

U.S. DEPARTMENT OF COMMERCE

+ + + + +

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

+ + + + +

MARINE FISHERIES ADVISORY COMMITTEE

+ + + + +

WEDNESDAY,
OCTOBER 20, 2010

+ + + + +

The Marine Fisheries Advisory
Committee met at Historic Inns of Annapolis-
Maryland House, 6 Church Circle, Annapolis,
Maryland, Tom Billy, Chair, presiding.

MEMBERS PRESENT:

- TOM BILLY, Chair
- HEATHER D. McCARTY, Vice Chair
- TERRY ALEXANDER
- RANDY CATES
- ANTHONY CHATWIN
- PAUL CLAMPITT
- PAMELLA J. DANA
- BILL DEWEY
- PATRICIA DOERR
- MARTIN FISHER
- CATHERINE L. FOY
- KEN FRANKE

- STEVE JONER
- GEORGE C. NARDI
- TOM RAFTICAN
- KEITH RIZZARDI
- DAVID H. WALLACE

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

CONSULTANTS TO MAFAC:

RANDY FISHER
JOHN V. O'SHEA

STAFF PRESENT:

MARK HOLLIDAY, Designated Federal Official
HEIDI LOVETT
KARI MACLAUHLIN
KAREN ABRAMS
STEPHEN BROWN
LAUREL BRYANT
TIM DONOVAN
JAMES LECKY
MONICA MEDINA
KATE NAUGHTEN
SAM RAUCH
ALAN RISENHOOVER
ERIC SCHWAAB

ALSO PRESENT:

STEVE ALEXANDER
MACKENZIE HUFFMAN
BRUCE TACKETT

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

A G E N D A

	<u>Page</u>
Report from NOAA - Monica Medina, Principal Deputy Undersecretary, NOAA	4
National Ocean Policy and Coastal and Marine Spatial Planning (CMSP) - Sam Rauch	110
NOAA Law Enforcement Update and Compliance Assistance Program - Alan Risenhoover, Tim Donovan	162
Marine Habitats Assessments/HAIP - Stephen Brown	234
Critical Habitat Designation Process for Endangered Species - Jim Lecky	281
Public Comment	307
Chair Nomination Process - Mark Holliday	307
Subcommittee Meetings Commerce - Steve Joner	354
Adjourn	

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

P R O C E E D I N G S

8:53 a.m.

Report from NOAA

CHAIR BILLY: Okay. I'd like to call the meeting to order. It's our pleasure this morning to have Monica Medina, the principal Deputy Undersecretary for NOAA, who is going to share with us sort of an update, a report on what's going on in NOAA and in particular hopefully the response from the agency to some of the recommendations and suggestions that we've made. So without further ado -

DR. HOLLIDAY: It might be nice to give a quick round of introductions around the table.

CHAIR BILLY: Oh, okay. Yes, yes.

MS. MEDINA: That would be great. I know was I here -- well, I was at your meeting a year ago in Silver Spring, so it's nice to be back with you. But if you don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mind, I would love to have introductions again
2 just so I can place everybody. I think I know
3 a lot of you, but not everyone.

4 CHAIR BILLY: Okay, I'll start.
5 Tom Billy, the chairman and a consultant,
6 retired from government. Government career 38
7 years, primarily in food safety.

8 MS. MEDINA: Boy, we could use your
9 help right now.

10 CHAIR BILLY: You've been getting
11 it through FDA.

12 MS. MEDINA: That's great, because
13 we've been working closely with them.

14 VICE CHAIR McCARTY: I'm Heather
15 McCarty. I work with National Marine
16 Fisheries Service on fisheries research.

17 MR. DONOVAN: I'm Tim Donovan. I'm
18 the acting special agent in charge of
19 investigations.

20 MR. RISENHOOVER: Alan Risenhoover,
21 the acting Director for Law Enforcement.

22 DR. CHATWIN: Tony Chatwin with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NFWF [National Fish and Wildlife Foundation].

2 MR. RIZZARDI: Keith Rizzardi. I'm
3 an environment lawyer from Florida.

4 MR. ALEXANDER: Terry Alexander,
5 National --.

6 MR. O'SHEA: Good morning, Monica.
7 Vice O'Shea, Atlantic States Commission.

8 MR. WALLACE: Dave Wallace. I'm
9 from a consulting firm and I represent
10 commercial fishing on the East Coast.

11 MS. LOVETT: Heidi Lovett.

12 MS. MACLAUHLIN: Kari MacLauchlin.

13 MR. FRANKE: Ken Franke, Sword
14 Fishing Association in California.

15 MR. FISHER: Randy Fisher, owner,
16 Rising Sun Fisheries in St. Petersburg,
17 Florida.

18 MR. RAFTICAN: Tom Raftican, Sport
19 Fishing Conservancy.

20 MR. CATES: Randy Cates from
21 Hawaii. I'm in commercial fishing.

22 MS. FOY: I'm Cathy Foy. I'm the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 project manager for the Stellar Sea Lion
2 project up in Alaska.

3 MR. FISHER: Good morning, Monica.
4 Martin Fisher from Florida, commercial
5 fishing.

6 MR. NARDI: George Nardi from
7 Portsmouth, New Hampshire, with the Marine
8 Fish Hatcheries and with Maine for farm
9 aquaculture.

10 MR. CLAMPITT: My name's Paul
11 Clampitt. I'm a member of F/V Augustine.

12 MS. MEDINA: Whereabouts?

13 MR. CLAMPITT: In Seattle.

14 DR. DANA: I'm Pam Dana. I'm a
15 charter fishing boat owner from Florida.

16 MR. JONER: I'm Steve Joner from
17 Washington, the state. I work for the Makah
18 tribe of Washington in fisheries management.

19 (Off microphone introductions.)

20 MS. MEDINA: Okay. Well, it's
21 really nice to be with you this morning, and I
22 apologize for being late. I really went to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the other end and stood there for about ten
2 minutes, and kept asking someone there
3 "Where's the Duke of Gloucester Room," and
4 they kept saying "we don't know."

5 So luckily I found you, and I'm
6 very glad to be here. I really want to start
7 out by sending my, sending the -- conveying to
8 you the greetings and good wishes from Dr.
9 Lubchenco, who I know can't be everywhere at
10 once.

11 I think we wish we could clone her,
12 because she has such a tremendous travel
13 schedule and even so, we can't get her to all
14 the places that we think, you know, would --
15 really all the people who'd really like to
16 talk to her.

17 So I'm happy to be her stand-in
18 here today, but really when it comes to the
19 fisheries issues, Eric and I work pretty
20 closely together on them on her behalf. So
21 when you have Eric and me in the room, you
22 pretty much have what you need in terms of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 folks who can help you make things happen.

2 I want to take a step back and just
3 say it's been a very busy year since we were
4 here last year. We have been working very
5 hard on particular fishery management plans
6 all around the country, on our catch share
7 policy.

8 We were lucky enough to have Eric
9 join us, which was a great help midway through
10 the year, and we were doing I think pretty
11 well and then this thing happened in the Gulf
12 of Mexico, and it diverted an awful lot of
13 time and attention and energy from everyone in
14 NOAA leadership.

15 We managed to continue to keep
16 things going on all the things we do on a
17 daily basis, but we had in addition this other
18 huge issue that we had to deal with, and it
19 was an emergency. We had to respond. We had
20 fisheries implications that were huge, as you
21 all know.

22 But even across the agency, from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our weather forecast offices in the region
2 that had to come up with spot forecasts on a
3 daily basis, so that we could figure out where
4 to put the boom, where to send the responders
5 to our offices in the National Ocean Service
6 that deal with how to figure out where the
7 oil's going to go, and who mapped that out and
8 gave daily trajectory forecasts, to Dr.
9 Lubchenco herself who made ten trips to the
10 Gulf in three months.

11 We were, I would say as agency,
12 about as extended as we possibly could. We
13 had more than 100 people who hit their pay
14 ceiling.

15 We had pay caps, you know, that
16 basically -- you can't make people work a
17 whole year and a half in a year's time, and
18 there's hourly caps, and we had a number of
19 people, not just a few, who worked so many
20 hours that they were up against their pay caps
21 and we're working to try and solve that
22 problem so that those people get compensated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for the vast amounts of overtime that they
2 worked.

3 That's not to say that we didn't
4 need to do it or that, you know, we deserve
5 anything other than just, you know, "That's
6 your job", because it is our job to deal with
7 crises when they happen.

8 But it did, I think, create an
9 awful lot of work for us that made it hard for
10 us to focus on some of the things that we had
11 really wanted to be focused on earlier in the
12 year. At the same time, we did learn a lot
13 and we got to do an awful lot of outreach in
14 the Gulf of Mexico.

15 I know, Pam, you're here from
16 Florida. There's another person from Florida
17 or two, and I would be really curious about,
18 you know, to hear your thoughts about, you
19 know, how it seems from the regulated
20 community's point of view, from the fishing
21 community's point of view.

22 Did we communicate well? I think,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, we have a lot that we can learn from
2 this. We worked very hard. We did the best
3 we could. I'm sure that there are things that
4 we could do differently that might be better,
5 and if you could help us with that feedback,
6 that would be great.

7 DR. DANA: Well, in our community
8 it happened. We were right there in the
9 Panhandle.

10 MS. MEDINA: In the thick of it.

11 DR. DANA: Also it was more of -- we
12 had oil come ashore and also a lot of
13 pollution stuff that was about four miles off.

14 I thought NOAA did a fine job, you know, in
15 just the way it handled it.

16 I think the real problems are with
17 the fleet, and just in the way that they
18 communicated and dealt with the community and
19 it became very clear, obvious to us, that they
20 really weren't there for our best interest,
21 you know.

22 They were becoming a management

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue. Even the Coast Guard really had no
2 involvement. As soon as they had that
3 temporary cap, they were gone. Like it was
4 amazing how quickly they just disappeared from
5 the community. So from my perspective, I
6 thought you guys handled this as well as you
7 could, and so that is big.

8 MS. MEDINA: It will continue to
9 be.

10 DR. DANA: Yes. Our tourism, which
11 is the mainstay for us, hit rock bottom, I
12 mean rock bottom, and still I think it's going
13 to take --.

14 MS. MEDINA: It's so sad. I love
15 that part of Florida. I grew up going to the
16 beach there as a kid. So you're still feeling
17 the impacts?

18 DR. DANA: Oh yeah, and our tourism
19 commission has done some strategic targeted
20 marketing, to try to help spur some activity
21 in the fall, and again in the spring, which
22 we're going to feel the impact for the spring.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We appreciate it, but there really
2 is a super, super bad perception out there
3 around the United States that the seafood is
4 not safe. Martin can speak to that.

5 You know, it's nothing but time and
6 good marketing and better media messages.

7 MS. MEDINA: I hear you, and we are
8 working so hard to try and fight that
9 misperception that the seafood isn't safe to
10 eat, and we've been trying to communicate, you
11 know, why we closed fisheries and why we
12 thought that would be both precautionary and
13 would help people to have confidence once we
14 reopened, you know.

15 I think if we let it go, there
16 would have been a lot of distrust. We've
17 tried to be very careful and cautious. We
18 were careful in the way that we closed and
19 we're careful in the way that we're reopening.

20 But even so, it's hard to get past that
21 picture of the oil coming out of the pipe for
22 days on end.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. DANA: I thought we had this
2 discussion at the last meeting. There was the
3 widespread thought that NOAA was not going to
4 open some of the waters for years, because
5 that would be -- that will be the opportunity
6 that NOAA had to, you know, take over federal
7 waters and just, you know, rebuild the stocks
8 and everything else.

9 So I thought that your expedient
10 reopening is smart and the right thing to do
11 in our opinion, and you know, it will go far
12 in helping to rebuild the relationship.

13 One thing that concerns us going
14 forward beyond this, given the perception in
15 our communities, is while the seafood is safe
16 and while the -- what we know, that the death
17 rate of sea larvae is minimal than what we all
18 thought, the return from the larvae that
19 traditionally spawn in the Louisiana waters,
20 and this is the waters in the spring, the
21 cobia, the tuna, and then after they mature a
22 little bit, then they do their migration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 towards Mexico, they're probably going to
2 return down the road.

3 But we don't know that. We don't
4 know what kind of sea life have been choked
5 off by all this stuff that went to the bottom.

6 There's weird things that have kind of come
7 out of the shore.

8 MS. MEDINA: Oh wow. Something's
9 happening?

10 DR. DANA: Yes. But anyway, that
11 was the concern for us, return migration for
12 years out and how that impacts people or
13 businesses.

14 MS. MEDINA: Well, I think you know
15 you've hit on something that we are very, very
16 concerned about, and it is such a hard
17 message.

18 You know, when you're trying to
19 convey this big meta-message to the public and
20 you don't want to be ambiguous or seem like
21 you don't have confidence in something like
22 the seafood, and yet we don't want to say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 everything's great.

2 In fact, even though it wasn't on
3 our agenda, this year ahead of us we will
4 spend a tremendous amount of time studying
5 what is happening in the Gulf, rededicating
6 resources to do more science there, so that we
7 can understand those long-term effects, and
8 then continuing that study, and on top of it,
9 you know, doing what we need to do get the
10 public repaid for the resources that have been
11 damaged.

12 The lost use and the lost actual
13 natural resources, and we have that fully in
14 our area of responsibility as well. We're the
15 trustee for those resources and we take that
16 job very, very seriously. We will be doing
17 absolutely everything that we can to try and
18 protect and then get repaid for those lost
19 resources.

20 So that would be a huge amount of
21 work this year. Luckily it won't be sort of
22 emergency work that we were doing when we were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trying just to keep it off the beaches, you
2 know, every day as it was coming out of the
3 well.

4 But it will be a very intense
5 effort and we will not shrink from this. We
6 won't say well, you know, it's all okay. We
7 won't. You have my word on it. So Martin.

8 MR. MARTIN FISHER: Hi. From my
9 perspective, you know, I'm invested in the
10 commercial side of fishing in the Tampa area.
11 So I'm vertically integrated; I produce
12 wholesale and retail. I lost 50 to 60 percent
13 of my wholesale business.

14 One of my vessels lost a captain
15 that couldn't stay. I have yet to be able to
16 replace, and exactly due, exactly to the oil.
17 NOAA did a great job in the beginning and
18 through the summer.

19 Unfortunately, there's a public
20 perception in Florida that NOAA is suppressing
21 funds for independent research for the
22 underwater plumes, and if you guys could do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anything at all for PR and for the science
2 itself, it would be to publicly come out and
3 attack the underwater plume issue.

4 We are very, very concerned about
5 our future, because of you know, from some
6 estimates, you know, what's on the surface is
7 gone. The sun's out, the beach is clean, it's
8 great. But there's a science fiction horror
9 movie coming to a theater near you and it's
10 called "What Lurks Below the Surface."

11 MS. MEDINA: Yes.

12 MR. MARTIN FISHER: So that's
13 something that I've offered to you guys to
14 just focus on, make as transparent, as clear,
15 as public as possible, and get the money there
16 quickly.

17 MS. MEDINA: Yes. We are working
18 on that too, and I take your point, that we do
19 have this problem out there, that people
20 believe that the oil is still lurking, and it
21 probably still is. Our boss is very good at
22 describing it. She says it's diffused, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that doesn't mean it's benign.

2 MR. MARTIN FISHER: Exactly.

3 MS. MEDINA: And we've been trying
4 to get that message across, but it's hard.

5 She's actually going to be in the Gulf region.

6 She's going to be in Alabama later this week.

7 But she, you know, we hopefully will continue
8 when she's there. I mean it's hard.

9 The problem is it's hard for people
10 -- reporters, I feel like, kind of lost
11 interest and we've gone to the next story, the
12 elections, whatever, and so it's hard to keep
13 the media attention on that.

14 We do have a team of people who are
15 working on subsurface monitoring. Obviously,
16 we could always use more of that. I think we
17 would like to do more of that.

18 We also have a communications team
19 based in New Orleans, and I'm going to give
20 them your contact information, because it
21 sounds like even if they're getting the word
22 out in New Orleans, it may not be coming all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the way over to Florida and, you know, it's a
2 big area.

3 It's a big region and we, you know,
4 have to kind of make sure we communicate well
5 everywhere.

6 MR. MARTIN FISHER: Here's another
7 suggestion for you. You might create a
8 science contest to come up with a fabric that
9 you can actually trawl through the water that
10 would collect the dispersed material.

11 Because by some accounts, there are
12 plumes that are 300 feet tall, a mile wide,
13 ten miles long. If they really do exist, we
14 could probably develop a technology to collect
15 that oil.

16 If there was a national science
17 contest or something to that effect, where
18 there was a million dollar prize or whatever,
19 something to, you know.

20 MS. MEDINA: Harness ingenuity and
21 good ideas.

22 MR. MARTIN FISHER: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: There was such a thing
2 during the spill that the Coast Guard had, you
3 know, they were trying to figure out how to
4 cap the well. Kevin Costner came and
5 testified before Congress. He had an idea.
6 Lots of people had ideas, and in fact some of
7 them were used. They weren't all just for the
8 cap process or for the cap mechanism.

9 But I think that's gone now, and we
10 don't really have a way to deal with the oil
11 that we're trying to characterize out there.
12 So I will take that back and talk about it.

13 We have also a new Obama
14 administration team being stood up in the
15 Gulf, under the leadership of Administrator
16 Jackson of EPA that will do sort of long-term
17 recovery for the Gulf in every respect,
18 health, economy and ecological recovery. So
19 we definitely have our work cut out for us
20 ahead. We don't think that this is something,
21 you know, it's over. It's not over.

22 MR. MARTIN FISHER: Well, one of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the most important things is that you're
2 asking these questions of us. So thank you
3 very much.

4 CHAIR BILLY: Monica, I'd like to
5 add a couple of other things related to this.

6 At our last meeting, we talked at some length
7 about this whole area, and made a number of
8 recommendations to you.

9 But two in particular are relevant
10 that haven't been covered so far, and they
11 relate to the process that's going to be used
12 to reopen shellfish beds, particularly the
13 oyster beds, and that process will be
14 carefully done under the auspices of what's
15 called the Interstate Shellfish Sanitation
16 Commission, and perhaps be done on an interim
17 basis, so that any kinks, any problems are
18 worked out and it's effective and can be
19 communicated as such as that moves forward.

