement authority, we believe some action is necessary to ensure that violations are processed in a timely manner. To accomplish this, better procedures are needed for observers to contact the Coast Guard for assistance, to improve the Coast Guard's response to such calls, and to encourage Coast Guard boarding personnel to use observer's expertise in identifying violations. We believe that losing 44 percent of the observers in the northeast region represents a rather high turnover rate and must have affected the enforcement program, since observers themselves told us that it takes several months of on-the-job training before they become proficient at their job.

ADMINISTRATION OF THE PENALTY SYSTEM COULD BE IMPROVED

The same civil administrative penalty system discussed in the section on domestic enforcement also applies to foreign vessels, and the problems in assessing and collecting penalties are compounded by the difficulty of dealing with foreign owners. The foreign system is even more untimely than the domestic system because a notice of violation is sent first to the agent, who represents all vessels of a particular country, who in turn forwards the notice to the vessel owner. This adds 4 to 5 months to an already long process. The agents routinely apply for an extension of the 45-day period allowed for appeal because they are unable to contact the vessel owner for comments on the case within that time period.

NMFS has not processed foreign cases as expeditiously as possible. We reviewed 46 Northwest Atlantic cases where the violation occurred between November 1977 and August 1978. As of March 1, 1979, notices of violations had still not been issued on 5 cases, and NMFS had formally assessed a penalty for only 2 of the 46 cases. By June 1979, the

penalty for only one of these cases had been paid and over 18 months had elapsed between the date the violation occurred and the date the penalty was paid. Generally, NMFS has been successful in collecting fines only when vessels were seized by the Coast Guard for significant violations and the owner must pay the fine in order to get the vessel back. Four such seizures of foreign vessels have occurred in the Northwest Atlantic.

We noted a similar problem for the Northeast Pacific where, although numerous penalties have been assessed for foreign vessels, few have been paid. Of the 32 violations of FCMA in 1978, only 2 penalties have been collected as of March 26, 1979, and 1 of these involved seizure of the vessel.

CONCLUSIONS

Foreign enforcement has resulted in restricting the number and catches of vessels fishing in the fishery conservation zone. Despite this, improvements are needed in enforcement efforts because in the northeast region NMFS has not established a system to assure that foreign vessel reporting is accurate. Observer reports are not fully used to determine whether vessels are underreporting their catches, and as a result, vessels have not been assessed penalties for underreporting. In addition, foreign countries are underpaying the fee they must pay on the fair market value of the reported catch.

Various problems with the observer and Coast Guard boarding programs in the Northwest Atlantic have weakened enforcement efforts, and NMFS' failure to assess and collect penalties in a timely manner has reduced their effectiveness in deterring violations.

Because of the high turnover rate in the Northwest Atlantic observer program and the long period new observers need to develop proficiency, the program's ability to achieve compliance with the regulations is limited. The observer program in the Northeast Pacific is also not as effective as it could be because it relies on temporary, inexperienced personnel. Violations are not quickly or fully investigated because in the Northwest Atlantic observers must depend on the Coast Guard to write up violations they have observed and in the Northeast Pacific observers report violations on their return from the vessel which could be several months after the violation occurred.

Because of inadequate fishery enforcement training, Coast Guard personnel conducting foreign boardings at times have either incorrectly written up vessels for violations or have provided incomplete documentation of a violation.

RECOMMENDATIONS

To improve oversight and enforcement of foreign fishing activity, we recommend that the Secretary of Commerce direct the Administrator, National Oceanic and Atmospheric Administration, to strengthen the foreign fishing enforcement program by:

- Improving the observer program by reducing the turnover rate of the observers so that they can develop proficiency to perform both the biological sampling and the compliance function and by assuring that foreign violations identified by observers are processed in a timely manner.
- Requiring that observer reports be used on a routine basis to verify the catch reported by foreign vessels.
- Assuring that penalties for violations are assessed and collected promptly.