20 The second is that you have the
21 voluntary inspection program. I know Eric's
22 been working closely with FDA and we talked

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about that last time as well. But the
2 difficulty is, and I've been in this business
3 so I know, getting credible people to say what
4 is really true about the safety of the
5 products.

6 The head of FDA is reluctant to do
7 that about any product it regulates. But it
8 would seem to me that there might be a
9 strategy that would include sort of a peer
10 review of what's been done, and appropriate
11 experts, either under the Academy, National
12 Academy or some independent mechanism, that
13 would look at this and come out.

14 Then that can be used by industry
15 and by all the people in the chain through to
16 the consumer, as well as educating the
17 consumer about the safety of the products. So
18 you can use your voluntary program, we suggest
19 that you consider waiving the fees or get
20 money from BP or someone and get inspection
21 where it will help with the flow of product,
22 both domestically and for export.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But in combination with that, a
2 credible assessment and statements about the
3 safety of the product, which I think is quite
4 doable. So I'd just call that to your
5 attention.

6 MS. MEDINA: I appreciate those
7 suggestions. We have a proposal for doing
8 that very thing that we've written up and are
9 trying to get BP to fund. Now there's a lot
10 of things that people want BP to fund. But we
11 and FDA have each put together a proposal on
12 long-term seafood safety monitoring, and I
13 hope that we will be able to get them to fund
14 that very soon.

15 We had hoped to do it as part of a
16 response. You know, there's sort of like
17 stages in an oil spill under the law. First,
18 you have the response phase. But then you go
19 to restoration.

20 If in the end, this has to be
21 something that we do under the rubric of
22 restoration, it is restoration. We don't have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 any -- we don't see that that's -- even if
2 it's not putting grass back in the marshes or
3 something, I mean it's restoration.

4 It's the same kind of thing. It's
5 trying to rebuild those fisheries, so that
6 they, you know, the public will buy the
7 seafood. So we are working on that.

8 But I think, you know, your points
9 are really good ones, that we the government,
10 despite our best efforts, I think are always
11 going to be a little bit mistrusted. The
12 public wants other experts to verify and to
13 validate what we do. So we will keep that in
14 mind.

15 There were a lot of great ideas
16 about how we could help promote seafood, and
17 I'd be curious if other parts of the country
18 experienced diminished sales, just because of
19 sort of the spillover effect, if you will, of
20 the spill.

21 MR. ALEXANDER: I believe that our
22 pressures increased this summer because of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spill in New England. People seem to be
2 paying a premium --

3 MS. MEDINA: To buy New England,
4 because it was labeled "New England seafood."

5 MR. ALEXANDER: Right, right. So I
6 think the pressures on our coast have
7 increased because of their misfortune.

8 MR. MARTIN FISHER: And the
9 opposite's true for us.

10 MS. MEDINA: Right. Even though --
11 I mean some of the fish, it was never even
12 close to being in any place that would --

13 MR. MARTIN FISHER: We got murdered
14 by the press early on, murdered.

15 MS. MEDINA: Dealing with trying to
16 figure out how to get messages out is really
17 probably the hardest thing, because the press
18 has to, you know, go to an issue and go to an
19 event and write a lot of stories, and that's
20 the impression people have, and then it's hard
21 to change that. Randy.

22 MR. CATES: I have a lot of respect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for what was said here, but I'll give my
2 opinion. I'm probably as far away from the
3 oil spill as anybody.

4 One thing I think's going to be
5 important for NOAA is to have balance in
6 addressing this issue, and not to come across
7 as trying to find a negative.

8 You've got to do the correct
9 science, but we also have to be open to the
10 fact that maybe Mother Nature consumed this
11 thing and has taken care of it. We know it
12 was there. We've got to find it.

13 I've experienced that in my
14 business, where you know, you have a fish farm
15 and we know fish have pollution coming out,
16 some consider it pollution. So they're so
17 hell bent on finding it that they went
18 through, but they couldn't find it. Well, the
19 reality was the ocean is so vast that it may
20 have diluted.

21 So you've got to be careful not to
22 come across as we're going to go find it, no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 matter what. That's important on the
2 marketing side too. The consumer needs to
3 know that the ocean is resilient and can take
4 care of some of these things on its own, and
5 also celebrate the fact that maybe the efforts
6 that were taken, some of them worked.

7 We need to recognize that, you
8 know, we did a pretty good job on the thing,
9 and it could have been a lot worse.

10 MS. MEDINA: Could have been a lot
11 worse. I think that is the trickiest part of
12 our message, is it could have been a lot
13 worse.

14 If it wasn't for all these people
15 who worked up until their pay cap and over it
16 and basically volunteered to work nights and
17 weekends and write weather forecasts and oil
18 trajectory forecasts and fly overflights and,
19 you know, go on cruises, you know, it would
20 have been much, much worse.

21 MR. CATES: If the science says
22 it's safe and it's not a concern, then rely on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the science and not so much -- well, we know
2 it's there; we haven't found it yet.

3 MS. MEDINA: Well, I think the
4 people in the region are worried that they'll
5 not get their businesses back, and we can't --
6 you know, we can't stop watching to make sure
7 that those year classes, in some of these fish
8 species that take a long time to grow up, you
9 know, aren't going to be hit. We just don't
10 know.

11 So while we can't say it's going to
12 be terrible, we also can't say it's fine, and
13 that's where the science is going to be our
14 guide.

15 And we have to have the ability to
16 do the science. So you know, you can't
17 measure what you don't know you know, you
18 can't manage what you don't measure. You
19 can't see if you don't go out there and take
20 the measurements.

21 If you don't know, then you're just
22 guessing and more than likely to be wrong. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we have to be bound -- that's our job as the
2 government. It's not to take one side or the
3 other. It's other than the people's side, you
4 know, to protect those resources.

5 Make sure that we don't lose
6 something that was the public's, that belonged
7 to all of the people in that region who, you
8 know, want to enjoy it or make a living from
9 it, and all over the country who wanted to
10 enjoy that seafood.

11 So anyway, I know we've talked a
12 lot about the Gulf. I don't want to keep
13 going, but I don't want to cut it off either.

14 If there are other things that people want to
15 talk about, I promise you we'll get to them.
16 I will stay and I'll impose on Eric's time.

17 If maybe you don't want to spend a
18 whole hour and a half on enforcement, or maybe
19 you do.

20 MR. MARTIN FISHER: I have one more
21 suggestion. I had the privilege of being
22 included in the state of Florida's --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 actually, it was twice a week and then got
2 turned into once a week, and it was like a
3 stakeholders' forum.

4 MS. MEDINA: Oh, that's great.

5 MR. MARTIN FISHER: Yeah, and it
6 was a conference call. One of the things that
7 was missing for me was the federal presence.
8 I mean Dr. Crabtree, Alfred attended; Steve
9 Murawski was on a couple of times. But what I
10 was thinking was in the future, or even
11 possibly occasionally, that the regional
12 office could host a very similar thing.

13 MS. MEDINA: Yep.

14 MR. MARTIN FISHER: And it would
15 provide a federal presence, a large umbrella,
16 a little bit more confidence and it's easy to
17 do. Mark Robson did a really wonderful job.
18 He's the -- I guess he's the -- I don't know
19 what his title is, but he's with the FWC
20 Commission.

21 MS. MEDINA: I'm actually going to
22 be with some folks from Florida tomorrow, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'll pass on your gratitude.

2 MR. MARTIN FISHER: Thank you.

3 DR. DANA: And coordinated from the
4 Tallahassee command center, and we in Florida
5 -- we do it right when it comes to crises.
6 Unfortunately, we have a number of them, from
7 hurricanes --

8 MS. MEDINA: Hurricanes. You are
9 practiced.

10 DR. DANA: And we quickly, from the
11 top level forward, get all the right
12 stakeholders, from local, from county,
13 regional, state and progressively deal with
14 the crisis at hand, to those kind of
15 conference calls.

16 Then after the crisis is dealt
17 with, first response. Then we go into
18 restoration or whatever that's called. Anyway
19 --

20 MR. SCHWAAB: So I would echo that.
21 We did run, you know, Laurel's right here
22 behind me about -- I think we ended up doing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 four or five national --

2 MR. MARTIN FISHER: Yes,
3 nationally.

4 MR. SCHWAAB: Conference calls were
5 very well-received. I know that the White
6 House was running calls on a weekly basis for,
7 you know, months.

8 DR. DANA: Yes, and I think that's
9 right.

10 MR. SCHWAAB: And but I think
11 probably Martin, your point was a more
12 regional focused opportunity, you know, could
13 have also been done.

14 MR. MARTIN FISHER: Well, I'm not
15 saying it was a deficit. I'm just saying that
16 in the future or even currently from now on.

17 MR. SCHWAAB: Well, when we did
18 those things, they were very --

19 MR. MARTIN FISHER: Oh, I attended
20 a couple of them. It was -- they were great.

21 MS. MEDINA: We will take that
22 point and, you know, when we -- you know, it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a good segue to everybody else and everywhere
2 else. I think one of the things that if I had
3 to look at it and think about how we could do
4 our job better, it has to do with
5 communication and outreach and creating an
6 environment where you all feel like you can
7 come to us and talk to us and tell us things,
8 that we don't have to be in some formal
9 negotiation or discussion of this plan or that
10 action.

11 You know, I think that's a theme
12 that I'd like to try and, you know, work on
13 this year, you know. Eric and I have talked
14 about this a little bit. We've talked about
15 sort of souped up communications in New
16 England, where we think we have a real need to
17 do that, and you know, I don't think though
18 that that's the only place.

19 Obviously the Gulf's the big
20 problem, but everywhere. I mean I think we
21 benefit when we are seen as not your
22 adversary, and hopefully we'll work towards

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your colleagues and your partners in trying to
2 keep fisheries sustainable all around the
3 country.

4 That's the goal. We don't, you
5 know, we don't get anything for, you know,
6 propounding regulation or -- and we don't want
7 to make people unhappy. We do want to see
8 fisheries that are healthy and sustainable for
9 the long run, so that we all have the benefit
10 of them and, you know, so do our children and
11 our grandchildren.

12 So you know, that's our only goal.
13 There's nothing in it for us other than to
14 try and leave that legacy, you know, or at
15 least to start to it. I mean it's not
16 something you can ever quit doing, right?

17 But we do have some fisheries that
18 are, you know, really needing to be rebuilt
19 and we really want to do it, because we want
20 to make sure that they'll be there for the
21 long run, for those communities, for our
22 children and our grandchildren.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So I don't need to, you know, get
2 too high up here on the higher plane. But
3 back to communications. I think we need your
4 help.

5 CHAIR BILLY: In that regard, one
6 of the suggestions, or primary suggestions we
7 made to Dr. Lubchenco was the opportunity to
8 strengthen the interface and the interaction
9 between this committee and the NOAA
10 leadership.

11 We have Eric, but I think you're
12 really missing a real opportunity. There's
13 the knowledge and expertise in this room, and
14 the regional and balance and so forth could
15 work for you in a very dynamic way, in the
16 kind of crisis you had in the Gulf or on other
17 policy issues, particularly as you're thinking
18 about it.

19 We've suggested that it not just --
20 our report not just be on, you know, a memo
21 that goes forward, but there be actual
22 interaction. You can get a better feeling for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what's going on in the committee and more
2 importantly, if there's something coming down
3 the road and you give us a heads up, we're
4 very responsive.

5 We can help you be more effective.

6 So I'd just like you to carry that away and
7 think about how that might be accomplished.

8 MS. MEDINA: Well, we can
9 definitely use your help, and I appreciate the
10 offer. Actually, I mean it's a great thing
11 that you are willing to help us, because we
12 need it, and we -- while we value our
13 expertise, you are a cross-section of
14 different sectors and all across the country,
15 and different, you know, a whole range -- as
16 diverse as the industry and the country
17 itself.

18 So we definitely will take you up
19 on that offer and I mean maybe the thing to do
20 would be to convene a phone call every once in
21 a while, as opposed to just waiting for these
22 meetings.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Maybe do that on a quarterly basis,
2 so that we can bounce our ideas off you and
3 tell you what sorts of things we're trying to
4 accomplish, what's on our agenda for the next
5 few months.

6 I know we are focused on catch
7 shares and getting our policy out. It's done
8 essentially, and I don't know, Mark, if we
9 have -- if you have it on the agenda to walk
10 them through it at some point.

11 DR. HOLLIDAY: It is specifically
12 on today's agenda.

13 MS. MEDINA: Well, we could do
14 that, take a few minutes here and just talk to
15 you about the fact that we are on the verge of
16 having it out in the public, or I think kind
17 of this education of all the other agencies
18 that are interested, other parts of the
19 government.

20 So it's going to take us a little
21 bit longer, maybe another day or two, but
22 we're within a very few days of being able to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make it public, and you all are, you know, the
2 ones who we count on for advice. So I will
3 say that we have taken an awful lot of public
4 input on the policy.

5 The policy is not a mandate. I
6 think we went through this last year and it
7 hasn't changed in that respect. It is
8 guidance, and it's meant to assist, not to
9 dictate how any one council or region should
10 approach using catch shares. It does take, I
11 think, into consideration and makes
12 recommendations on some of the tougher issues,
13 things like allocations within the sectors or
14 economic royalties.

15 But leaves an awful lot of room for
16 you all in every part of the country who might
17 want to use one of these plans, to design it
18 in a way that you all see fit, and I think the
19 goal for us is to be as supportive as we
20 possibly can be, and I'm glad Tony's here,
21 because NFWF is our partner in that.

22 We've created a fund, an innovation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fund that we hope will help to, you know,
2 support councils and support the regions and
3 support you all out there who might want to do
4 something innovative.

5 It doesn't have to be just catch
6 shares, but we really are hoping that it can
7 be used to educate. I know it's a hard thing
8 to understand how you design these things.
9 It's a little bit scary because it involves --
10 the word "allocation" alone is a scary word.

11 But if done properly, if designed
12 well, for whatever goals your region is trying
13 to achieve, it can really be a very helpful
14 tool in trying to get to this place where our
15 fisheries are well managed and sustainable,
16 and provide a good living for everybody who's
17 out there trying to make a living at it.

18 So if people would like, we can
19 just quickly take you through some of the
20 major changes from the draft version that was
21 on the website. We did have a delay because
22 of the Deepwater Horizon. We just didn't have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the bandwidth to finish it. But we are, like
2 I said, in the final stages Mark's done, the
3 heavy lifting on all of it.

4 So Mark, if you want to -- if you
5 wouldn't mind taking just five minutes and
6 explaining kind of the highlights of how we
7 changed the policy from the draft and then we
8 can take questions about that or anything
9 else.

10 DR. HOLLIDAY: Thanks, Monica. So
11 we did spend some time in June at the meeting.

12 I gave you the sneak preview of the final
13 policy. At that point, it hadn't been
14 validated and approved, but it did go over
15 some of the major changes that resulted from
16 both the public comments on it as well as the
17 special meeting that MAFAC had on catch shares
18 when we reviewed the draft policy in-depth at
19 the Honolulu meeting.

20 So Monica's characterization of the
21 policy itself I think is a good one. It's
22 that we wound up coming up with these guiding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 principles.

2 They're not requirements, they're
3 not rules, they're not regulations, but
4 they're eight or nine specific areas of design
5 and implementation with catch shares that are
6 there to help guide both NOAA and the councils
7 in developing a workable design that's linked
8 directly to the objectives and goals for each
9 of these fishery management councils planned.

10 So responsibility is left to the
11 council to design a program, consider whether
12 or not, based on the pros and cons, that catch
13 share works for that particular fishery. But
14 if they do so, be mindful of these different
15 characteristics of catch shares that can
16 affect the outcome.

17 So accentuate the positive, try to
18 minimize any negative and see if those designs
19 make sense, relative to some other management
20 strategy.

21 So it's catch shares versus some
22 alternative management strategy, not catch

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 shares versus no management, which I think
2 some people have engaged in that debate. We
3 don't like catch shares, but what would you
4 like instead? Well, no management. That's
5 not an option, so to try to compare something
6 on a more practical basis.

7 Of these nine goals or guiding
8 principles, you know, allocation, a lot of the
9 toughest ones that councils have to deal with.

10 The guidance is that, you know, when a
11 council has made an initial determination of
12 allocating some share of the total allowable
13 catch, they should periodically revisit that.

14 Catch share programs has a requirement to
15 revisit the program every five years, do a
16 program review.

17 So, consistent with what the
18 Magnuson Act says, revisit these allocations
19 to see if they still are consistent with the
20 goals and objectives of the plan on some
21 periodic basis. Thirty years ago when an
22 allocation was made, circumstances were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different, the fisheries changed.

2 So maybe it's some part of the
3 process of a council to look at that, revisit
4 it, and see if it's still relevant,
5 particularly if you're going to move towards
6 the catch share, because at that point, people
7 are going to make decisions based on those
8 allocations for the future about
9 transferability, et cetera.

10 So allocations are a pretty big
11 issue for all councils, but in particular for
12 catch shares, and we have some guidance about
13 considering that reevaluation at the time. I
14 have to give the five minute version, so I'm
15 going to kind of shift to my less wordy one.

16 Some of the other important things
17 that we talked about the committee, about the
18 application of catch shares to recreational
19 fishing. So when we briefed, I briefed to you
20 at the July meeting in Juneau, we said that
21 NOAA was not going --

22 NOAA, consistent with what the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Magnuson Act says, will support catch shares
2 wherever the councils want to take them. But
3 we're not advocating the use of catch shares
4 for private anglers, okay, for the
5 difficulties in trying to do individual
6 allocations to tens of thousands of anglers
7 over time and space and monitor their
8 transfer.

9 There's pros and cons, and I think
10 the cons in that case really outweigh the
11 pros. But if a council wants to look at a
12 catch share for groups of anglers or the for-
13 hire sector, you know, where council and
14 stakeholders want to pursue it, we'll be there
15 to help them do it.

16 But we're not proposing this
17 blanket acceptance of a tool for those private
18 marine anglers. It just doesn't have the
19 weight of applicability that it does in
20 commercial fisheries, where they've
21 traditionally been used.

22 Transferability and goal-setting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 They kind of go hand-in-hand. We have a
2 principle that says the more specific a
3 council can have as a goal for catch shares or
4 any other plan, the better off you'll be,
5 because then you'll know exactly how close you
6 are to --

7 You'll see and know success when
8 you see it, and you can design a program to
9 address those specific objectives. A lot of
10 the criticism about catch shares in the past
11 is oh well, they're not taking care of small
12 vessels, owner-operated fleets, or they're not
13 taking care of particular communities. Well
14 that's because councils haven't designed
15 specific programs necessarily to address those
16 objectives.