We also recommend that the Secretary of Transportation direct the Commandant of the U.S. Coast Guard to assure that personnel engaged in foreign enforcement receive adequate training in identifying FCMA violations and documenting violation cases.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D C 20230

18 JUL 1979

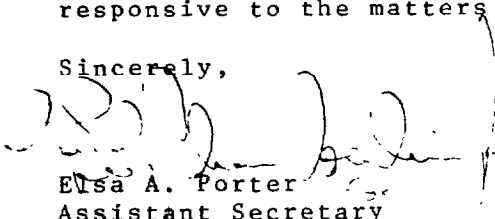
Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of May 21, 1979
requesting comments on the draft report entitled
"Improvements Needed In the Enforcement of the
Fisheries' Conservation and Management Act".

We have reviewed the enclosed comments of the
Associate Administrator, National Oceanic and
Atmospheric Administration and believe they are
responsive to the matters discussed in the report.

Sincerely,


Elsa A. Porter
Assistant Secretary
for Administration

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 Washington, D C 20230

OFFICE OF THE ADMINISTRATOR

JUL 10 1979

Mr. Henry Eschwege
 Director, Community and Economic
 Development Division
 U.S. General Accounting Office
 Room 6146, 441 G Street, N.W.
 Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your letter of May 21, 1979, to Secretary Kreps inviting comments on a draft proposed report entitled "Improvements Needed in the Enforcement of the Fishery Conservation and Management Act." We have the following comments on Chapter 2 of the proposed report, which addresses domestic fishery enforcement:

1. Scope of the Report. The investigative effort by the General Accounting Office (GAO) auditors focused primarily on the enforcement program as it takes place in the Northeast Region of the National Marine Fisheries Service (NMFS). The report, however, leaves the impression that conditions in the Northeast Region as perceived by GAO auditors are similar in the four other NMFS Regions. In fact, the NMFS enforcement program is tailored to accommodate the biological, social, political, historical and economic variables that characterize the fisheries in each region.

New England fisheries, for example, are characterized by a large number of small specialized ports as well as four or five major ports with widely diverse fleets. Particularly in smaller ports, there are a large number of daily fishing trips each representing a separate instance of potential violation. In large ports, where longer fishing trips are more common, detection of violations has been difficult because of complex quota allowances and greater opportunities for hiding illegal fish. In terms of enforcement response, this requires both wide deployment of agents and intensive coverage of separate ports. The effort is labor intensive and must concentrate more on monitoring and surveillance of a large number of activities than on detailed investigations in a few specific instances.



2

The great diversity that occurs in these variables in each fishery creates unique enforcement situations in each region and requires unique enforcement responses. We recommend, therefore, that where appropriate the proposed report clearly indicate that the focus of the GAO audit was NMFS Northeast Region, and that the report's findings are not necessarily applicable to all NMFS Regions.

2. Establishment of Specific Enforcement Goals and Objectives. We agree that it is important to establish specific goals and objectives for enforcement under the various fishery management plans. We have undertaken these efforts, and are about to issue an assessment detailing specific goals and objectives. This will be done on a plan-by-plan basis, with principal emphasis on the number of enforcement contacts per vessel per year which we believe will represent effective enforcement for each fishery management plan.

We prefer the number of "enforcement contacts" as a specific enforcement goal because we believe it best measures enforcement output. Some NMFS regions have used this system to plan deployment of existing resources. We do not believe that it is possible with respect to domestic fishing to establish a goal for fishery enforcement expressed in terms of a percentage of the total number of violations which take place, because there is no reliable way to determine the number of violations which are actually taking place. Unless actually detected, a fishery violation is not evidenced in any way.

It is true that counting enforcement contacts does not of itself measure the effectiveness of the enforcement activity. However, the state of the art in quantitative enforcement measurements does not currently provide a mechanism for adequately determining how much enforcement is enough. The implicit, as opposed to specific, goal of enforcement is to insure attainment of the conservation and management objectives of each FMP. Beyond that, we do not believe that qualitative measurement is possible.