17 When you read the plans, you don't
18 see those objectives very clearly. So our
19 guidance is very explicit up front, so that
20 you can design a program that addresses those
21 objectives and minimize or eliminate, as best
22 you can, what they call "unintended effects."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 There shouldn't be unintended
2 effects if you've really done a thorough job
3 of understanding where we want this fishery to
4 go in the next ten years. Then we can design
5 catch share elements or other programs that
6 meet those design characteristics.

7 Again, transferability is one of
8 the powerful tools that a council has to
9 design, from no transferability on one side of
10 the equation to full transferability. You can
11 control who can acquire a privilege; you can
12 control transfers by lease or sale.

13 So within, there's a lot of
14 discretion and flexibility that have an impact
15 on who you want to receive the privileges and
16 how do you want them transferred that will
17 affect the goals and objectives of the plan.

18 Finally, the issue of if you have
19 clear goals, you've done a well-designed
20 program, you have to have good performance
21 metrics. You have to have some standard by
22 which to monitor the success.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 If there are consequences, you can
2 -- that you didn't want to have happen, you
3 can plan for them as well, in terms of
4 contingency planning, doing set-asides, you
5 know, allocations that can provide some
6 opportunity to be adaptive to changing
7 circumstances.

8 So one of the guiding principles is
9 try to anticipate where things may go wrong,
10 and build flexibility into the plan about
11 using some of the tools that are in the
12 Magnuson Act.

13 The last point, not so much one of
14 the guiding principles but the content of the
15 plan. Those who remember the draft, we had an
16 implementation strategy linked to the policy
17 statement itself within that same document.
18 Well because the policy makes the standard
19 test of time, you want it to be valid and
20 useful five, ten years from now, we've
21 separated out the implementation plan, because
22 that was looking at what should we be doing in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the first year or second year of the program.

2 Instead of linking it indirectly in
3 the policy, we're going to, on an annual
4 basis, create an implementation strategy that
5 aligns with the NOAA appropriation. So how
6 much money do we have, where will that money
7 be spent, what are the problems that the
8 council is facing in the next year or the year
9 after that.

10 So this implementation plan will be
11 linked to changing circumstances, changing
12 objectives for the councils. So that's a
13 separate document from the policy itself,
14 which two or three years from now won't be
15 talking about some event that was proposed to
16 take place in 2011.

17 So the idea is to again, provide
18 this as guidance. It's not a requirement.
19 There's no quota, there's no target for how
20 many catch shares there are, and we've said
21 repeatedly that not every fishery should be
22 managed by a catch share program.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 People should consider the pros and
2 cons and make that judgment for themselves,
3 and if they want to pursue that, NOAA is there
4 to help provide design support, implementation
5 support and operational support. That's more
6 than five minutes, but --

7 MS. MEDINA: That's pretty good.

8 DR. HOLLIDAY: I get wound up.

9 MS. MEDINA: So we'd be happy to
10 answer questions about that or anything else.

11 VICE CHAIR McCARTY: Thanks,
12 Monica. I have a question about -- maybe it's
13 in the implementation plan. We've talked a
14 number of times in this body about direction
15 on some of the aspects of catch shares, of
16 lapse in the MSA, having to do specifically
17 with immunity, fishing groups and those kinds
18 of aspects.

19 I think at one point we asked for
20 some guidance on that. Is that going to be
21 part of this policy or part of the
22 implementation plan? People all over the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 country have been looking for that kind of
2 guidance.

3 MS. MEDINA: I would say that
4 communities and the focus on communities has
5 to be sort of our next, and NMFS, as we
6 implement this policy, our next area of focus.

7 Because as I've seen as the two plans, at
8 least in my time here, go into place, that's
9 the thing that can make or break the community
10 support overall these plans.

11 I'm more mindful than ever of the
12 impacts that any kind of management system has
13 on a community. But if you're not planning
14 for it and taking that into account, and then
15 trying to deal with some of the effects,
16 you're not going to succeed.

17 And so that I know we have some
18 workshops on the west coast. I think they're
19 on community shares that are happening in the
20 next few weeks.

21 MR. SCHWAAB: Yeah, and that's a
22 big focus of the innovation grant as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: Okay. So that if
2 there's a specific -- if you would like us to
3 come up to your region and do a workshop on
4 that, or if you just want to have someone that
5 you can call here, or if there's some paper
6 that you think we can --

7 I mean I tend to not like paper,
8 because you know, we just throw paper at
9 people. But we will put things on the web, I
10 hope, that will make that easier for people to
11 understand, at least at the beginning. We
12 definitely need to focus on communities, and
13 you know, it was something that Dr. Lubchenco
14 actually had in mind, in a broader way.

15 But when I think about our
16 application of catch shares in particular, I
17 realize now that that's got to be a part of
18 what we're looking at when we design it.

19 VICE CHAIR McCARTY: And a lot of
20 concern about that aspect of catch shares, and
21 it would be useful, I think, to have a
22 workshop similar to what you sound like you're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 doing on the west coast, because people have
2 been asking and really need that guidance,
3 particularly because of the review process,
4 you know.

5 In the reviews, as you know, we
6 have a number of catch share programs already
7 in Alaska, which were formed before the
8 guidance came out. People are now concerned,
9 as they go into their first review,
10 particularly the crab program in Alaska,
11 there's a lot of community interest in
12 allocations to communities, for example,
13 straight across allocations, and so it will be
14 really timely in Alaska right now.

15 And before we leave that topic, I'd
16 like to thank you and Mark and the rest of the
17 team for incorporating some of our
18 suggestions. We had that special meeting and
19 lots of people worked really hard on it, and I
20 think we'll all appreciate the fact that it
21 was taken seriously and taken to heart. We
22 loved it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: Thank you. Thank you
2 and thank you for the time and the energy. We
3 got a tremendous number of comments in, and I
4 think Mark had the hard work of trying to
5 incorporate all of them and balance them all,
6 sometimes they were conflicting.

7 We did our best, but we definitely,
8 definitely made it a whole lot better, because
9 we had the feedback and took the time, and I
10 only wish we could have completed it, you
11 know, in June as opposed to now. But we're a
12 little behind but we're catching up, and we do
13 appreciate.

14 But people did put the time in, and
15 I hope they didn't think that it was a waste,
16 because you know, we will have this policy out
17 there and hopefully people like you, and
18 others around the country who gave us that
19 kind of feedback, will see that we did take it
20 to heart. I mean we appreciated it.

21 VICE CHAIR McCARTY: Yeah. We saw
22 that already at our last meeting, when Mark

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gave us a little sneak preview. So we really
2 appreciated it.

3 DR. HOLLIDAY: Just a clarification
4 on the workshop. So there's actually two
5 kinds of workshops that we're doing. The
6 first is going to be on the west coast. It's
7 going to include eight councils, to talk about
8 developing specific guidelines.

9 It's going to try to answer as a
10 technical workshop, with attorneys, with
11 expertise, people who develop community
12 associations, to try to get some national
13 consensus on how to approach these things.

14 Then that will be followed by these
15 regional workshops in each of the council
16 regions, where we go out and transfer that
17 information. So we want to make sure that --
18 and we're doing this in cooperation with the
19 Pacific Council, because they're in the middle
20 of doing their community fishery association.

21 VICE CHAIR McCARTY: Right.

22 DR. HOLLIDAY: Meeting. I mean

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they have to do it between October or the
2 September and November meetings. Got a little
3 pushback and then we had the continuing
4 resolutions. So now the meeting's going to be
5 in the first part of January.

6 MS. MEDINA: Oh, you had to move it
7 because of the CR?

8 DR. HOLLIDAY: Yes. So we're on
9 the path of doing sort of this technical
10 workshop first, and then a series of regional
11 meetings in each of the regional areas, in
12 cooperation with each council, to take that
13 information back out.

14 MS. MEDINA: Okay.

15 DR. HOLLIDAY: And again, it
16 compliments what we're doing with the
17 innovation fund, providing opportunities for
18 people to get a small grant to help them
19 develop, to look at what it will take to
20 develop a regional fishing association and a
21 fishing community structure.

22 MS. MEDINA: Good. We haven't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talked about that yet. Martin.

2 MR. MARTIN FISHER: Thank you.

3 Would it be all right if I just segue into --

4 VICE CHAIR McCARTY: The discussion
5 that we had yesterday about some aspects of
6 catch share?

7 MR. MARTIN FISHER: It seems fresh
8 and pertinent.

9 MS. MEDINA: Uh-huh.

10 MR. MARTIN FISHER: Okay. First of
11 all, I really want to thank Mark and you,
12 Monica, for incorporating MAFAC's suggestions
13 and recommendations about the catch share
14 issue, because I read the most recent draft
15 and I was amazed.

16 I mean one of the things that we
17 sometimes feel in MAFAC is we're not heard,
18 and judging from that document, we were heard,
19 because there were so many of our
20 recommendations that were incorporated into
21 the body of the thing. So thank you very
22 much. That's the first thing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: It was your ideas, and
2 Mark's great penmanship and --

3 MR. MARTIN FISHER: Absolutely, and
4 some of them were even augmented, I mean
5 deeply enhanced. So that's great.

6 However, in the Gulf of Mexico, one
7 of the things that piqued my interest and
8 brought me again to this place in the budget
9 presentation yesterday is that there is money
10 in the catch share program for observer
11 coverage.

12 But the grouper industry or the
13 grouper IFQ really isn't included in there,
14 and we have a distinct, specific issue with
15 what I will call a disconnect between the
16 stated objectives of the program and the
17 actual everyday nuts and bolts of running the
18 program. So I'll just do this.

19 One of the basic tenets of the
20 catch share management programs is reduction
21 of bycatch and the conservation of targeted
22 and untargeted species.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Bycatch can be classed in at least
2 three distinct forms: untargeted species
3 encountered while prosecuting a targeted
4 fishery, discarded alive or dead; economic
5 discards comprised of targeted species less
6 valuable to the stakeholder, subsequently
7 utilized for bait or discarded alive or dead;
8 and regulatory discards related to size
9 restrictions or specific primary enclosure,
10 discarded alive or dead.

11 In the Gulf we've got two
12 distinctive grouper fisheries: the deep water
13 complex and the shallow water complex. The
14 deep water is comprised of three species of
15 grouper, one of hind and two of tilefish.
16 They're all classed together.

17 Tilefish have their own
18 classification, but the two distinct species,
19 even though their valuation is really broad.
20 I mean one is 90 cents to the boat; the other
21 is \$3 to the boat. There's no distinction in
22 the IFQ as to which one -- in other words, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fisherman has a disincentive to keep the 90
2 cent fish as a bycatch, and wait for that \$3
3 fish to come aboard.

4 So in the shallow water we have
5 another issue of red grouper. Because of
6 recent size restriction in the FMP, I mean
7 size limit in the FMP, we now have two
8 evaluations of red grouper. The red grouper
9 harvest is comprised of perhaps as much as 25
10 percent of the less valued size. It's a
11 dollar a pound difference.

12 So we've got a management plan that
13 says we should be keeping 18-inch fish, but we
14 have a disincentive for the fisherman under
15 the IFQ to keep that 18-inch fish. So that's
16 the issue, and the way to solve it is 100
17 percent observer coverage, either by camera or
18 by person.

19 Heather made the point yesterday
20 that having an actual person on board taking
21 the data is much better for stock assessment
22 because of the host of data that you can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 collect versus cameras. We absolutely really
2 -- if we're going to have catch share programs
3 in multi-species fisheries, you've got to be
4 able to account for --

5 MS. MEDINA: For what you're
6 catching.

7 MR. MARTIN FISHER: For what we're
8 catching on the boat. A lot of my brethren
9 will want to lynch me when they find out I
10 said this here, but if we're --

11 MS. MEDINA: Oh gosh, I hope not.

12 MR. MARTIN FISHER: Oh, absolutely.
13 But if we're going to have a program, let's
14 have a program, you know.

15 MS. MEDINA: Right.

16 MR. MARTIN FISHER: If we're going
17 to make it work, let's make it work. However,
18 in our fishery, we don't have the money. It's
19 not a lucrative fishery right now. We don't
20 have the money to pay for this.

21 So there's a growing question among
22 the fishing community, the grouper fishermen,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what is the point of having an IFQ if it's
2 really giving us a license to exploit the
3 resource? It's actually forcing us to exploit
4 the resource to remain economically solvent.

5 MS. MEDINA: We need to take a step
6 back, and I mean I appreciate you telling me
7 this. I really do. We don't want to miss
8 these things or not know about them until they
9 become such huge problems we can't fix them.
10 So we'll take that point and we'll work with
11 you.

12 I mean I don't know exactly what
13 you want us to do. In other words, we'll try
14 and get you funding. We're not allowed to ask
15 for money, although we can certainly help
16 shape requests that people make to members of
17 Congress.

18 MR. MARTIN FISHER: Well, the
19 budget included, what was it, five or eight
20 million dollars for observers in the Pacific
21 groundfish fishery.

22 MS. MEDINA: Yep, and you need it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: We just need --
2 and to be specific, the long line industry
3 catches like 70 percent of the red grouper.

4 MS. MEDINA: So if we target it
5 there.

6 MR. MARTIN FISHER: Amendment 31 or
7 32 took us to 62 endorsed vessels. I just did
8 a quick math extrapolation of that. It takes
9 about 200 days at sea at \$500 a day just for
10 data collection, and that would include 200
11 for the observer, 200 for the processor, blah
12 blah blah.

13 Not including what you do with the
14 data after. \$6.2 million for 100 percent
15 observer coverage, and that's just for the
16 long line fleet. Then you've got 500 other
17 permitted vessels that are engaged in the
18 vertical industry.

19 So I know that's in the weeds. I
20 know it's specific to my region, but it's
21 something that needs to be addressed.

22 MS. MEDINA: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MARTIN FISHER: Thank you.

2 MS. MEDINA: Got it. We will work
3 with you on it.

4 MR. SCHWAAB: I think it's
5 important, particularly when we talk about the
6 money that's in the budget, to understand sort
7 of the philosophy behind that, and the
8 philosophy behind that is that there are
9 transitional costs associated with moving to a
10 catch share program that, at the point of
11 initiating the transition and in the early
12 stages of transition, the fishery can't absorb
13 those costs. And at least the theory behind
14 it is that the catch share program will
15 ultimately make the fisheries more profitable,
16 and therefore over time able to assume a
17 higher portion of those costs.

18 I think it's problematic if you
19 enter into a catch share program where there's
20 no end point at which you see it paying off in
21 a way that will allow the fishery to take on
22 the cost, the increased costs. So basically

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it can't have a system that costs more to run
2 than what the fishery can produce in the long
3 run.

4 So I think that while we ought to
5 keep all these options on the table, there's a
6 program design problem. If you say, well,
7 this fishery can only exist under a catch
8 share program if it is subsidized at some very
9 high level of observer cost by the federal
10 budget for the long term, because that's not
11 really sustainable.

12 So we ought to be thinking about
13 transitional costs. What we also need to be
14 thinking about is program design, to make sure
15 that we don't create a program that neither we
16 or the fishermen can afford for the long haul.

17 So your point is, I think, well-
18 taken Martin about what that means, and I
19 don't know enough about the details of that
20 particular fishery to understand where it
21 falls on that continuum.

22 But I think it's also under --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because we, you know, people see us investing
2 money in the Northwest. They see us investing
3 money in New England and they think, well, why
4 not us? It's important that everybody at
5 least understand the theory behind that is
6 transitional in nature, not as a permanent
7 subsidy.

8 MS. MEDINA: It won't be forever.
9 But if you need it now, too --

10 MR. SCHWAAB: If it's a part of a
11 transitional design. We just need to be
12 thinking about what that means.

13 MS. MEDINA: Randy.

14 MR. CATES: I have a suggestion on
15 where you can get some of the money.

16 DR. HOLLIDAY: It took almost an
17 hour to get it in the budget.

18 MR. CATES: There are species,
19 particularly in Hawaii, that are being --
20 money is going towards protection that clearly
21 doesn't need protection. I'd love to transfer
22 it and give it to Martin here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's shocking to me that we can't
2 get the science done to take, for example,
3 green sea turtles off the protection list.
4 Even scientists say they don't need it any
5 longer.

6 We're spending a lot of money in
7 the nation on things that maybe feel good. If
8 they don't need the protection, we should be
9 celebrating the success of them getting off
10 the protection list, and we don't do that.
11 Once they go on, it just seems they don't come
12 off.

13 MS. MEDINA: You know, the brown
14 pelican came off the endangered species list,
15 and a week later we had the spill. It was
16 terrible. But I hear you. We have to make --
17 we don't ever gain ground, and actually
18 achieve some of the things we set out to do,
19 that will measure something else.

20 MR. CATES: Just in Hawaii last
21 week, there was a call to expand the whale
22 sanctuary to include green sea turtles, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expand the area.

2 MS. MEDINA: We didn't do that. It
3 wasn't me. Was it a NOAA plan?

4 MR. CATES: The sanctuary folks
5 held these public meetings and are wanting to
6 expand this under the guise that they need
7 protection, and yet the science is indicating
8 that it doesn't need it.

9 So there's a real disconnect going
10 on, and I think what did we spend last year,
11 NOAA spent 4.8 million in Hawaii on the green
12 sea turtle, where they're so abundant it's
13 becoming a problem.

14 MS. MEDINA: That's one I hadn't
15 heard about, so I will get to it.

16 CHAIR BILLY: They're delicious,
17 but Cathy.

18 MS. FOY: Randy gave me the perfect
19 segue. Thanks for coming, Monica. A
20 continuing issue that's come up is that we
21 don't have enough money for adequate stock
22 assessments, both for commercial target

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 species and for the protected resources such
2 as the marine mammals.

3 The data would have been really
4 useful in the Gulf prior to the spill, and it
5 would have helped with the environmental
6 response. But I'd just like to ask that your
7 staff continue to emphasize the need to
8 increase the budget for the stock assessments.

9 It would help for performance
10 measures for knowing how we're doing with the
11 new Magnuson-Stevens, as well as catch share
12 programs.

13 MS. MEDINA: We share that desire,
14 and our Secretary is looking to reprogram a
15 little bit of money left over from the census
16 to do some additional stock assessment work
17 across the country and, you know, we're glad
18 that he was able to find that, those pennies
19 lying around, about \$15 million.