3

3. Contents of Fishery Regulations. The report notes that Atlantic Groundfish and Surf Clam fishery regulations have been difficult or impractical to enforce; that this has contributed to ineffective enforcement. We agree that these regulations have proved difficult to enforce. The regulations themselves are formalizations of conservation and management measures included in fishery management plans by the Regional Fishery Management Councils. Many of the enforcement problems associated with the regulations are related to the complex nature of the conservation and management measures which they implement. The Council and NMFS have been attempting recently to simplify these measures so they can be enforced more easily. This will clearly be a factor in any future FMP approval decision by NMFS.

4. Transfer of Agents in Response to Area Problem. The proposed report notes that NMFS continues to respond to problems as they arise by transferring agents from one geographical area to another, and states that this practice interferes with agent ability to provide coverage in their original areas of responsibility. We believe this is a sound way of dealing with situations which are temporary in nature. The alternative approach is to hire a permanent staff for each NMFS Region that would have the ability to respond to the worst possible situation. That would leave NMFS with a staff of underemployed agents during much of the year.

5. Allotment of Agent Time. The proposed report notes that agents are not given "any guidance on what would be the most productive use of their time such as to what degree the agents should concentrate their investigations on processors rather than the individual vessels, where agents should be located, and what intelligence information is needed for effective enforcement." Most NMFS agents are deployed in one or two person field stations located in major fishing ports that are frequently far removed from the Regional offices. Agents thus become the best source of intelligence information on activity taking place within their own geographical location, and they should be in the best position to determine how to allot their time in successfully concluding any particular investigation. However, we would agree that more training would help field agents to better determine for themselves the most productive way to use their time.

4

6. Administrative Tasks Performed by Agents. The proposed report notes that "agents often spend considerable time typing reports rather than carrying out investigations. For example, one agent estimated that about 10 percent of his time from September 1977 through August 1978 was spent typing investigative reports." As noted, most NMFS agents are deployed in one-or two-person field stations. The administrative chores at such stations do not justify assignment of a secretary. Sending drafts into a central location for typing, then correcting the typescript, and finally submitting the report, would consume more agent time than if they type the reports themselves. Further, we do not believe devoting 10 percent of an agent's time for the completion of investigative reports is unreasonable.

7. Penalties as a Deterrent to Violations. We agree that our civil penalty prosecution system has not been an optimally effective disincentive to violation. NOAA has recently taken a number of steps to address this problem. The NOAA General Counsel has formed a Northeast Enforcement Task Group, with two sub-groups. The first of these has addressed various policy issues with the goal of adopting new approaches to processing violations which will help in using our prosecutorial resources more effectively. Specific recommendations include changing the two-tiered system for processing civil penalty violations to a one-step process; adopting a formalized permit sanction procedure; and seizing unlawful fish or the value thereof as a matter of routine. These changes will be applied on a national basis through rulemaking.

The other sub-group has been charged with bringing New England groundfish civil penalty cases to administrative hearing as soon as possible, using attorneys on detail from other field offices of NOAA GC, as well as our GC office in Gloucester. Currently, this sub-group is actively working on thirty-nine cases; and the first hearings are scheduled for the week of August 6. The purpose is to increase the credibility of our enforcement efforts in New England by successfully prosecuting cases.

We continue to believe that civil penalties are most useful in enforcing the FCMA. The actions of the Northeast Enforcement Task Group should strengthen our efforts in this area.

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The following comments concern Chapter 3 of the proposed report, which addresses foreign fishery enforcement:

1. Scope of the Report - Again, the proposed report appears to draw conclusions about the entire national foreign fishery enforcement program based on an audit that focused principally on foreign fishery enforcement off New England. There are, however, significant differences among the foreign fisheries enforcement programs conducted off the several coastal regions of the United States, and we believe it is ill advised to draw conclusions about all based on an examination of one.

2. Accuracy of Catch Statistics - Determining the amount of fish harvested by foreign fishermen has been, and will continue to be, a difficult task. In 1978, more than 2 million metric tons of fish were allocated for foreign harvest, and 692 vessels were licensed to harvest this allocation. To determine precisely the amount and species composition of the catch of each foreign vessel as it harvests fish is neither practical nor necessary for sound fishery management. Rather, each FMP establishes the Total Allowable Level of Foreign Fishing (TALFF) for each fishery based on the best scientific information available. TALFF's are prudent estimates of the foreign fishing pressure that target and associated species can sustain, and they are established with the knowledge that no one, including foreign fishermen, can precisely estimate the size of the harvest during the fishing process. Once TALFF's are established, NMFS uses a combination of methods to insure that foreign allocations are not exceeded. The methods used are as follows:

A. Foreign catch reports can be assessed for accuracy. Based upon experience, NMFS specialists can detect significant errors in foreign reports of catches by comparing the amount of effort expended with the quantity of catch reported.

B. Catch data collected by U.S. observers stationed aboard foreign vessels are used to verify the total foreign catch in a given fishery.

C. Logbook audits by on-scene enforcement personnel can and do detect fallacious entries.

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None of techniques described above can accurately determine foreign catches if used independently. However, when used in concert, we believe they are extremely effective in determining actual foreign catches. If the above combination of techniques is not applied routinely, as it has not been in the NMFS Northeast Region, it is because there was no need to do so. Foreign fishing off New England was so tightly controlled during 1977 and 1978 that foreign fishermen were unable to harvest a significant quantity of fish allocated to them.

3. Observer Program - We do not believe any useful purpose would be served by investing observers with enforcement authority. If observers were asked to take overt enforcement action, foreign fishermen could be alienated to such a degree that it would be impossible for observers to accomplish their data collection duties, which involve enlisting the aid and cooperation of the crew. Further, were observers to function in a law enforcement mode while isolated at sea aboard foreign fishing vessels, we believe that their personal safety would be jeopardized.

Secondly, with respect to observer turnover, we expected that a high turnover rate would be inevitable with positions that required prolonged sea duty. However, in New England, the turnover rate has been low. And when a number of observers did voluntarily terminate their employment recently, they did so at the beginning of a closed season, and observer activities were not adversely affected while replacements were recruited and appropriately trained. Where we have experienced turnover, it has not been a problem because of the nature of the specific activities (e.g., observers in the Pacific, whose tours at sea are in any event exceptionally long.) Therefore, we disagree with the assertion in the proposed report that the turnover rate among observers significantly affects our ability to accomplish program goals.

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Thank you for the opportunity to review the proposed report. We hope our comments will be helpful and look forward to the final report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "G. S. Benton".

George S. Benton
Associate Administrator



REXDE'S GULLION
COMMISSIONER

Steve T. Chmura

The Commonwealth of Massachusetts
Department of Fisheries, Wildlife and Recreational Vehicles
100 Cambridge Street
Boston, Massachusetts 02108

June 18, 1979

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C.

Dear Mr. Eschwege:

Your correspondence has been referred to my office. We thank you for the opportunity to review the draft report, "Improvements Needed in the Enforcement of the Fishery and Conservation and Management Act". The Commonwealth is also very concerned over enforcement of both state and federal regulations. We believe ineffective enforcement and unrealistic, complex regulations are the prime cause of management problems to date. We are also very concerned over the failure of other states to implement appropriate regulations for their waters.

Overall, we would say that the draft aptly reviews the management/enforcement problems which have existed since the inception of the FCMA. A few points might also have been noted, however. For example, the Councils strive to implement the best management plans possible. This involves attempts to comply with National Standards of the Act; i.e., to provide equity for all affected by the plans' management measures. In doing so, regulations necessarily become complex and ultimately unenforceable. When the Council considers simplistic, enforceable regulations, they are reminded that equity must be ensured. This sort of Catch 22 situation leads to frustration for all concerned, a deterioration of public confidence in the system, a hindrance of future plan development, and a failure of states to adopt "consistent" regulations.