20 We're supposed to get it if we get
21 Congress' approval. But we've gotten through
22 OMB, so we're halfway there, and hopefully

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that, you know, will provide a little bit
2 more. But we understand.

3 Without this -- when you have
4 someone at the head of this agency who wants
5 nothing more than to have the best science
6 that we possibly can to make our management
7 decisions. So it will continue to be
8 something we work for. George.

9 MR. NARDI: Yesterday, Monica, in a
10 subcommittee meeting, we spent a good deal of
11 time talking about aquaculture and how that's
12 moving forward, and I would like to complement
13 Paul and NOAA on the revisions that I noticed
14 in the strategic plan from the last revisions
15 to the current revision, which elevated a
16 little bit the direction that -- for
17 aquaculture under the NOAA strategic plan.

18 But in general, you know, I'd also
19 like to comment that it still seems to be a
20 category that is not yet deserving of its own
21 bullet. It's still a little bit underneath -
22 but, however, it's further recognized, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 appreciate that.

2 And we also talked about a couple
3 of the things that are current, such as the
4 National Marine Aquaculture Initiative and the
5 changes from the last program to this program,
6 with this program requesting a 50 percent
7 match, for example.

8 Unfortunately, Bill's not here this
9 morning to share with you, but he brought up,
10 and I'm passing on the message, which I also
11 felt from some of the colleagues that are
12 trying to develop proposals for the research,
13 that that's a bit of a high target, and I
14 think it was pushing some good research
15 proposals away.

16 I would like to suggest NOAA look
17 for another avenue or a program that didn't
18 require that high level of match, to get
19 better proposals. Also, when we were
20 discussing some of the priorities under the
21 research, the question came up about how were
22 those priorities developed, and are those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 priorities, what are they addressing?

2 Are they addressing more the
3 concerns from a specific community, like
4 whether it's the environmental community, or
5 is it trying to push forward NOAA's strategic
6 objective to increase production by 2025, for
7 example, as might be outlined in the 2020
8 plan.

9 And then finally I would just like
10 to comment from my perspective of having been
11 involved in the industry for a good deal of
12 time now, and also participating with NOAA in
13 various grants, that we seem to be falling
14 behind the eight ball. We seem to be
15 continuing to be a third nation when it
16 becomes to marine aquaculture.

17 We have good resources that we're
18 putting towards things, but we feel that we're
19 constrained by having to divvy it always up
20 into geographic locations and make sure
21 everybody gets their -- I don't even want to
22 say "fair share." I'll say a little share.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So that the actual work that gets done doesn't
2 really move the ball forward.

3 The question, then, to you is how
4 can we -- do we have the political will, in
5 other words, or the agency will to kind of try
6 to identify and pick some winners or gamble, I
7 would say, on certain species in certain
8 regions, to adequately fund those to make a
9 difference, as opposed to just complete a
10 study, it sits on the shelf; it doesn't move
11 the ball forward.

12 It's a challenge, I recognize,
13 because we're such a large country of so many
14 regions, that it's more difficult. But I
15 think some difficult decisions have to be made
16 with limited resources, to try to develop a
17 success, rather than a lot of sputtering
18 activity. So just my comments regarding
19 aquaculture for you.

20 MS. MEDINA: No, I appreciate that.
21 I know we've been working on our policy. I
22 don't know where that -- is it almost done?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHWAAB: Yeah. We're pretty
2 close on releasing the aquaculture policy as
3 well. You know, I would say that as it
4 relates to some of our research, you know, one
5 of the things that policy addresses is the
6 important role -- one of the important roles
7 that we think that we can play on some of
8 those technical research questions, in
9 addition to some of the big, sort of offshore
10 regulatory issues that arise.

11 I think there's a strong
12 recognition that, you know, a lot of the more
13 immediate opportunities, from a business
14 perspective, is inshore. So more of what we
15 can do is to provide the kind of technical
16 support to the states and to the industry for
17 those inshore opportunities, and I think we're
18 moving to the probability that, you know,
19 we'll endorse that, you know.

20 Obviously, there's a lot of
21 consultation with the industry and with the
22 states when it comes to where we invest our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 admittedly still limited resources. But I
2 think a good example of a strategic investment
3 is this alternative feeds work.

4 So one of the things that we
5 understood to be both sort of an environmental
6 impediment as well as a business impediment to
7 moving forward in a lot of places around the
8 country was the cost of feed and the
9 implications of using the wrong feed for the
10 wrong places.

11 So Michael here; I know that Kate
12 has stepped out of the room. One of the
13 things they would point to is this is a place
14 where we strategically identify a priority and
15 have -- invest in it significantly there.

16 Now I suspect there are other
17 examples that either Michael or Kate could
18 share with us if they were here. But I think
19 to the question of, you know, are we spreading
20 money or trying to strategically invest it?
21 We're trying to strategically invest it, and
22 that's an example.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NARDI: Right, and I think
2 whether or not people agree with that
3 priority, I think that is key. I think, you
4 know, you put sufficient resources at a topic,
5 because you're not going to please everybody.

6 But you need to, you know, take that
7 approach, I think, because we need to be
8 competitive on a global basis or we're going
9 to continue to lose good people, good
10 technology, only to end up buying a product
11 back from another country where it is
12 developed.

13 MR. SCHWAAB: Right.

14 CHAIR BILLY: Terry.

15 MR. ALEXANDER: While we're on the
16 research thing, our association, we've been
17 trying to catch redfish. Mesh size just too
18 big to catch redfish. We have a huge
19 allocation of redfish, Acadian redfish in New
20 England, but we can't seem to capture them,
21 because the net size is too big.

22 So we put in for a research project

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to test some cod-ends and different sized cod-
2 ends and stuff. Our budget was \$270,000 and
3 we had -- that was including 50 days at sea.
4 So 50 days' natural research.

5 For some reason, I don't know if
6 it's NMFS or NOAA or who it is, they have this
7 new policy where we had to include all these
8 different people in this organization, because
9 people complained about certain people getting
10 all the research money and stuff.

11 Our budget went to -- they wouldn't
12 fund the \$270,000, by the way. Our budget
13 went to \$500-and-something-thousand, but what
14 we're going to have is ten days at sea, ten
15 days as opposed to 50, and they funded that.

16 I just think it's a huge waste of
17 money to involve people that I couldn't get
18 the job done in something like that. Now
19 who's policy is that? Is that NMFS or is that
20 NOAA's or --

21 MR. SCHWAAB: I think that's driven
22 out of that cooperative research framework,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that's really in our shop, and Terry, I don't
2 know exactly what drove the decision-making in
3 that redfish example. I've heard a little bit
4 about this, but I frankly haven't spent any
5 time looking into it.

6 I'm happy to do that and try to
7 provide a little more clarity back to you and
8 the committee. But I can't go into the detail
9 on that as we sit here today.

10 MR. ALEXANDER: And I understand
11 he's complaining about the money not going,
12 getting spread out, you know what I mean?
13 But, I mean, out of all the corporate research
14 money that has been spent in New England, our
15 organization has done the two projects that
16 were actually implemented into management.

17 MR. SCHWAAB: Yeah.

18 MR. ALEXANDER: You know, so we
19 know how to get the job done.

20 MR. SCHWAAB: Yeah. I know we're
21 really interested in that project. I just
22 don't know why it went -- why it followed the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pathway that you're describing. Because I
2 will say that there are some issues associated
3 with, you know, testing the mesh size that's
4 already being used as a part of that
5 experimental design, which seemed kind of
6 foolish. So let me look into that a little
7 bit more and we're circle back to you.

8 CHAIR BILLY: Randy and then Paul.

9 MS. MEDINA: Can I just jump in and
10 say when things like that come up, don't wait
11 until the six month, until this meeting. If
12 you feel like there's something you need us to
13 know that makes no sense because it's our
14 money, it's all our taxpayer money, call us,
15 write us. Please don't wait.

16 MR. ALEXANDER: All right.

17 CHAIR BILLY: Randy.

18 MR. CATES: We had an interesting
19 conversation yesterday regarding aquaculture,
20 and Eric made a couple of comments. I wish
21 you were here yesterday. A brief history.
22 I've been in offshore, or I actually started

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 offshore off the -- inlets. I had the first
2 lease in the U.S., so I blame NOAA for getting
3 me involved in that.

4 So I've seen the rise and fall of
5 aquaculture and in particular offshore
6 aquaculture. The Department of Commerce
7 brought me to Washington, D.C. back, I
8 believe, in 2002, and challenged the industry
9 to increase production.

10 They saw a vital need for that, and
11 that need is still even more vital today. So
12 the first thing I would challenge anyone
13 within NOAA, how are we going to increase
14 seafood production?

15 Set aside aquaculture, I would like
16 to know how we're going to increase
17 production, and I've asked Andy Weiner that,
18 what the administration's plan is, and I'm
19 asking you or anyone else. I haven't heard
20 how we're going to do that.

21 But particularly the aquaculture,
22 the priorities that are set forth that were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mentioned yesterday, none of them will
2 increase production, in my opinion. It's not
3 feeds. It's not feeds research. They're
4 important, but they are not going to increase
5 production in this country.

6 What is missing is that link on
7 what we have -- Mark pointed out that the
8 priorities came out of a GAO report, which is
9 targeted towards environmental concerns. So
10 in essence, those concerns have taken over
11 what little funding we do have, and there's a
12 big missing link there, and that's probably in
13 increased production.

14 So I would challenge NOAA that we
15 don't need more money for aquaculture right
16 now. It would be nice, but money is not the
17 answer. A better plan is what is needed, and
18 it's more balanced-focused. Yes, the
19 environmental concerns are important and they
20 should be researched and looked at.

21 But equally, how we're going to do
22 it, species development. Very little to no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 funding goes to that, of how are you going to
2 do the business. I've experienced that in
3 Hawaii. There's been no funding towards how
4 to do it, but a whole bunch of funding looking
5 at the environmental concerns.

6 No matter what the outcome is on
7 the science, opponents will just switch.
8 Feeds research is a great example, the very
9 group that was pushing for feeds research has
10 now switched and said we don't want soybean in
11 the fish feed going into the open ocean.

12 So we're never going to satisfy
13 everybody, but we need, vitally, we need to
14 find a way to increase seafood production in
15 this nation. If that involved aquaculture,
16 great. If it doesn't, I'm there for you. But
17 we need to increase production somehow.

18 MS. MEDINA: Yes, you know, there's
19 nothing I can add. I mean we appreciate that
20 there's a food security issue. It's not just
21 about even just the economy; it's about our
22 long-term sustainability, food security.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Part of what we're trying to do in
2 managing these fisheries is to allow for
3 maximization of that yield for economic
4 purposes, but also because we need the food.
5 But I don't think that's going to be enough
6 either, and other countries are mass producing
7 fish and we have to get to a place where we
8 can do it too.

9 But we can't do it in a way that we
10 engender so much public opposition that it
11 fails. So, you know, I think it comes down to
12 the plan, and this is a good segue for me to
13 say that one of the things that we have been
14 -- you know, sustainable fisheries is one of
15 our goals.

16 Another one was better ecosystem-
17 based management of ocean resources, and that
18 is something we raised to the White House and
19 they took it on and created this national
20 ocean policy, with the goal of planning in the
21 way that you talk about.

22 I mean, you know, we need a better

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 way to understand all the various uses of the
2 resources that we have in the ocean or the
3 space, even just the coastal areas, so that we
4 don't continue to butt heads or halt progress
5 on any of them because, you know, no one has
6 the absolute right.

7 So I would say aquaculture plan,
8 you know, in our own research, all of that
9 important and we understand that, and I take
10 your point. But having a better sense of how
11 we're going to integrate all these various
12 uses of the oceans and make sure that the
13 ecosystem doesn't get hammered as a result is
14 also something that we have to do, and we're
15 working towards it.

16 It's not going to be regulation.
17 It's not going to be, you know, the same old,
18 same old. I think the goal is to create the
19 kind of certainty about where you can do
20 certain activities, or where those activities
21 will take place because of the resources that
22 are there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You know, oil and gas has gotten to
2 figure out where they're going to drill all
3 over the Gulf of Mexico, and they consult with
4 us. But we haven't really had a comprehensive
5 plan for all the ocean uses of the Gulf, and
6 then we had the oil spill and we realize how
7 much that one industry impacted every other
8 bit of the economy there.

9 So you know, it's something that --
10 it's hard to take on something that big and
11 integrate that many different types of
12 resource uses. But if we don't, we run the
13 risk of never being able to fully maximize the
14 benefits of the space and the resources out
15 there.

16 MR. CATES: To respond to that,
17 we've really taken a step back. We are not
18 really addressing where to do it or how to do
19 it, in the last two or three years. We're not
20 really doing that now. We've taken a major
21 step back. Even though the budget has
22 increased, the work is not really focused on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -- and I'll give you an example.

2 U & H is out of water, not doing
3 anything. The Gulf of Mexico, is not doing
4 anything. Hawaii's research project is not
5 doing anything. So there's no real effort to
6 do what you're saying. You need to do it
7 environmentally safe. Well, okay, we're not
8 really doing that. That's what needs to be
9 looked at.

10 MS. MEDINA: And all I'm saying is
11 that it can't be looked at in a vacuum, and
12 we're trying to set up a structure where we
13 can do that. So that we can figure out the
14 marine farm's going to go here, you know, and
15 the aquaculture pen's going to be here, and
16 the oil rig's going to be here, and these are
17 fishing grounds, and there's protected area.

18 I mean when you think of all the
19 competing uses now -- and the Navy, well,
20 they've got to have room to train. I mean the
21 Gulf is the perfect microcosm of this problem,
22 because they've got everything there, and if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 everybody's just doing what they want to do
2 wherever they want to do it and then they
3 don't check with other people.

4 We have these processes in place,
5 but we don't really have a comprehensive
6 strategic plan about how to use those
7 resources, just the space. That's what we
8 need. If the oil spill didn't bring that
9 home, what will? Because when one use sort of
10 gets a priority and then they mess up, look
11 what happens to everybody else?

12 Anyway, I know it's frustrating. I
13 know it's not quick enough. But you know, you
14 have a commitment here that we're working on
15 it, and keep pushing us.

16 CHAIR BILLY: Paul.

17 MR. CLAMPITT: Monica?

18 MS. MEDINA: Yes, hey Paul.

19 MR. CLAMPITT: Thanks for being
20 here. I appreciate it. I have to talk about
21 budgets just a little bit more. I was looking
22 through the budget that was given to us

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 yesterday, and I noticed the target
2 performance summary.

3 There's a percentage of stocks of
4 protected species with adequate population
5 assessments. They get the actual percentage
6 that has a good stock resource memo, and then
7 what is, you know, what they hope in the
8 future, and the number goes down. It starts
9 here.

10 In 2010, there's 20 percent, which
11 is extremely low, I think, and ends up in 2015
12 at 18 percent. Why this concerns me is that
13 these species, endangered species has, you
14 know, the potential to shut down fisheries,
15 and some of these species are probably
16 recovered now and can be taken off that list,
17 and we are not putting any effort into doing a
18 good assessment of that.

19 MS. MEDINA: You mean other than --
20 is there another one besides green sea
21 turtles?

22 MR. CLAMPITT: The sperm whale.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: And is that -- right.
2 Is that hampering a fishery?

3 MR. CLAMPITT: Well, these whales
4 are predating on our longlines. They're
5 pulling black cod off like grapes.

6 MS. MEDINA: So, well what's your
7 answer?

8 MR. CLAMPITT: My answer is -- if
9 we can get a good population. My concern is
10 that what happens if there's an accidental
11 take. It can shut down the fishery. So if
12 this, if these whales were threatened, that
13 wouldn't happen, but they're under the
14 endangered list.

15 They're protected under the Marine
16 Mammal Protection Act, but you know, if
17 there's an accidental take, under that
18 scenario it doesn't shut the fishery down.
19 But under the Endangered Species Act, it has
20 the potential to do that.

21 So my contention is there's not
22 just the sperm whales, there's turtles,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's other things that most argue don't
2 belong on that list. But for the lack of
3 funding, we don't have a good population
4 study.

5 MS. MEDINA: But I'm not aware that
6 we've shut anybody down.

7 MR. CLAMPITT: No. I mean if your
8 livelihood is involved in harvesting
9 sablefish, and you have this thing, this
10 potential. What makes it serious to me is
11 that the animals are increasing in abundance,
12 which is good.

13 MS. MEDINA: Right.

14 MR. CLAMPITT: So that brings the
15 possibility of an accidental taking.

16 MS. MEDINA: Right. But I hear
17 you, and it is hard to maintain resources to
18 do all the things that we want to do. So
19 sometimes we have to be more judicious about
20 what we don't do, and tell you what our
21 enforcement priorities are going to be, so
22 that you don't worry that anything that could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be -- I mean I -- I mean what I love about
2 what you're saying is that you care enough
3 about complying that you are deterred, that
4 you're worried, and you care enough about this
5 species and the law.

6 To me, we'll work with that. We'll
7 try and figure out how to solve your problem,
8 and it may be that it's just -- the amount of
9 money we would spend on that whale research we
10 have to spend on that stock assessment over
11 there, because that's somebody's livelihood
12 that isn't happening -- it's not just threat,
13 not happening, unless we get the stock
14 assessment done.

15 So that's our budget woe. We never
16 have what we think we need, and it always
17 costs more than we think it should, to do
18 whatever it is we're trying to do. That said,
19 there are ways, I think, that we can work with
20 you and, you know, it may be that there are
21 other issues that you're not aware of.

22 It may be that, you know, it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 planned for next year and it's just buried in
2 some line in that budget that you can't --

3 MR. CLAMPITT: I appreciate that.
4 I appreciate that the funds are, you know,
5 hard to come by and there's lots of demands
6 for it. But this kind of goes also to the
7 point of, you know, celebrating our successes.

8 We brought these species back, and
9 you know, we're not putting the effort into,
10 you know, communicating to the public that
11 we've done a good job.

12 So I would just like to see -- you
13 know, we're dealing with an \$150 million a
14 year fishery in the sablefish, and I think
15 we're very conservative about that and the
16 potential for that fishery to shut down just
17 because you don't have a population survey of
18 sperm whales.

19 And it's not -- that's just my
20 little thing. As you know there's turtles,
21 there's short-tail albatross, there's all
22 kinds of species out there. We need to get a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 better handle on that. Thank you very much.

2 CHAIR BILLY: Steve.

3 MR. JONER: I want to go back to
4 something Randy said way back when we were
5 talking about the whole resiliency of the
6 ocean, and this kind of touches on the
7 discussions we've had about stock assessments
8 and even into the issue of the ecosystem
9 management and the national ocean policy.

10 I want to talk about Fraser River
11 sockeye, which you may know is tremendously
12 successful this year, and I apologize for --
13 while people were talking I was looking up
14 some numbers here. I used to be the sockeye
15 manager. I haven't done that for years, but
16 I'll refresh my memory on some things.

17 I'm speaking from somebody who has
18 had experience with salmon. Early in my
19 career with the tribe, I had a role in saving
20 and restoring the salmon runs. They're very
21 healthy now, using partially the fishery
22 science I learned at the University of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Washington -- God bless Rita Braman (phonetic)
2 for those developments -- and also
3 incorporating the traditional knowledge of
4 local fishermen and listening to them, of
5 their experience growing up fishing with their
6 grandfathers and their fathers, and the
7 traditions that were passed down for
8 generations, for centuries actually.

9 And you know, we come out with our
10 forecast and they'd always have some criticism
11 of it. But you've got to remember when they
12 explain something to you. So I learned to
13 kind of incorporate that. Last year, the
14 Fraser River sockeye run had a forecast of
15 10.5, and the actual run was 1.5, and the
16 fishery was actually closed.

17 So that was the first time since
18 the convention and the National Safety Panel,
19 NPSFC, which pre-dated the salmon fishery. So
20 the first time I noticed it was 34 years ago
21 and it probably went way back-- that the
22 fishery was closed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 A workshop of experts was convened
2 to look at policies for -- it was a client of
3 the Fraser River sockeye, and they had this
4 workshop in June and published their report in
5 August of this year. How ironic that this
6 came out just when the Fraser sockeye run hit
7 34 million.

8 They looked at everything, and
9 again, a lot of this goes to what Randy was
10 saying about aquaculture, that there's so much
11 opposition and so much of our science and so
12 much of our resources are spent chasing those
13 red herrings.

14 This workshop, they looked at
15 everybody's favorite target. Aquaculture, the
16 sea lice hurt for years, all the aquaculture
17 in British Columbia, they're going to destroy
18 the Fraser sockeye and pink salmon and sea
19 lice contamination from industrialization, you
20 know, all these things are a problem to some
21 degree.

22 They looked at everything from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lake temperatures, the river temperatures,
2 availability of feeds, zooplankton production,
3 ocean conditions, everything, and each
4 scientist had his favorite target for what was
5 responsible for the decline of Fraser River
6 sockeye.

7 Then out of the blue comes this run
8 of 34 million. The most recent update was
9 34,546,000, and that's really amazing. When
10 you think about that, in 1913, there was a
11 huge rockslide when they were building the
12 railroad up through Fraser River and it
13 blocked up the river for a number of years.

14 The United States got involved in
15 the sockeye treaty, building a fishway through
16 that, a fish ladder that went through rock.
17 It took many decades for the run to start to
18 rebuild.

19 Since 1960, excuse me, the average
20 run has been 12 million and the highest 26
21 million. But then the last few years it's
22 been this low level.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: Oh, and then all of
2 the sudden it exploded.

3 MR. JONER: Then it just exploded.
4 Nobody knows. Just it was totally
5 unexpected. This year's forecast was going to
6 average about 10 million.

7 There was a 75 percent probability
8 it will grow to 18 million. So, you know,
9 with all of the great science we have, and the
10 stock assessments, there needs to be a caveat.

11 I watch my lawyer.

12 He caveats that "buyer beware."
13 That means something. There should be a
14 caveat in the stock assessment document.
15 Buyer beware. There's a 75 percent
16 probability this will be off. So anyway, I
17 guess the message is that --

18 MS. MEDINA: Yeah, those census
19 people think they have it hard.

20 MR. JONER: And my experience with
21 salmon stocks, they're way more resilient than
22 we think they are. You know, given a chance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they will recover.

2 So in dealing with the goal of
3 ecosystem management, stock assessments,
4 everything, there is this probability that it
5 can be way better than expected, and worse
6 case is not probably the best forecast you
7 should take. That's my stump speech.

8 MS. MEDINA: You know, I hate to
9 say it, but I'm now running up against a plane
10 that I have to catch, and I'm taking all the
11 time that I -- and this was a request from
12 leadership.

13 So I'll take a couple more
14 questions, but I do want to at least give a
15 nod to Alan, because I know he's about to talk
16 with you about compliance assistance and
17 enforcement efforts. We really need your help
18 in figuring out how to design a compliance
19 assistance program that will put us in a place
20 where we can have a good dialogue with
21 fishermen about our regulations and about how
22 we can help them to be easier to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understood, or you know, about the way that
2 we're going out our enforcement, so that we
3 don't lose the confidence of the industry.

4 That's, you know, critical to our
5 ability to protect the fisheries. We have to
6 have strong enforcement. Enforcement matters
7 immensely. Like I said, when Paul was
8 talking, I mean, most people want to abide by
9 the rules. But sometimes the rules are hard
10 to understand, and sometimes we're hard to
11 find when you have a question.

12 So I think, you know, the thing we
13 really -- you know, you asked for us to use
14 your, all your knowledge and your expertise
15 and your time, and this is one way that we
16 really need it. So I just want to put in a
17 plug for what Alan, I think, is going to cover
18 here, and I don't want to take up too much of
19 the time, because it really is a priority for
20 us.

21 So with that, I'll take one or two
22 more and then I've got to go.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Tom.

2 MR. RAFTICAN: Monica, very
3 quickly, you referred to Randy, I think, the
4 aquaculture is going to blend into marine
5 spatial planning, and I just want to remind
6 NOAA to leave a degree of flexibility in that
7 marine spatial planning.

8 You've got energy areas,
9 aquaculture, as they can work in concert
10 often. But you know, actually in California
11 we just passed a law where we can decommission
12 our oil platforms and actually get them out
13 off the water, or at least partially off the
14 water, an awful lot faster than it was before,
15 and use those artificial reefs.

16 So just keep that in mind. And
17 again, the same thing with enforcement, with
18 all of these things and particularly with the
19 marine spatial planning, stakeholder
20 involvement is going to be key to the success.

21 MS. MEDINA: It's critical.

22 MR. RAFTICAN: Thanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Randy.

2 MR. CATES: Thank you for coming
3 and listening. There was an issue that was
4 brought to MAFAC some time ago, and I think it
5 just came up a minute ago with Steve, and that
6 is it's important for NOAA to stand with the
7 recreational fishermen, the commercial
8 fishermen and the coastal communities on the
9 successes, and that we do have sustainable
10 fisheries.

11 There is a disconnect. There is a
12 disconnect between NOAA and the fishermen,
13 that we can stand together, whether it's a
14 label.

15 MS. MEDINA: Right.

16 MR. CATES: Whether we can even put
17 that label on our product to say this is a
18 NOAA-sustainable fishery is in question. I
19 think there's going to be a lot to be gained
20 if we can do that better. That's an issue
21 that hasn't been touched on for some time
22 here, but I think it's really important.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MEDINA: Well, if labeling is
2 the issue specifically, I agree. It's an
3 incredibly powerful tool and probably more
4 powerful than any regulation if you can find
5 the right standards.

6 I don't know where, if we've even
7 got an initiative on that. But it's certainly
8 something that I agree on. But I think the
9 bigger issue is how can we work with you, with
10 fishermen, fishing communities, fishermen,
11 recreational or commercial?

12 We do not wish to have an
13 adversarial relationship. But frankly, and
14 I'm going to be really frank here, and with
15 all respect to all my colleagues from NMFS,
16 there are times when I think we stand back,
17 you know, we're introverted or whatever. We
18 stay at our desks. We consider our job to be
19 -- because we have to be objective, right, you
20 know, back to being balanced and all that, we
21 remove ourselves from, you know, really
22 working with you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So we in this leadership team, I
2 think, are trying to impress upon the NMFS
3 leadership team that, you know, communication
4 is part of the job, and it's not just talking
5 at you; it's talking with you and listening.

6 You know, it will take time,
7 because I think, frankly, and you know, I'm a
8 political appointee so I have a perspective on
9 this that's my own, you know, over time these
10 issues were, you know, sort of -- they didn't
11 get a lot of political attention in the last
12 administration, and we didn't do that kind of
13 retail politics where we reach out and try and
14 touch all of the community stakeholders and
15 involve them in what we're trying to do.

16 I think it's incumbent upon us to
17 do it. I mean, the world's changed and the
18 way people communicate with each other is that
19 much easier. We have lots of ways that we can
20 do it, if we'd just work at it. But it will
21 take, you know, us figuring out how to change
22 the way we do business.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We're used to writing regulations,
2 you know, waiting for the council to act,
3 writing the regulation, putting it in the
4 Federal Register and you know, then off we go.

5 We need to find ways to be more engaged.
6 That's not enough.

7 MR. CATES: We have great examples
8 in this country of how we're doing things
9 right with fisheries. We need to stand
10 together and show our community. This past
11 summer we had record tunas coming up, probably
12 some of the biggest ones ever. The average
13 person believed that the fishery was down.
14 And that's simply not true.

15 CHAIR BILLY: One of the things
16 we've done now, we've put an item on the
17 agenda, talking about services, but it's more
18 than services. It's about communication.
19 It's about, you know, we're going to get into
20 enforcement --

21 MS. MEDINA: A relationship.

22 CHAIR BILLY: -- and how to make it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that more effective, how to communicate.
2 People on the street and better understanding
3 for labeling. It's very fertile ground, and
4 we're anticipating, in part, based on what
5 we've heard from you, but also there's
6 interest in the agency as well.

7 So this committee is going to try
8 to see, and begin that discussion and see what
9 we can come up with in terms of
10 recommendations from our experience base that
11 you should consider.

12 MS. MEDINA: Well, I really
13 appreciate that, and you know, I think what I
14 can say, and I know Eric feels this way and
15 I'm sure Mark does and Alan, we have so many
16 things that are happening all the time. Just
17 staying on top of the work as it comes is
18 impossible. So us being able to see around
19 corners and do things strategically in an
20 affirmative way is just that much harder.

21 So that's why we really need you,
22 to help us see and to shape those affirmative

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agendas, so that we can take them up, you
2 know, when we have the time, which is not
3 always when we plan it, because things like
4 the oil spill happen. But that's not to say
5 that we don't want to have an affirmative
6 agenda, you know.

7 We need your help, and I'm glad to
8 see this is on your agenda, and I look forward
9 to hearing more about, you know, what you
10 think, because if you can help us prioritize,
11 then we could actually do something. But if
12 everything's a priority, nothing's a priority.

13 So if it's aquaculture or if it's
14 labeling, help us figure out what it is you
15 want us to be doing affirmatively, and then we
16 can try and work on it. So and that's hard.
17 It will require some give and take and
18 discussion among yourselves as to what really
19 are the priorities, and that's, you know, our
20 job as leadership is to try and make those
21 things happen, to set those priorities
22 ourselves within the agency, do we need more,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, better weather forecasts or a
2 climate service?

3 But then how do we mesh all that
4 and turn it into a really good affirmative
5 agenda that we can get done so, you know, we
6 feel like we're doing the job. So we need
7 your help. Thank you very much.

8 CHAIR BILLY: Thank you for coming.

9 MS. MEDINA: Glad to do it, and I
10 talk to Mark and Eric every day, so they'll
11 tell me all about all the rest of your
12 discussion, and I really appreciate your help
13 on this enforcement piece. We really need it.
14 So thank you all. Have a great rest of your
15 meeting.

16 VOICES: Thank you.

17 (Applause.)

18 CHAIR BILLY: Take a 15 minute
19 break.

20 (Whereupon the above-entitled
21 matter went on the record at 10:40 a.m. and
22 resumed at 11:04 a.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Okay. I'd like to
2 get started again. First, I'd like to thank
3 the committee and particularly those that
4 spoke during the last session. I felt that
5 was as productive as we could make it. Thank
6 you very much.

7 Hopefully, we put some markers down
8 in terms of how we interact in the future and
9 can be more useful in terms of policy
10 development and implementation.

11 We're going to change our schedule
12 a little bit. Sam's here and he has a tight
13 agenda, so we're going to go back and pick up
14 that item from yesterday, focused on national
15 ocean policy and coastal and marine spatial
16 planning.

17 Sam Rauch is the Deputy Assistant
18 Administrator for Regulatory Programs, and
19 Sam, the floor is yours. Thanks for coming.

20 National Ocean Policy/CMSP

21 MR. RAUCH: Thank you, Mr.
22 Chairman. I, in addition to my duties as the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deputy assistant administrator, I was one of
2 the negotiators for the NOAA team working on
3 the national ocean policy. I went to a lot of
4 the meetings. I drafted some of the language.

5 If you didn't like that particular piece, I
6 didn't draft that piece.

7 The other stuff I drafted. So I do
8 know a lot about it. This is the presentation
9 that Dr. Lubchenco gave to the NOAA all-hands.

10 We give a shorter version of the presentation
11 when we go talk to the councils.

12 But we thought for this group,
13 you'd like a little bit more of the detail
14 that Dr. Lubchenco shared with the rest of us.

15 So that's what this presentation is.

16 I'm going to speed through some of
17 the other more background slides that I think
18 that you guys are aware of, including the
19 reasons why a national policy was good, this
20 being an ocean policy body. Some of those
21 reasons are apparent.

22 One of the biggest issues that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 face in ocean fishing, one of the big ocean
2 actions in general, is just the plethora of
3 different jurisdictional bodies. If you want
4 to do anything on the ocean, you have to talk
5 to a number of different people to deal with
6 it, depending on where you are and what you
7 want to do.

8 We try to use some of the existing
9 mechanisms in the law to look at cumulative
10 effects and other coordination, but we often
11 fall short of those kinds of things. As you
12 see, that is one of the main issues in this
13 ocean policy, is to improve federal
14 coordination and to bring a modicum of
15 advanced planning to what we do, as opposed to
16 the reactive issues, what we've been in.

17 As I said -- so case in point that
18 Dr. Lubchenco highlights often is the oil
19 spill, in which if we had coordinated better
20 across the agencies at the outset, before the
21 spill happened, on oil and gas development,
22 some of the issues, not maybe all of them, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some of the issues could have been lessened
2 from that. We certainly could have learned
3 some lessons.

4 One of the things that is important
5 on ocean policy is that it is not a wilderness
6 preservationist document. It reflects that
7 the ocean is a source of -- a great economic
8 driver for our economy.

9 It is important that you preserve
10 the things that cause that economic driver,
11 that you preserve some habitat function and
12 utility, in order to continue to reap the
13 benefits from the ocean.

14 But we need to recognize that there
15 is a balance between ocean health and ocean
16 prosperity, and this policy tries to do both
17 of those things.

18 It does try to level the playing
19 field for all the stakeholders in the ocean,
20 particularly getting back to what I said about
21 it being very difficult to deal with the
22 multi-jurisdictional entities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It is very hard for someone who is
2 interested in a particular aspect of the ocean
3 to know who to go to, where to go to or how to
4 be heard. Science, which is something that
5 NOAA is grounded on, is very important in this
6 document.

7 It strengthens the requirements
8 that already exist to make a decision on the
9 best available science, and tries to create
10 mechanisms to make it easier to react to that
11 science.

12 Of course, the last thing is
13 although a national ocean policy has to by its
14 very nature be somewhat top-down and
15 directive, or else it wouldn't be a national
16 policy, it tries to respect the unique
17 characteristics of the individual reasons; it
18 tries to build in a lot of bottom-up
19 approaches.

20 When we get to the coastal marine
21 special planning part of that, you'll see that
22 that is an effort to be very bottom-up,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recognizing that each area of the country is
2 different, that there are unique things to
3 come in. While it is important to set a
4 national direction, it is also important to
5 realize that no one size will fit all in terms
6 of national policy.

7 All right, the mechanisms, the
8 building blocks. The one thing that it did,
9 it created a National Ocean Council at the
10 White House level, made up of the Secretaries
11 of the various interested agencies and the
12 head of the National Oceanic and Atmospheric
13 Administration. So Commerce gets two seats at
14 the table.

15 That council is supposed to meet
16 frequently. It is supposed to have dedicated
17 staff. There have been, in the past, efforts
18 to have a similar sort of council. That never
19 met and in part never tracked what was going
20 on, because there was no dedicated staff.

21 So although it seems minor, the
22 fact that this council will have dedicated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 staff to make sure that there are meetings and
2 agendas and things that are followed up on, it
3 is major accomplishment. Randy?

4 MR. CATES: Can you describe the
5 membership? What other agencies are involved?

6 MR. RAUCH: It's Defense, Interior,
7 Agriculture, Coast Guard. Yes -- Energy, I
8 think, is in there. There's a list. I don't
9 have the document in front of me that goes
10 with this. It's the Secretarial level. We're
11 the only, NOAA's the only one that has sort of
12 a subsecretarial representation.

13 There are nine national priority
14 objectives that are laid out, and I'll talk
15 about those in a minute, which are areas of
16 special emphasis that are split between
17 changing the way or emphasizing certain
18 aspects of how the federal agencies interact
19 with one another and the public, versus
20 certain areas of expertise that -- or areas of
21 emphasis that we want to work on as we go
22 forward.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Each one of the priority objectives
2 is somewhat generic although there are a
3 number of things which the President has
4 indicated we need to work on within those.

5 But there is a requirement to
6 convene interagency working groups on each one
7 of those and to come up with a strategic plan,
8 which will be a more detailed checklist of the
9 things that we're going to do in the coming
10 years to carry out that objective.

11 We'll talk about the next one in a
12 lot more detail later on, the framework for
13 coastal and marine spatial planning. It is
14 coastal because it includes the Great Lakes as
15 well.

16 That was a big focus. That was
17 part of the President's original directive,
18 and there are regional planning bodies which
19 are actually going to do the marine spatial
20 plan, the marine spatial planning, because it
21 is a vibrant, living process.

22 Those do not exist yet, but will be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 existing soon, and we'll talk about how those
2 are structured later on in the presentation.

3 All right. This is a little bit
4 more detailed on the ocean council. You can
5 see that there's the Secretary-level group
6 right there, this group pre-existed at the
7 ORRAP, the Ocean Research and Resources
8 Advisory Panel.