The draft recommends to the Secretary of Commerce that she act to ensure revision of plans to include vessel trip quotas or limitations which are enforceable. We concur that this is a better way to ensure adequate enforcement. Not coincidentally, the Commonwealth's Division of Marine Fisheries in conjunction with our Marine Fisheries Advisory Commission with public input implemented regulations for the taking of cod, haddock, and yellowtail flounder (attached) on that basis. We knew that

-2-

the Council Groundfish Plan did not provide for effective enforcement and not seeking to adopt the same problems for our state law enforcement agency, we opted to depart from the Council plan to adopt different but enforceable regulations. It is nonsensical to adopt "consistent" regulations in territorial waters if those measures are deemed inappropriate by our Division of Marine Fisheries, Commission, and advisors. In fact, the Council plan with federally implemented regulations is hindering the effectiveness of our state enforcement. We advise that the Secretary of Commerce take appropriate action to encourage the Council to implement groundfish regulations for the FCZ consistent with the philosophy of Massachusetts groundfish regulations.

We are not so naive as to believe that development of regulations for the New England groundfish fisheries is an easy task. The Division has been involved with Council Groundfish Oversight Committee meetings and development of the Plan since mid 1977 when the first problems arose. It has also struggled with means to provide equity in the complex groundfish fishery and effective enforcement while complying with the National Standards. We do not believe that any organization or state or federal agency could have devised a more workable plan with equity. As long as the Councils are constrained to work within optimum yields, equity must always be a factor.

We disagree with a generalization made on page 18, specifically, "NMFS agents also have not received cooperation from other Federal, State, or local enforcement agencies". Our state law enforcement agency has been and continues to be cooperative to the extent that it can. As with NMFS, our law enforcement agency has manpower and monetary constraints.

While we fully appreciate increased ease of enforcement with interchange of data between the statistical and enforcement branch of NMFS (pp. 20-21), we must stress that in practice the interchange would prove more damaging than beneficial. For example, logbooks are viewed as a key to attainment of better information on what is occurring in the various fisheries and are expected to enable better assessments of the status of various fish stocks; hence, more realistic and reasonably accurate total allowable catches. If fishermen feel that logbooks will be used by NMFS law enforcement, they will refuse to fill out or will inaccurately report actual species catch and location of that catch to avoid self-incrimination. This behavior will negate the logbook's usefulness. "The agents inability to obtain catch statistics has prevented effective enforcement", points out the need to adopt more simplistic regulations which are not dependent solely on catch statistics.

With regard to recommendations to the Secretary of Commerce, we suggest the following additions. First, instruct the NMFS enforcement branch to provide timely guidance to the Councils

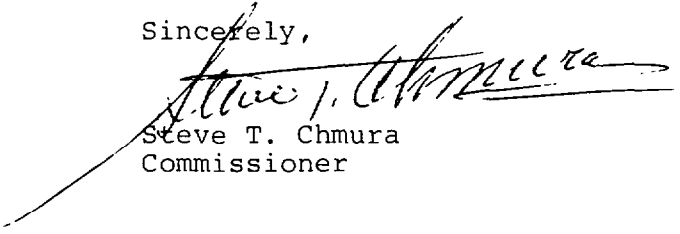
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as to whether proposed regulations are enforceable. To our knowledge this has not been done in the past until way after-the-fact. Good advice would prevent unenforceable regulations from getting into the formal review process. If regulations are deemed unenforceable during the review process, significant modifications in the basic framework of the plan(s) would be necessary. Why wait until the review process before scuttling poor planning or ill-advised actions?

A revision is suggested for the third recommendation. It might read, "encourage states to implement regulations for territorial seas consistent with Council management plans, which provide for effective enforcement, and consider taking".

Again, we thank you for the opportunity to comment. We sincerely hope that the issue of law enforcement can be resolved. Be assured that Massachusetts is aware of its obligation under the Act and is willing to cooperate for the sake of "consistency" when that "consistency" is warranted.