9 One of the recommendations of the
10 policy is that this was largely a group of
11 academics and some, certain segments of
12 industry. I don't believe there were any
13 fishing interests on this.

14 This is a standing FACA committee
15 to advise this group and the policy recommends
16 that the membership of this group be expanded
17 and changed to be more representative of all
18 all of the ocean stakeholders. It's not right
19 now. It's mainly a research-focused group,
20 but it needs to be a resource-focused group as
21 well.

22 There is a Governance Coordinating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Committee, which are jurisdictional entities,
2 states, tribes, local governments, to provide
3 a way for other jurisdictions to directly
4 input into the National Ocean Council. So
5 that, I believe there are ten seats on that,
6 including certain designated tribal seats.

7 These already exist. This is just
8 to reflect that there is a cross-linkage
9 between the ocean council and the security
10 council, the economic council and climate
11 change.

12 And then there are these two
13 interagency -- the IPC, the interagency policy
14 committees. One of them, the Ocean Science
15 and Technology IPC, largely pre-existed this
16 group. It was called the Joint Ocean Science
17 and Technology Committee, JSOST.

18 It will continue on under a new
19 title. It is actually a creature of statute,
20 so it cannot change, but we can change its
21 name. So that's what that is. So that's
22 where we're supposed to work together to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 coordinate interagency research priorities and
2 objectives.

3 That has worked fairly well over
4 the years. The other one is, you may recall
5 in the last administration there was a group
6 called C-MORE, which was looking at
7 interagency coordination activities. That's
8 somewhat what this is supposed to do. The
9 Ocean Resources Management Committee is
10 supposed to replace C-MORE, but to actually
11 have more emphasis than that group did in that
12 it has -- one of the issues that we heard when
13 we were going into the national ocean policy
14 about C-MORE is it was hard for that group to
15 be effective, because it didn't have any
16 directives from the top as to what it was
17 supposed to do.

18 This group now has directives. The
19 ocean policy sets out what this group is
20 supposed to do. So there is more direction
21 towards that interagency group. Within that,
22 there will be a number of working groups that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are going to be set up, probably to do the
2 nine strategic objectives, priority
3 objectives, including coastal marine spatial
4 planning.

5 Those groups are just now forming.

6 The Steering Committee or I'm sorry, the
7 deputy level of this group has met already.
8 The principals have not yet met but they're
9 supposed to meet at the end of this month, I
10 think the end of October, the 26th.

11 I expect that the first thing
12 they're going to do is to formalize this
13 structure and actually constitute all these
14 bodies, because they need to have some sort of
15 recognition. There are documents that need to
16 be signed, and that will be the first task of
17 this group there.

18 This is the web page for all the
19 information on this. It's
20 whitehouse.gov/oceans. It's got all -- it's
21 got the ocean policy, it's got the facts, it's
22 got all the details on this including, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 believe, updates on when the group's going to
2 meet.

3 All right. We talked about -- I
4 know yesterday Paul Doremus came and talked to
5 you about the strategic plan. These are the
6 three main goals aligned with the strategic
7 plan.

8 We looked at this in ocean policy,
9 since we were drafting ocean policy at the
10 same time NOAA was doing the strategic plan,
11 and NOAA was a key proponent of the policy.

12 We drove a lot what was in the
13 policy. So it's not surprising that there is
14 a lot of linkage between the NOAA strategic
15 plan and the primary objectives of the
16 strategic policy. Let me go back one.

17 So there's four things about how we
18 do business. This is cross-purposes. One is
19 the ecosystem based management, which
20 underlies everything that we do and while this
21 is important to NOAA and we believe we have
22 been embracing it, although maybe not fully

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 carrying it out for many years, other agencies
2 have not been embracing it.

3 This, we believe, is the benchmark
4 in getting away from looking at the particular
5 action on which you are dealing with, looking
6 at it as one species, one activity and looking
7 at it broadly, as to what that action -- what
8 really the effect that that action has in the
9 ecosystem.

10 Coastal marine spatial planning,
11 which we'll talk about, has been very
12 important. Two other ones which are
13 important, this is the one in which we get
14 better -- the informed decisions and approved
15 understanding is the one in which we argue for
16 better science.

17 This is both better science, in
18 order to make the decisions we need to make,
19 and educating the public about those important
20 aspects of ocean policy, and this one,
21 coordinate and support.

22 It doesn't sound very exciting, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 one of the issues that we had is, in order to
2 look at the multitude of federal activities
3 that are going on, some of the authorities
4 might conflict. There may be gaps in
5 authorities.

6 Right now, the ocean policy does
7 not argue for any additional legislation, but
8 it sets up a mechanism by which it will
9 evaluate whether additional legislation is
10 appropriate. That's coming there.

11 To coordinate and support, one of
12 the things that's supposed to do is to look at
13 conflicting or overlapping jurisdiction, and
14 to see whether a legislative fix is
15 appropriate for any of that. So that's where,
16 that's where that water is going to be carried
17 right there.

18 Areas of emphasis, climate change
19 and ocean acidification. Not trying to
20 determine whether climate change is going to
21 happen, but how we can adapt to it, what we
22 can do to deal with that, both on land and in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the ocean. Obviously, that tracks very well
2 to the NOAA strategic objective.

3 Regional ecosystem protection and
4 restoration. This is not a small-scale
5 project. What they mean by this are things
6 like the Chesapeake Bay executive order,
7 Secretary Mabus' approach to the Gulf
8 restoration, looking at perhaps the
9 California-San Francisco Bay delta system,
10 Puget Sound. Large ecosystems and large
11 actions to deal with those.

12 Water quality and sustainable
13 practices on land. Throughout the document,
14 it clearly and repeatedly talks about the
15 linkage between what you do upstream and the
16 effects that it has on the ocean, and vice
17 versa.

18 There is an important need to
19 reflect that the ocean policy does not stop at
20 the beach, but it goes inland, in terms of
21 those things that are happening.

22 NOAA has less resources and less

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 authority to deal with inland actions. But
2 other signatories like USDA, the Department of
3 Agriculture, or EPA are much bigger players
4 there, and this is where they have a big role
5 in what happens.

6 Changing conditions in the Arctic.

7 Very important to NOAA. We just came out
8 with an Arctic strategy to deal with Arctic
9 research mainly. But trying to figure out how
10 to apply the principles of the ocean policy in
11 the Arctic, where there are vibrant changes
12 going on.

13 If we deal with it right, we can
14 manage the Arctic properly, but there's a lot
15 of danger if we don't address it properly.
16 And the last one, which also overlaps with the
17 informed decisions is to improve our
18 observing, mapping and infrastructure.

19 It's a recognition that we can't do
20 anything else in the ocean unless we have good
21 observational systems, good infrastructure and
22 those kinds of things.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is a, for those of you who
2 heard Vice Admiral Lautenbacher repeatedly,
3 this is his "all the global earth observation
4 systems fall within that." All right. Within
5 NOAA, how are we going to deal with this?

6 You may be familiar that within
7 NOAA there was such a thing as the NOAA Ocean
8 Council, which is where the National Marine
9 Fisheries Service, the National Ocean Service,
10 the Ocean Atmospheric Research and other line
11 offices got together periodically to discuss
12 important issues.

13 A lot of the work that went into
14 NOAA's participation on the ocean policy was
15 sponsored by the NOAA Ocean Council. Can't
16 call it the NOAA Ocean Council anymore because
17 there is a National Ocean Council, and so you
18 can't double-use the acronym. So we had to
19 change that. So it's now the NOAA Ocean
20 Coastal Council, the NOC-C.

21 The other thing that we did is we
22 expanded the representation to bring what was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 missing before, which was -- that's Lesson 4.

2 You might like it. It was to bring the
3 political leadership of NOAA into the
4 policymaking.

5 We were, a number of career
6 officers, trying to forward the objectives of
7 NOAA, but we didn't have that political
8 linkage. We've done that now. The new
9 assistant secretary, Dr. Robinson, is the
10 head. The Office of Policy is one of the
11 explicit co-chairs, and then the other three
12 co-chairs remain as they are.

13 But this is the organization within
14 NOAA that is going to be implementing the
15 ocean policy. We're making sure that all of
16 the interagency teams are staffed up. We're
17 making sure that when somebody goes to the
18 National Ocean Council meetings that they've
19 got the NOAA perspective. This is the support
20 structure for that.

21 All right. We've got nine team
22 leads. You'll recall we have nine priority

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 objectives. We have already assigned within
2 NOAA team leads for those nine priority
3 objectives. Some of these have changed since
4 Dr. Lubchenco gave this slide, so I would
5 worry less about the names.

6 But the idea is that when those
7 interagency bodies meet, these are our
8 negotiators. These are the ones that are
9 working on, within each one of those nine
10 objectives, what NOAA would like to get out of
11 these.

12 These are the ones that are charged
13 with actually getting a strategic plan that
14 works, to, in some sense take off their line
15 office hat and put on a NOAA hat, and then
16 take off the NOAA hat and put on an
17 administration hat, to make sure there is a
18 strategic, a quality strategic plan at the end
19 of the day for each of those objectives.

20 So this is just a different
21 representation of how NOAA is interacting
22 -- the NOAA structure is interacting with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 national structure. So these are the
2 interagency groups here. This is the NOAA
3 groups and we are linking to all of those
4 things.

5 All right. So that is, unless
6 there's questions, or I can take them at the
7 end, that's basically how NOAA's going to
8 interact with the policy as a whole. I'll
9 spend the rest of the time on coastal marine
10 spatial planning. So if you have questions on
11 the policy in general.

12 VICE CHAIR McCARTY: Yes. The
13 question I had was, you mentioned very quickly
14 at the beginning legislative changes. What,
15 can you expand on that a little bit?

16 MR. RAUCH: So right now, the
17 policy does not call for any legislative
18 changes. Everything that is implemented on
19 the policy is implemented under the
20 President's administrative authority. So all
21 current legislative authorities stay as they
22 are.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But we've heard repeatedly from
2 constituents that there is a frustration
3 either because there is too much overlapping
4 jurisdiction, different agencies are trying to
5 do different things, or there are gaps, where
6 there is a critical need to undertake
7 activities that the President doesn't
8 currently have the authority to do.

9 So the policy doesn't actually
10 advocate for either removing any of those
11 jurisdictional barriers or filling any of
12 those gaps yet, but creates this, within the
13 coordinate and support goal, an effort to look
14 at that, and there might be legislative
15 proposals that come out of that to say, to
16 deal with how, for instance, oil and gas
17 development is going, or other kinds of
18 things.

19 So there's no legislation yet, but
20 there is a potential for legislation in the
21 future to deal with gaps or overlaps. That's
22 what it is. Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR McCARTY: And then I
2 have another question. You talked about the
3 Director of Policy being on the NOAA NOC-C?

4 MR. RAUCH: Yes.

5 VICE CHAIR McCARTY: Is that a new
6 position and could you just talk about that a
7 little bit?

8 MR. RAUCH: That right there?

9 VICE CHAIR McCARTY: Yes.

10 MR. RAUCH: There's always been a
11 Director of Policy.

12 VICE CHAIR McCARTY: Okay.

13 MR. RAUCH: So NOAA's always had,
14 and this is a political office that has always
15 existed -- well, at least I don't know always,
16 but as far as I can remember, from the last
17 administration to this administration, they
18 have never been involved in the NOAA Ocean
19 Council, this council which looks at long-term
20 strategic objectives between the Fisheries
21 Service, the Ocean Service and OAR.

22 They are involved now and are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 charged with working on the ocean policy. So
2 I think that's a positive sign, since the
3 policy is inherently political and involves
4 the political leadership of the President's
5 doctrine. It's politically small.

6 Other questions, before I move on
7 to coastal marine spatial planning?

8 MS. DOERR: I was just able to get
9 the executive order, but does anyone have a
10 recollection of the executive order that went
11 on with the policy, about the regional FACAs?

12 Am I remembering this correctly?

13 MR. RAUCH: So the regional
14 planning bodies are the -- let me go back. So
15 there is a need for regional representation at
16 this Governance Coordinating Committee, right?

17 So this is going to involve states and not
18 every state, but the representatives of the
19 various regions have come onto this.

20 There is a sense here that if there
21 are other advisory committees needed that they
22 could pair up on this one. But this is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 only FACA advisory committee that is out
2 there, and don't quiz me on the executive
3 board, because I don't have it, right? We can
4 talk about that some more.

5 But that's right now the only FACA
6 advisory committee and this one pre-existed.

7 MS. DOERR: And those -- okay,
8 because -- I just found it. And then there
9 will be how many planning departments? We can
10 come back to this.

11 MR. RAUCH: Well, there are
12 regional planning bodies under the coastal
13 marine spatial planning that we talked about.

14 MS. DOERR: We're calling them
15 regional advisory committees. Under FACA.

16 MR. RAUCH: So they would feed into
17 -- if they are, they would feed into this --
18 they would feed into this one, which is -- you
19 know, so this has got the states. So a
20 regional state representative would be on
21 here. So there may be subgroups, and this
22 group may want to create regional subgroups to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 help feed into this process.

2 But it's under -- I don't think
3 it's a new FACA. It's under -- it's a
4 subgroup of this one, is my understanding.

5 MS. DOERR: Okay.

6 MR. WALLACE: Sam, can you tell me
7 how the regional coordinating committees are
8 going to be structured and who they're going
9 to be made up of?

10 MR. RAUCH: The regional planning
11 bodies?

12 MR. WALLACE: Yes, the regional
13 planning --

14 MR. RAUCH: For coastal and marine
15 spatial planning?

16 MR. WALLACE: Pardon? Yes.

17 MR. RAUCH: Yes. So we'll get to
18 that.

19 MR. WALLACE: Okay.

20 MR. RAUCH: And we don't -- the
21 short answer right now is we don't know. They
22 have not been constituted yet. I have some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ideas as to where they're going to go. Until
2 this group formally meets and constitutes
3 itself, nothing can be officially designated
4 as happening, right?

5 But that will happen at the end of
6 the month. At that point, I think we will
7 know a lot more certainty about some of these
8 things. Other questions before I go on?

9 Okay, okay. So coastal and marine
10 spatial planning. This obviously has been a
11 major focus of the work of the policy of the
12 administration. It was one of the President's
13 directives to create an effective framework,
14 or a framework for effective coastal marine
15 spatial planning.

16 One of the things that they wanted
17 to get out of this and to make it clear is
18 that we did not want an additional layer of
19 bureaucracy requiring everything to stop in
20 the ocean while you made sure that whatever
21 you did was consistent with some marine
22 planning body.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 There is no statutory or
2 legislative authority, as we just mentioned,
3 along with this. But within that, there is
4 inherent ability in every federal agency to
5 plan its actions and to talk to other agencies
6 as they are doing that, and that is the
7 authority that we are taking advantage of
8 here.

9 So it's not intended to be an extra
10 layer of regulation or bureaucracy, but it is
11 intended to force the federal agencies
12 collectively to look ahead, in partnership
13 with the states and other local stakeholders,
14 to look ahead at what you're going to do in
15 the ocean to try to achieve the maximum
16 benefits possible and to resolve conflicts
17 before they arise.

18 It is supposed to be bottom-up.
19 There are a very few national objectives from
20 the top because this is a national policy.
21 But there's a recognition that we don't know
22 exactly how -- what the best model would be to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do this in any given region.

2 So we need to work on some of the
3 activities that are going on in the region and
4 to realize that what is critical and important
5 in one region of the country is maybe not
6 critical and important in another. So there
7 needs to be a regional priority-setting in
8 terms of what they want to do with their ocean
9 and coast.

10 With a national overlay, here are
11 the regions. There are the nine various
12 regions, which are based roughly on the large
13 marine ecosystems that NOAA has spent a long
14 time trying to define. Those are large
15 bioregions in the oceans that make some sort
16 of ecological sense.

17 The fishing assemblages tend to
18 react to one another. These lines, while
19 they're not always precise, they do make some
20 sort of sense, and we worked a long time to
21 try to do that.

22 There is a recognition, though,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that there's a geopolitical reality to coastal
2 marine spatial planning. Somebody has to do
3 the plans. There are states that are clear
4 partners.

5 So there needs to be some sort of
6 overlap between what makes ecological sense,
7 environmental sense and what makes
8 geopolitical sense, reflecting that there are
9 existing bodies which are likely to morph into
10 the planning bodies in some manner, or
11 contribute strongly to the planning bodies.
12 There are voluntary regional governance
13 organizations that have generally been formed
14 by the governors of the various states.

15 There's one in California, the
16 Great Lakes, the Northeast, Mid-Atlantic,
17 South Atlantic and the Gulf of Mexico, in
18 which the governors have gotten together and
19 have indicated that they want to work
20 collectively towards shared objectives.

21 This group -- these groups may well
22 become the regional planning bodies if a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 couple of things happen. One is they have to
2 broaden their inclusion of the federal
3 agencies. This is at bottom a federal
4 process, which we want to do it in
5 consultation with the states.

6 These groups of organizations right
7 now are state-led processes, in which the
8 federal government has supported, but we're
9 not always sitting members at the table. So
10 we need to work out that interaction.

11 They need to make sure that their
12 decision-making processes are open and
13 transparent, and not all of them are. Some of
14 them are still in the formative stages. So we
15 need to work on that. But those six may well
16 be part of the -- may will either be the
17 regional planning bodies or become the
18 regional planning bodies with some activities.

19 There is no current governance
20 organization in the Caribbean, Alaska, the
21 Arctic, or the Pacific Islands. Obviously
22 some more work needs to be done there, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know there are a lot of people working on
2 trying to figure out how to create a regional
3 planning body in those areas.

4 So I do know that these
5 organizations are very interested in
6 participating. Not all of them want to be the
7 planning body. For instance, the West Coast
8 Governors, the last I had heard, didn't want
9 to be the planning bodies themselves, but did
10 want to contribute strongly to the process,
11 and that may be a model for the rest of them,
12 so I don't know.

13 I know that the fishing management
14 councils are also struggling with how to
15 interact with these planning bodies and how
16 they can make sure they are heard at the
17 table. Right now, at the outset, they are not
18 designated officially as part of the regional
19 planning bodies.

20 But unlike any of these other
21 organizations, the fishing management councils
22 are called out, recognizing their unique role

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and there's a process for potential inclusion
2 of them as seats at the table, not just mere
3 stakeholders but as planners, and I actually
4 think that has to happen. I know that a
5 number of the fishermen's councils are
6 reaching out to their partners in regions to
7 do just that.