Sincerely,



Steve T. Chmura
Commissioner

Attachment

GAO note: Page references in this appendix refer to our draft report and may not agree with pages in this report.



HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

June 6, 1979

Mr. Henry Eschwege, Director
Community and Economic Development Division
U. S. General Accounting Office
Washington, D. C. 20548

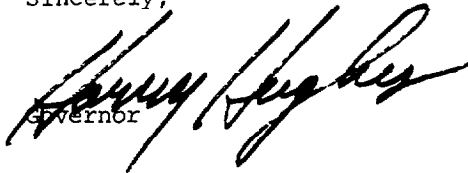
Dear Mr. Eschwege:

Thank you for giving Maryland the opportunity to review Chapters 1 and 2 of the draft report "Improvements Needed in the Enforcement of the Fishery Conservation and Management Act." I have two general comments.

First, Maryland's regulations governing the activities of its 63 surf clambers are in mesh with Federal regulations. State fisheries and marine police officials inform me they have encountered no significant enforcement problems.

Second, it is my understanding that the Mid-Atlantic Fishery Management Council is working to assuage a number of problems associated with the surf clam and ocean quahog fisheries such as catch quotas, permissible fishing hours, dredging equipment and minimum size limits.

Maryland is very much interested in your report and I look forward to seeing future chapters.

Sincerely,

Governor



ASSISTANT SECRETARY
FOR ADMINISTRATION

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

Aug. 17, 1979

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Improvements Needed In The Enforcement Of The Fishery Conservation And Management Act."

If we can further assist you, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward W. Scott, Jr.", is written over the typed name.

Edward W. Scott, Jr.

Enclosures

DEPARTMENT OF TRANSPORTATION
STATEMENT ON GAO REPORT

I. **TITLE:** Improvements needed in the enforcement of the Fishery Conservation and Management Act (DRAFT - undated).

II. **GAO FINDINGS AND RECOMMENDATIONS:** The principal GAO draft report findings, conclusions and recommendations involving the Coast Guard are as follows:

DOMESTIC ENFORCEMENT

a. The regulations are difficult or impractical to enforce because:

- (1) extensive resources are needed to document violations, and
- (2) they are confusing; frequent revisions exacerbate this problem.

b. Specific enforcement goals need to be developed to measure the effectiveness of enforcement activities and determine the resources needed.

c. Enforcement has been sporadic and done on an ad hoc basis.

d. Coordination problems between NMFS and the Coast Guard have hampered enforcement efforts.

e. The Coast Guard has been unable to verify Surf Clam/Ocean Quahog domestic fishery violations which usually occur at night when Coast Guard vessels and aircraft are generally not in operation.

f. Because only eight of the estimated 70 management plans have been implemented, existing enforcement resources will be spread even thinner and their effectiveness will be further diluted when the remainder of the plans come into force.

g. Enforcement has suffered because many Coast Guard personnel are not trained in fish identification, do not know FCMA laws, and do not know how to conduct fishery boardings.

h. The experienced staff that have gotten on-the-job training and experience do not always remain in the enforcement area because of the Coast Guard's rotation policy and lack of a specialized law enforcement job classification.

i. It is recommended that the Secretary of Transportation direct the Commandant of the Coast Guard to assure that personnel engaged in fishery enforcement receive adequate training, particularly in identifying FCMA violations.

FOREIGN ENFORCEMENT

- a. The Coast Guard is not able to verify the accuracy of figures recorded in foreign fishing vessel logbooks because they do not have the expertise to accurately estimate the quantity of each species of fish on board; there must be gross inaccuracies in logbook entries before the Coast Guard can identify them during a boarding.
- b. When Coast Guard personnel board a foreign vessel in response to a call from an observer, they have not always been willing to accept observer documented problems or use the observer's expertise in identifying violations.
- c. Coast Guard personnel have either incorrectly written up violations or failed to provide complete information on documentation supporting Reports of Violation causing cases to be dropped.
- d. It is recommended that the Secretary of Transportation direct the Commandant of the U.S. Coast Guard to assure that personnel engaged in foreign fisheries enforcement receive adequate training particularly in identifying FCMA violations and in documenting violation cases.