8 All right. So what can we expect
9 to get out of this? As I said, this is
10 supposed to be bottom up. It's supposed to
11 allow the stakeholders to come together and
12 look forward-looking based on the science, and
13 then craft a forward-looking plan for what
14 should or should not be done in particular
15 areas of the ocean.

16 Beyond that, the details can be
17 very flexible. You could have a region which
18 would have a very specific plan that would
19 outline areas of the oceans in which certain
20 things should or shouldn't be done. You can
21 have a region which would have more of a
22 decision matrix.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The point being that you need to
2 look ahead of time and to think in details of
3 what should or shouldn't happen. Beyond that,
4 I think there's a great deal of flexibility in
5 the policy as to how you design that program.

6 There's a recognition that current
7 uses need to be preserved. As I said, this is
8 not a document that preserves the oceans and
9 walls it off, but it is intended to make sure
10 that we recognize that the ocean provides
11 certain environmental benefits, economic
12 benefits that we would not get without
13 healthy, functioning ecosystems, and so there
14 needs to be a recognition that you have to
15 preserve those in some manner, but also
16 maintain the economic drivers.

17 There needs to be a place for new
18 uses as they come on line, particularly
19 alternative energy development, perhaps
20 aquaculture, depending on where you go. But
21 it's for planning; it's a place for mutual
22 discussion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 As we said, this needs to be a
2 bottom-up approach, and there is no current
3 new legislative authority. So it's not
4 supplanting any of the existing authorities.
5 What happens, what the executive order says is
6 there are certain things that federal agencies
7 have to do in the oceans. There are a great
8 many things which federal agencies have the
9 discretion to do.

10 When the federal agencies have the
11 discretion, they are supposed to implement the
12 ocean policy, and act consistent with the
13 plan. That works very well if the federal
14 agency signed onto the plan ahead of time. It
15 doesn't work so well if they didn't. This is
16 in part why I think the fishery management
17 councils should be part of the plan.

18 But the idea is you do the plan,
19 you sign onto it ahead of time, which means
20 when you sign it, you are saying you have the
21 discretion to carry it out. Then it's up to
22 you to carry it out under the President's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ultimate directive.

2 We've talked about there is a
3 critical component of marine spatial planning,
4 separate and apart from the regulatory sort of
5 aspect or the management aspect is the data
6 aspect. Having a common understanding both in
7 the regions and nationally of what data we
8 have, in terms of ocean mapping, mapping of
9 uses, mapping of data, and making sure the
10 data can talk to one another, is a very
11 difficult task. This is a very significant
12 task.

13 I often though -- a lot of the
14 energy and enthusiasm for marine spatial
15 planning are coming from the people who can
16 create bigger and better products like this,
17 and that's good, and we need those kind of
18 things, better decision-making tools. But we
19 need to remember that those tools need to
20 serve the decision. There needs to be an
21 investment in the decision-makers, as well as
22 the decision-making tools.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We know that a lot of the states
2 and other entities are critically short-
3 staffed, and their ability to even bring
4 people to the table is limited, in order to
5 fully carry this out. But you need to bring
6 that to the table, or else all the science in
7 the world is not going to help you.

8 We have a lot of -- we bring a lot
9 to the table, not just the mapping. We
10 monitor the ocean conditions, we monitor the
11 use patterns. So we bring biological,
12 socioeconomic, and other research to the
13 table, in addition to our management
14 authority; our predictive capability; our
15 ability, our unique ability to connect with
16 other jurisdictions.

17 A lot of these voluntary
18 organizations we talked about would not have
19 happened without assistance from NOAA, both in
20 terms of money and staffing. Of course, we
21 have our management authority.

22 So this is our regional role. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will sit on all the nine regional planning
2 bodies. We've already designated within NOAA,
3 or we are working on designating, I'm not sure
4 the announcement is official yet, who is going
5 to be our principal negotiators for NOAA on
6 these planning bodies, and their main task is
7 to make sure that there is a workable plan
8 that comes out of this, that reflects all of
9 NOAA, not just whatever line office they came
10 from, but also reflects the administration
11 priorities.

12 We have existing regional
13 collaboration teams. I don't recall whether
14 this group has been briefed -- I think
15 probably at one point -- on NOAA's efforts in
16 the regions to create regional collaboration
17 teams where within the region we may have the
18 Weather Service, the Fishery Service, the
19 Ocean Service and other things.

20 And we often are invited to
21 regional forums. It's important that we talk
22 with one voice. So we created a while ago

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regional collaboration teams to bring together
2 the various things that we do in a region.

3 They're going to work with, and
4 they nominate and they have nominated the
5 representatives to these regional planning
6 bodies. The NOC-C, which is the NOAA-level
7 group, has approved them. We just need to --
8 I don't think we've formally announced them.

9 The regional planning bodies need
10 to create a formal mechanism. They're
11 required by the policy to create a formal
12 mechanism for consultation with the council.
13 My hope is that it is more than just a
14 consultation, but at a minimum it has to be a
15 consultation. Yes?

16 VICE CHAIR McCARTY: Sam, do you
17 want to be interrupted or wait until the end?

18 MR. RAUCH: Go ahead.

19 VICE CHAIR McCARTY: Sorry. I was
20 wondering, there is a huge amount of concern
21 in Alaska about the collaboration with the
22 regional councils. Is there any way that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could sort of take out that concern by giving
2 the regional councils a seat period on these
3 regional planning bodies? Wouldn't that take
4 out a lot of that --

5 MR. RAUCH: It certainly would, and
6 it is something that was discussed within the
7 administration. It's certainly something that
8 I personally thought was a good idea and still
9 do, and there is still an option to do that.
10 In Alaska in particular, it's difficult
11 because you give them a seat at what?

12 The regional planning body doesn't
13 exist in Alaska yet, and I don't think when
14 the national NOC meets in October, I don't
15 think that they right now know who the Alaska
16 representative is going to be.

17 In my view, obviously we didn't --
18 obviously they didn't get a seat at the table
19 at the outset across the board. A lot of that
20 is a national perception problem with the
21 councils, on what they do and what they don't
22 do.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 In the regions, there are many good
2 working relationships with the councils, and
3 what I've advised every council that I've
4 talked to to do is to reach out to other
5 potential partners in the region, and to
6 collectively come up with what they think the
7 regional planning body should be.

8 It would be very hard, at a
9 national level, to deny an organization that
10 is coming from the regions, that says "We want
11 to do coastal marine spatial planning. We
12 have the jurisdictional authority. Here's who
13 we think should be on it."

14 So I have done that. I know that
15 the region, including the Alaska council and
16 other councils, are reaching out to try to be
17 constructive at the outset, so that there is -
18 - it becomes a more -- an easier determination
19 because the regions themselves will want it.

20 But right now, it is at the
21 national level, they are given a consulting
22 role, and the national organization will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 revisit, at some point in the future, whether
2 to put them on and give them a dedicated role
3 at all the regional planning bodies.

4 So this is within NOAA, how we're
5 going to deal with this. There is a coastal
6 marine spatial planning program that has been
7 created or is being created, that will exist
8 within the Ocean Service. They do a lot of
9 this work. It will have four national staff;
10 that's it.

11 There have been lots of proposals
12 for a bigger national staff, but what we were
13 arguing for is that a larger staff loses sight
14 of the goal. The goal is a regional plan, and
15 so to the extent that we have resources, they
16 need to be directed at the regions, to
17 actually create such a plan, and not in an
18 overarching headquarters structure.

19 So right now, these are temporary
20 detailees, but I expect that they will
21 permanently fill them at some point in the
22 future. There is an implementation council

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which NMFS sits on to oversee the work of the
2 marine spatial planning because this is -- for
3 those of you who are familiar with the
4 structure, even though this may sit in NOS, it
5 is a matrix program, much like our coral
6 program or our aquaculture program, in that it
7 relies on input and advice from the various
8 line offices.

9 There are these regional leads,
10 which we talked about before, which are the
11 ones that are tasked with going out in each of
12 the nine regions and negotiating a plan. They
13 don't report to the program because many of
14 them will stay with their line offices.

15 But they do interact with the
16 program and coordinate with that, and there
17 are a number of line office teams that help.
18 You know, NMFS has a number of people that are
19 helping assist with this program, even though
20 they're not one of these four people.

21 All this has been in addition to
22 the implementation council, in which the line

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 offices directly -- these are the heads of the
2 line offices providing input in that -- the
3 Ocean Council in general provides oversight,
4 and there is a connection between what we
5 said, the regional collaboration teams, which
6 existed before, and this process.

7 We have a website, just like the
8 President's website. We have a website too,
9 cmsp.noaa.gov to say how we are building on
10 this process. The view from NOAA is we need
11 to make this work. Both we need to make the
12 plans work and we need to make sure that the
13 plans are effective and efficient, and that
14 there continues to be support for marine
15 spatial planning.

16 If NOAA doesn't do it, nobody else
17 will, and this is something that is a high
18 priority with Dr. Lubchenco and with NMFS.

19 So that's it. So I've got two
20 concluding slides. This is the one, and I'm
21 not sure which one Dr. Lubchenco ended with,
22 so I will end with both. So there you go.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Any questions on either the policy or coastal
2 marine spatial planning, or how NOAA or NMFS
3 is going -- NMFS or NOAA is staffing up to
4 deal with these issues? Keith.

5 MR. RIZZARDI: How do you see us
6 fitting in this whole model? Where is our
7 role to provide feedback to the council?

8 MR. RAUCH: So you provide feedback
9 to both the Secretary and the Administrator
10 directly. One thing that you might want to
11 consider is what your relationship is to that
12 other FACA committee, the ORRAP committee, the
13 Ocean Research and Resources committee from an
14 earlier slide, which is the FACA committee
15 advising intergovernmental process.

16 You might want to reach out to that
17 committee and see what linkages there could be
18 between input into that. I do think that you
19 are advising the NOAA portion of this whole
20 process. So there is an interagency portion
21 as well.

22 To the extent that this committee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has advice on ways we can do better within the
2 Presidential directives, I think that that is
3 an important tool -- place for this committee.

4 But from the national perspective, I think
5 reaching out to that other committee to help
6 getting into input into the National Ocean
7 Council is --

8 MR. RIZZARDI: We could envision a
9 joint meeting with that other body?

10 MR. RAUCH: You might or maybe send
11 a representative to that body or --

12 MR. RANDY FISHER: I'm actually on
13 it.

14 MR. RAUCH: You are? Well there
15 you go.

16 MR. RANDY FISHER: I'm on ORRAP
17 now.

18 MR. RAUCH: Maybe time to be your
19 ORRAP representative on that body --

20 (Laughter.)

21 MR. RAUCH: -- with messages this
22 group would like to convey to that body would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be a very good thing. Other questions or
2 comments? Yes.

3 DR. CHATWIN: Could you tell us a
4 bit about the request for proposals that's out
5 for the regional coordination?

6 MR. RAUCH: Right. So there are
7 two pools of money that are at issue right
8 now. One is an internal pool of money that is
9 going to be dealt with by NOS to help
10 structure the internal NOAA processes.

11 The other is I believe about \$20
12 million which is proposed for FY '11. So that
13 budget's not been issued yet. So we don't
14 know that we're going to get it yet. But the
15 idea behind that money is it's supposed to go
16 to the regional partners to help create
17 infrastructure to do planning itself.

18 So I would think that whatever is
19 going to become of the regional planning
20 bodies, that it should look to that. It also
21 is to look somewhat at the decision-making
22 tools, although the critical need for this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 money -- there are a lot of monies for
2 decision-making tools out there in the
3 government, and we're developing a lot of
4 them.

5 There is a critical need for the
6 decision-making infrastructure to fund people
7 to go to meetings, to fund capacity in some of
8 these regional organizations or the states, to
9 help with this process. But that request for
10 proposal is out there. I don't know exactly
11 when it -- I don't recall when it closes.

12 MR. RAUCH: December 10th. But
13 it's about \$20 million, and it's going to be
14 spread around nine regions, and it's going to
15 look at needs. So I do think that some of
16 these regions in which they don't have
17 regional planning bodies right now, they might
18 likely get some of that money.

19 But you know, once we get those in,
20 I think NMFS will be at least a part of that
21 evaluation panel to evaluate who gets that
22 money, as will NOS. It's being run out of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NOS. Yes.

2 VICE CHAIR McCARTY: Sam, do you
3 have any idea what kind of group is being
4 considered to be the regional planning body in
5 Alaska?

6 MR. RAUCH: What kind of group?

7 VICE CHAIR McCARTY: Yes. What
8 kind of -- are we talking about a new group;
9 are we talking about an existing group.

10 MR. RAUCH: Well, it's unclear that
11 there is any group. You know, Alaska is
12 different from many of the others in that
13 there's only one state, and part of the
14 problem in Alaska is the state at the moment
15 doesn't seem to want to have much to do with
16 the federal government.

17 (Laughter.)

18 MR. RAUCH: Well, it comes and
19 goes. But right now, it's very difficult to
20 get the state to engage. I think any group in
21 which the state would bless and to say here is
22 -- here's the way we would like to deal with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the federal government in terms of ocean
2 planning off of our coast, I think that group,
3 whatever that would be, would have
4 automatically a leg up.

5 Until that happens, I think a lot
6 of people are trying to figure out a way in
7 which this can happen if the state doesn't
8 participate, which is not what we want. We
9 would like the state to participate, and
10 obviously they can bring a lot to the table.

11 But until then, it would have to be
12 something with -- the state's. You know, I
13 would think Alaska native communities would be
14 an important part of the players. Obviously,
15 I think the council should be, but
16 stakeholders in the process should be part of
17 it. You know, the whole coastal zone
18 management constituency may have experience in
19 kind of planning.

20 But that involves the state as
21 well. You can't bring those people without
22 the state. So until the state comes to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 table, it's hard to say in Alaska who might be
2 the planning partner.

3 CHAIR BILLY: All right, a couple
4 more. Patty?

5 MS. DOERR: Can you expand a little
6 bit on what you had said about the Western
7 Governors partnership not wanting to be the
8 planning entity, but wanting to participate in
9 somehow on a federal regional planning body?

10 I'm just trying to work out in my
11 mind how NOAA envisions working with the
12 already-established regional bodies like West
13 Coast or MARCO in the Mid-Atlantic, who have
14 some sort of coordinating structure within
15 themselves, but not necessarily has the
16 capabilities to participate in the planning?

17 MR. RAUCH: So what I understand,
18 and I would encourage you to talk to the West
19 Coast Governors representatives themselves,
20 but what I understand is that the West Coast
21 Governors agreement is an agreement of the
22 three West Coast governors.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So there is a question about what
2 its future will be if those three -- and
3 they're not all running for reelection. That
4 managing entity that is the West Coast
5 Governors group, as I understand it, doesn't
6 want to be the planning itself, but wants to
7 form a subcommittee with us perhaps, to be, to
8 work on the planning bodies.

9 So it wants to be -- it wants to
10 have a strong influence in that, but it does
11 not want to, as the three governors, be the
12 planning body.

13 MS. DOERR: Can you see that for
14 other regions?

15 MR. RAUCH: I've seen other regions
16 are discussing how those groups want to be a
17 part. We clearly want them to be a strong
18 partnership of that.

19 But I think there's a recognition
20 that it may not be like the Gulf of Mexico
21 Alliance or MARCO, but an organization that is
22 supported by MARCO, in which the federal, our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clear partner, may be -- may come out of this.

2 So we're working with those, but
3 there's not a lot of direction yet as to who
4 it's going to be. We're still working on it
5 at this time.

6 CHAIR BILLY: Okay, thank you.

7 MR. RAUCH: Thank you.

8 CHAIR BILLY: I appreciate it. I
9 think what we'd like to do is move on quickly
10 now and get started at least, on the NOAA Law
11 Enforcement Update and Compliance Assistance
12 Program. So we've got -- Eric, I think you
13 had some opening comments, and then Alan?

14 NOAA Law Enforcement/Compliance Update

15 MR. SCHWAAB: Yes. Thank you, Tom.

16 Maybe I'll just make a few comments to set
17 the stage. You all know that, I think, upon
18 taking office early on, Dr. Lubchenco had
19 requested that the IG undertake a review of
20 our -- of the NOAA law enforcement efforts.

21 The NOAA law enforcement efforts
22 include both our Office of Law Enforcement,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, the police side, as well as general
2 counsel for environmental litigation, which is
3 of course the legal/prosecution side of the
4 equation.

5 Dr. Lubchenco's request was
6 initiated by a number of concerns that she was
7 hearing with respect to inequity, unfairness
8 in the way that some of the law enforcement
9 efforts of the agency were being pursued.
10 Much of that centered in New England.

11 So she had taken the step to
12 request the IG to undertake this review. The
13 initial report, which was the most
14 comprehensive report, was delivered in
15 probably early -- late January, early February
16 of this year, a couple of weeks before I came
17 into my position.

18 So we have since that time gotten
19 three additional what you might consider
20 supplementary reports, one speaking to issues
21 related to shredding of documents that
22 occurred during the investigation period.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The second, relating to the use of
2 the asset forfeiture fund, which is the place
3 where penalties and fines that are levied are
4 deposited, subsequently to be used to support
5 enforcement efforts across the agency. Alan,
6 I'm forgetting what the third one is.

7 (Off mic comment.)

8 MR. SCHWAAB: Oh yes. So the last
9 one, which was the specific review of a subset
10 of cases, where there were specific
11 allegations of abuse. Thank you, guys.

12 So just in general, let me just say
13 that number one, we have, for each of those
14 reports, developed fairly quickly a complete
15 response plan, and have reacted across NOAA
16 very strongly in response to whatever
17 comments, whatever concerns or suggestions
18 were advanced by the inspector general, and
19 that we are first and foremost, as I think
20 fishermen and all the others that are
21 interested in the management of these
22 fisheries around the country, interested in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ensuring compliance with these fisheries laws
2 and ensuring compliance in a way that is
3 transparent and fair and creates, frankly, a
4 level playing field for people that have an
5 interest in these fisheries.

6 So that has been our overriding
7 objective, as we have received these various
8 reports and from my perspective, I think we
9 have responded pretty strongly to whatever
10 recommendations the inspector general has
11 given to us.

12 The other thing that I would just
13 say in sort of, you know, summary, is while
14 there has been certainly -- there has been
15 some focus on the actions of, in some cases,
16 individual employees and not to disregard or
17 dismiss the importance of those actions in any
18 way, the broader message that I think is more
19 important to us is that there were some system
20 failures, if you will, some -- a lack of, in
21 some cases, policies that went across the
22 country, that ensured application of penalties

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in a consistent manner from place to place.