III. DOT COMMENTS ON FINDINGS AND RECOMMENDATIONS: The Department of Transportation reserves judgment on the GAO findings concerning the Coast Guard's impending lack of resources to provide adequate enforcement coverage as more of the 70 fishery management plans become effective. The adequacy of enforcement activities should be assessed in terms of the overall effectiveness of the fisheries management program, and the extent to which its objectives are being met through voluntary compliance with the regulations. Moreover since the GAO finds the present management plan regulations "difficult and impractical to enforce," additional resources are not necessarily a solution. It should be noted that these regulations are not being developed with any consideration for available resources as a constraint. Goals and standards for domestic fisheries enforcement are being developed. The Coast Guard is analyzing the resource requirements of all mission areas and total ship resource requirements will be identified and the Cutter Plan updated accordingly.

DOT recognizes that the regulatory language of several of the implemented fishery management plans makes enforcement at-sea appear difficult. Although the National Marine Fisheries Service (NMFS) is tasked with drafting the regulations, the Coast Guard does evaluate each set for enforceability prior to promulgation. The regulations, many times, are limited in scope due to the contents of the management plans developed by Regional Fishery Management Councils. If the plan contains enforcement loopholes, the regulations can be only marginally enforceable at best. It is often a laborious task to persuade the cognizant Council that a plan needs to be amended in order to close such loopholes. Further, it should be understood that the Department, through the Coast Guard, participates as a nonvoting member on the Council and only acts as an advisor.

III. DOT COMMENTS ON FINDINGS AND RECOMMENDATIONS (con't)

DOT acknowledges the need for improved coordination between Coast Guard and NMFS on matters concerning regulations drafting and rapid dissemination of changes to the regulations that become effective with short or no advance notice. Beyond this, however, coordination between Coast Guard and NMFS at both the headquarters and field levels is deemed effective. Information is exchanged concerning patrol schedules, enforcement problems, violation processing results, etc. Coast Guard participates with NMFS in use of the computer-based fisheries enforcement management information system (EMIS). Moreover, both agencies continue to pursue their respective responsibilities in a spirit of cooperation which engenders effective coordination.

With regard to the Surf Clam/Ocean Quahog domestic fishery enforcement scheme, DOT agrees that detecting nighttime violations is difficult. Since the fishery is near shore and co-exists with a state fishery inside three miles, the Coast Guard's smaller cutters and boats are generally used to enforce the regulations of this federal fishery. Detection of a violation at night is virtually impossible because use of the current generation of night vision devices is restricted to the Coast Guard's larger cutters due to equipment size and platform motion considerations. However, the Coast Guard will place additional emphasis on its continuing efforts to increase the level and effectiveness of domestic fishery patrol efforts at night.

DOT acknowledges that the Coast Guard's increased involvement in maritime law enforcement, particularly in fisheries enforcement, has generated an increased demand for basic law enforcement training. With regard to certain specialized areas of fisheries law enforcement such as fish identification, knowledge of specific regulations, conducting boardings, recognition of violations, estimating catch by species onboard and case documentation, the Department concurs that additional field level training is needed.

The Coast Guard has recently conducted a thorough evaluation of the need for a specialized law enforcement job classification. The analysis indicated that due to the benefits of multimission utilization of Coast Guard personnel, proper law enforcement training of the present mix of specialized personnel on board our operating units was more cost effective than establishment of a special law enforcement rating. The operational commanders and program managers are in the process of proposing additional requirements for law enforcement expertise and skills to be included in advancement criteria for personnel in existing ratings or job classifications which perform law enforcement.

III. DOT COMMENTS ON FINDINGS AND RECOMMENDATIONS (con't)

DOT does not concur with the opening sentence contained in the "Cover Summary" which in generalized form, states that the regulations developed under the FCMA are not being enforced effectively. Although enforcement efforts have been hampered due to the regulatory language governing domestic enforcement, analysis of foreign fisheries enforcement results show a steady decline in foreign violations. The decline in the number of violations detected per constant unit of enforcement effort indicates that enforcement of the regulations has been effective.

DOT does not concur that Coast Guard domestic fisheries enforcement has been sporadic and done on an ad hoc basis. District Commanders coordinate domestic fisheries enforcement efforts within their geographic areas. Enforcement patrol efforts by cutters and boats are scheduled. In addition, cutters and boats are also made available on a response basis to investigate reports of illegal activity received from informants and to react to other forms of intelligence.

The Department does not concur with the finding that the Coast Guard does not confirm the accuracy of catch statistics that are reported by foreign vessels. As a matter of boarding procedure, the boarding officers do attempt to quantify, by the best means available, the amount of catch on board. Of the 17 foreign vessels seized for FCMA violations to date, three were seized on the evidence established by the boarding party that the catch on board versus catch logged did not correlate.

DOT does not concur with the GAO finding that the Coast Guard does not always use the observers' expertise to identify violations. Several Reports of Violation and two seizures of offending vessels have been the result of observer-to-Coast Guard initiated communications. In an effort to not compromise the observer's safety or status on board a foreign vessel, the Coast Guard does sometimes convey the impression of not utilizing the observer's expertise for law enforcement action.

The Department takes exception to the draft report in that the findings are the result of investigation into one geographic area vice a broad sampling of all the fishery conservation zone areas. The findings concerning problems with fishery management plans and implementing regulations in one area, and of problems identified on one or a few Coast Guard units operating in that area, should not be construed as being indicative of activities occurring in all areas and on all units. DOT concurs on almost all of the specific problems identified, but suggests that those specifics be identified as such and not generalized as being findings which exist throughout the Coast Guard fisheries law enforcement program.

IV. STATUS OF CORRECTIVE ACTION: A contract is being let for a study which will provide a revised model for the Coast Guard's fisheries law enforcement program. The model will be used to analytically determine resource levels necessary to accomplish realistic long range enforcement goals. Each fishery management plan presently implemented, or planned to be implemented in the future, will be analyzed to determine the best mix of resources to effectively check for compliance with the regulations. Currently, a joint Coast Guard/NMFS study is in the final draft stage. It addresses fisheries law enforcement needs on a regional basis, establishing domestic fisheries enforcement requirements and updating the requirements for foreign fisheries law enforcement under the FCMA. Additionally, it includes an assessment of enforcement needs for other applicable non-FCMA fisheries treaties and laws.

A Master Law Enforcement Training Plan which outlines the overall training goals for the Enforcement of Laws and Treaties (ELT) Program has been developed.

Guidance for personnel conducting boardings in support of the ELT mission is being incorporated in the new law enforcement manual. This manual will be promulgated to the field units by the end of FY 1979.

The Coast Guard has initiated action to increase the annual output of its five week Maritime Law Enforcement (MLE) Basic Course from 168 to 600 students and its one week MLE Senior Officer Course from 35 to 70 students. These increases should become effective during FY 1980.

The Coast Guard has initiated action to update and expand the fisheries law enforcement material taught by the Area readiness training teams. Additional emphasis is being placed on boarding procedures, regulations interpretation and species identification.

The Coast Guard's Permanent Rating Review Board, consisting of representatives from each Coast Guard program manager, will review proposals for short and long term resolution of law enforcement training requirements and qualification codes.

Cooperation and use of the consultative process between the Coast Guard and NMFS continues to increase. Both agencies are extremely aware that joint review of impending fishery management plans is important to insure enforceability. The lines of communication between field level and headquarters counterparts will continue to be a vital link in enhancing the effectiveness of fisheries law enforcement under the FCMA and other related laws.

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