2 There was a lack of, in some cases,
3 priority-setting processes that needed to
4 occur, I think effectively to deploy the
5 limited resources that we had in the most
6 effective means possible. There were a lack
7 of controls related to the ways in which the
8 asset forfeiture fund was being used.

9 So much of the response has really
10 been focused on putting those systems into
11 place, and that's really what Alan and Tim are
12 going to talk about because this is the place
13 where going forward we are in most need of
14 your advice as it relates to the steps that we
15 are taking to improve communications, assist
16 the industry, and everybody's using the
17 resources out there with compliance, and doing
18 so in a way that is strategic, consistent, and
19 transparent going forward.

20 The last thing I will say is, you
21 know, of course from a personnel perspective,
22 the characterizations of individual misdeeds

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are, in my opinion, far outweighed by the vast
2 majority of our employees who are out there
3 really trying to do the right thing and trying
4 to do a good job, and generally succeeding
5 against some pretty, you know, overwhelming
6 challenges, out on the water and in the
7 offices across the country and around the
8 world frankly, with the relatively few numbers
9 that we have, either in the Office of Law
10 Enforcement or in GCEL.

11 That spirit and attitude is
12 epitomized, personified by the two individuals
13 you're going to see here in a moment, hear
14 from momentarily. Because I want to take this
15 opportunity to thank Alan, because we have --
16 we did shanghai him into taking over as the
17 acting director in the Office of Law
18 Enforcement.

19 He is -- has done just a wonderful
20 job in keeping us straight and moving forward,
21 and we'll hear about that momentarily. And in
22 similar fashion, Tim has been shanghaied into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 serving as the acting special agent in charge
2 in New England. So we certainly appreciate
3 him stepping up.

4 I did tell Alan, and some of you
5 might have seen a news item that went out
6 earlier this week. We have finally advertised
7 for a new head of our Office of Law
8 Enforcement, and Vince was a guy who we
9 recruited to actually help us externally with
10 the recruitment process, and Vince has ably
11 stepped up and helped us to do that.

12 So in addition to what you're going
13 to hear from Tim and Alan, we are out
14 recruiting now nationally for a new Director
15 of our Office of Law Enforcement, and that job
16 vacancy is going to be open for 60 days. Mr.
17 Chairman, with that, I will, with your
18 indulgence, turn the floor over to Alan.

19 CHAIR BILLY: Alan?

20 MR. RISENHOOVER: Thank you, Eric.
21 Thank you, Mr. Chairman. I do have Tim here
22 for hopefully the real world perspective on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 enforcement on the ground.

2 What we plan on doing today is
3 going through four basic things that I'd like
4 to have MAFAC get back to us on. So I'm going
5 to give you a brief overview of enforcement
6 programs, just to remind you of all the parts.

7 I think folks kind of forget all
8 the parts that enforcement's been doing. So
9 we need to make sure everybody's got a
10 grounding in that. I will go through a very
11 quick summary of the four IG reports and our
12 actions in response to those.

13 Again, I'm going to focus mainly on
14 some compliance actions at the end, and that's
15 what we really, as Monica said and as Eric
16 indicated, it's how do we improve our
17 compliance side of our programs? So in the
18 final sum here, I'm going to look for comments
19 kind of in four areas from you.

20 Anyway, there's four areas we're
21 taking comments right now. There's a new
22 penalty policy that was released on Monday

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'll talk a little bit about. There was a
2 priority-setting process that has been
3 released. MAFAC should be able to help us
4 with some of our enforcement priorities.

5 There is a draft asset forfeiture
6 fund policy out for public comment right now.
7 As Eric mentioned, that's how we spend the
8 fines and penalties collected, and then
9 finally the compliance assistance program that
10 we're trying to put together. We'd like a
11 little real world, around the country
12 information on that.

13 There are copies from my
14 presentation up on the website, as well as
15 some supplementary documents that I'll refer
16 to as we go through. So just to start out and
17 remind everybody of the mission for the
18 Enforcement office, you can see arresting
19 people is not in that mission. What is in
20 that mission is compliance.

21 So the focus is on compliance.
22 It's at the heart of the mission. It's what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we're trying to achieve. If you think of, you
2 know, kind of the traditional, and it's the
3 way I thought of the program coming into it,
4 you have good science; you try to get better
5 science. You have science as a basis for your
6 management programs, and then you try to
7 design those management programs so that
8 they're effective.

9 Well, that all falls down if you
10 don't have compliance with those regulations.

11 So the agency needs to look very closely, and
12 it's not just an Office of Law Enforcement
13 goal, but it needs to be an agency goal of how
14 do we ensure compliance.

15 So there's two ways to get
16 compliance that I'm slowly discovering, and
17 Tim's helping me with. One is you can deter
18 people from it. Arresting people, fines, the
19 normal thing we think of, deterrence. You get
20 caught, you pay.

21 But there's a large incentive in
22 some cases to cheat. We have about 230 people

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 around the country. Only about 170 of them
2 are enforcement agents or officers.

3 So we have a very small force with
4 a very large coast and a very big ocean out
5 there to enforce. So there may be an economic
6 incentive not to follow the regulations.

7 So you do need that deterrence.
8 But there also needs to be more of what we're
9 calling this compliance assistance program
10 we'll talk about, is how do we help the
11 industry comply? What tools do we need to use
12 to make sure people have the ability to comply
13 and understand why they should comply?

14 I'm going to run through the next
15 slides fairly quickly, just to remind you,
16 yes, the Magnuson Act is the largest part of
17 the business. But there's four others that
18 make up a substantial part as well.

19 Coming from a fisheries background,
20 I kind of get stuck in the top one, in the
21 Magnuson one, and I'm continually reminded of
22 the others here at the bottom. So marine

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mammals, endangered species we need to think
2 about. Lacey Act is transporting animals
3 across state lines, contrary to other states'
4 or other countries' regulations or laws.

5 The Marine Sanctuaries Act, the
6 broad protection and conservation parts of
7 that. There's also seafood safety,
8 substitution. Are the imports coming in
9 actually what they say they are?

10 So another side of enforcement that
11 we've not talked a lot about, or you don't
12 read about it in the press as much, is the
13 substitutions cases where large amounts of
14 fish are coming into the country that aren't
15 what they say they are.

16 They may be coming in as catfish
17 repackaged into salmon, or grouper is a very
18 popular one I've discovered, where the price
19 is about four times as high. So if you have
20 an international company that's bringing in a
21 product, and they get a quarter, 100 percent
22 markup just by changing what they call it,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that hurts the domestic fishermen.

2 So part of what we need to do is
3 ensure our compliance and our enforcement
4 programs protect domestic fishermen. There's
5 four main parts of how we pursue the
6 enforcement around the country. Patrols and
7 investigations. That's what everybody thinks
8 about.

9 We have a COPPS program, which is
10 how we work with the regulated community now.

11 That's something we want to expand and
12 improve, and add this compliance assistance
13 on, as well. I'll talk a little bit more
14 about each of these. You're familiar with
15 VMS, for example. But then also partnerships.

16 One thing I've discovered in this
17 job is the large number of partner ships out
18 there. It's just not the Office of Law
19 Enforcement. It's the states and Coast Guards
20 and others that get us to where we are.

21 So just a quick summary here of
22 again, Magnuson Act is where we have most of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the cases. These are 2009, but there's a lot
2 of other issues going on there. The seafood
3 inspection, or seafood safety, seafood
4 substitutions are increasingly becoming
5 something we need to look at.

6 The COPPS program. Again, this is
7 conducted by our enforcement personnel. But
8 it's a lot of what we'll talk about again on
9 compliance. How do we work with the industry?
10 How we do we work with our stakeholders? How
11 do we inform them of regulations?

12 Some of that is an Office of Law
13 Enforcement job; some of it may not be, and we
14 need to talk about that, and I hope MAFAC can
15 steer us on that as well.

16 Part of the COPPS program here, the
17 community outreach, is the use of fix-it
18 tickets or warnings, or how do we tell
19 somebody, no, you're not quite complying, but
20 come into compliance and there won't be the
21 traditional enforcement?

22 So how do we improve our COPPS

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 program as we go along with this compliance?
2 Again, this is all done in an enforcement
3 context. So it is an enforcement officer.
4 One thing I'll talk more about is we may want
5 similar sort of activities not conducted by
6 enforcement personnel. Is that a way to reach
7 out to the community a little bit more?

8 VMS. The only thing I'll mention
9 here is this became very important during the
10 oil spill. Again, our enforcement programs as
11 part of the oil spill, we could track some
12 vessels when we saw them go into the closed
13 area. We could contact them.

14 When they came back, if they had
15 been fishing in there, we had evidence that
16 showed fairly clearly that's where the fish
17 came from, and we couldn't afford any chinks
18 and any kind of seafood safety coming out of
19 that oil spill. So enforcement, yes, it does
20 affect the individual, but it also affects the
21 industry.

22 We felt very strongly we couldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have any tainted shrimp or fish from that oil
2 spill getting into the market, because of the
3 effects on the larger market.

4 State partnerships. We have \$16
5 million program that we work with the states,
6 for them to implement federal fisheries laws.

7 So with those 27 joint enforcement agreements
8 around the country, we have a very strong
9 built-in partnership.

10 How do we work with them to improve
11 compliance? How do we work with our federal
12 partners to improve compliance?

13 The biggest federal partner is the
14 Coast Guard. They do the majority of our at-
15 sea enforcement work and provide cases to us.

16 But not just Coast Guard; there's a variety
17 of other federal agencies we work closely with
18 that help us enforce the laws, the
19 regulations, and hopefully in the future will
20 help us link into some more compliance
21 activities.

22 And then finally, as someone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mentioned, this is an international issue. We
2 can't just look at our own domestic fishermen;
3 we also need to see what's going on
4 internationally. What are those imports
5 doing? What laws are being obeyed, what laws
6 aren't? High seas drift netting, other
7 issues.

8 And then also the bottom one there,
9 capacity-building. How do we work with those
10 other countries, to make sure they are trying
11 to build their capacity to better manage and
12 better enforce their laws around the country?

13 So with that as kind of the basis
14 of the four areas we concentrate on now, we
15 can start talking about what do we need to
16 concentrate on in the future. Looking back at
17 the four IG reports that Eric mentioned, I
18 just took a quote from the first IG report,
19 the one in January, where they listed some
20 broad industry concerns.

21 The first one is that the
22 regulations are too complicated, can't be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understood. Well, yes, maybe there's a reason
2 for that, but I'll talk later about maybe
3 there's a few things that we can work on in
4 that regard, and that needs to be part of our
5 compliance assistance program as well.

6 The enforcement processes are
7 arbitrary, lack transparency. Those
8 corrective action plans we put in place have a
9 number of new policies, new processes, new
10 procedures, new oversight to get at that
11 issue, and we'll talk briefly about that.

12 Then finally the perspective that
13 our enforcement is too broad, it's too
14 powerful, it's too aggressive, and we've done
15 a number of things to correct that. But I
16 also think part of that gets into this
17 compliance.

18 If we have an ongoing dialogue with
19 the industry about the need of these
20 regulations, what happens to how you can abide
21 by them and what happens if you don't, may
22 help with that third one as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So there is a summary of the four
2 IG reports. Three of those were public; the
3 one on destruction of documents was not made
4 public, but I'll talk a little bit about the
5 outcomes of it, as well.

6 So the first one, as Eric
7 mentioned, was released in January. We
8 responded to that report in three broad ways,
9 with those improved policies and procedures.
10 Some additional efforts to start engaging the
11 stakeholders better, and then looking at our
12 work force. Do we have the right mix of folks
13 in our work force to meet the goals of our
14 program?

15 So the first one I mentioned that
16 we have an opportunity to comment on is this
17 new penalties policy. It was released on
18 Monday. It's on the website link on the MAFAC
19 page. It's also on the NOAA page.

20 All charging decisions are now
21 reviewed at a national level. There was
22 concern in the first OIG report that fines and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 penalties, particularly in the Northeast, were
2 higher than elsewhere in the country.

3 Now that may be because they needed
4 to be; maybe not. But what we've done is
5 we've done a national review, and all charges
6 are now done at the national level. So they
7 all go to the head of the general counsel's
8 office, just to make sure they're consistent
9 around the country, so that similar cases are
10 charged similarly, if you can find two cases
11 that are the same.

12 Then to get at that further, this
13 draft penalty policy was released for 60 days
14 of comments on Monday.

15 The second item there, a national
16 priority-setting process. What are our
17 priorities in Enforcement? Again, under
18 limited resources, we need to prioritize. We
19 need to prioritize in a way that meets
20 regional issues.

21 This priority process we had
22 released previously for public comment. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 final was put up on Monday. That should be
2 linked off the site as well.

3 We're going to now start a process,
4 and we invite MAFAC to participate in that, in
5 helping us set our priorities in the future.
6 How do we allocate those resources?
7 Obviously, we have to enforce everything, but
8 what ones are more important?

9 So what this process outlines is
10 looking at the threats to the resource; are
11 they a high threat, a medium threat, a low
12 threat, and then what is the resource? Is it
13 endangered, is it threatened, is it
14 overfished, is it subject to overfishing, is
15 it healthy?

16 And perhaps coming up with some
17 sort of matrix across those of high threats,
18 high vulnerability of the resource, maybe low
19 enforcement in the past. High economic value
20 may be a consideration. Again, the incentive
21 to cheat would be there more. So how do we
22 put that all together, and we have a process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 set out to do that.

2 We're looking at our national
3 enforcement manual, to make sure all our
4 policies are up to date and complete. We'll
5 talk more about the compliance things in a
6 minute.

7 Just mentioning one thing, the
8 National Enforcement Summit. Several of you
9 in the room attended that summit, and heard
10 kind of the perspectives around the country of
11 what the concerns are. So we're following up
12 on the results of that summit, as well.

13 The destruction of documents report
14 really reemphasized the need for us to make
15 sure we have a good document retention policy,
16 not only in OLE but all of NOAA. So Dr.
17 Lubchenco has mandated that we all have
18 document retention training.

19 In NMFS specifically, we
20 implemented a three-part training, where every
21 employee gets some level of training, all
22 supervisors get training, and then those that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 handle documents or are responsible for it get
2 a lot of training.

3 So, folks are going through that
4 training right now. We just recently hired a
5 documents manager at the national level, and
6 I'm going to have her create a program for all
7 of OLE, to make sure all documents are saved
8 according to regulations.

9 The third report, the asset
10 forfeiture fund report. There's a legal memo
11 that's in final clearances now on how that
12 fund can be used. But in the meantime, we've
13 issued a draft policy on how we're going to
14 use that fund. That's also out for 60 days of
15 public comment. That came out a couple of
16 weeks ago, so there's plenty of time to
17 comment on it as well.

18 The goal of that policy is to make
19 sure there's no conflict of interest, either
20 perceived or actual, between the fines we
21 collect and how we spend that money. The
22 policy limits the amount of money we've spent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 out of that fund by about 40 to 50 percent,
2 and it makes it for very broad sort of things.

3 Training that everybody needs, IT
4 infrastructure and a few other things related
5 to IUU. It doesn't allow for any purchase of
6 vehicles, any purchases of vessels, equipment
7 or anything like that that we were criticized
8 for before. So again, we're trying to take
9 that conflict of interest concern away by the
10 way we manage that.

11 Obviously, there may be some
12 budgetary concerns associated with that, and
13 we're looking at that right now.

14 On purchase cards, there was some
15 concern about the use of those. We discovered
16 that there were a large number of purchase
17 cards in the organization. We've cut those by
18 a third, and made it more strategic to what
19 does the organization need when it comes to
20 purchase cards.

21 With 60 offices around the country,
22 you do need a few more purchase cards than

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 perhaps a single location. When it comes to
2 budget, we're looking at annual budget
3 submissions that include both what we would
4 spend out of this asset forfeiture fund, as
5 well as out of our appropriated budget.

6 Then full transparency, we're going
7 to audit that fund every year for a while,
8 just to make sure we're following our own
9 guidance. The final report that came out at
10 the end of last month did indicate that there
11 were 27 case complaints, excuse me complaints
12 that the OIG looked at.

13 Of those cases, they found nine
14 that they thought warranted additional review
15 because of specific issues, as well as about
16 ten others they thought we should go back and
17 look at. So about 19 total is what the report
18 said.

19 The Secretary determined that we
20 needed to appoint a special master to look at
21 those cases that the IG brought to us. That
22 process is starting right now. That special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 master will come in, review the cases, and
2 make final determinations on whether there
3 were problems with those or not. So we're
4 supporting that.

5 It recommended again the position
6 of an ombudsman for Fisheries, and also a
7 different process within the organization that
8 would advocate or advise the regulated
9 community on compliance assistance issues. So
10 again, that's where I'm working here, is to
11 get back to that compliance assistance part on
12 how do we ensure the agency knows what the
13 requirements are that it needs to follow, to
14 meet the goals of the regulations.

15 And we haven't put together a full
16 corrective action plan for this fourth report
17 yet. That's still forthcoming, but we'll be
18 done within a 60-day period of releasing the
19 report. So we're probably a couple of weeks
20 away from that final corrective one.

21 So let's talk a minute now about
22 compliance assistance. We're in the process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of developing a program. It's something that
2 we have elements of now through that COPPS
3 program, where everybody that works for Tim, I
4 guess works for me too, but however that
5 works, part of their job is outreach with the
6 community.

7 Well, some people are better at
8 that than others. Some are trained for that.

9 Others may not be. So how do we get at this
10 compliance, so that it's effective and
11 comprehensive? So we want to build on the
12 findings of the OIG report. They gave us some
13 ideas. Our responses to those OIG reports
14 have some ideas in it as well.

15 We want input from our
16 stakeholders. You're the first group. We're
17 going to be talking to you, we're going to be
18 talking to some of the folks in Tim's area as
19 well on how would this work, what works. I'll
20 get to some trigger questions at the end.

21 We need to build in our current
22 programs. We don't need to invent something

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 totally new here. We have our COPPS program
2 which has outreach and compliance parts to it.

3 The states have compliance and outreach. The
4 Coast Guard has compliance and outreach.

5 How do we fill the gaps between
6 those and add more value to the current
7 programs? Then finally I see this as needing
8 to occur in a non-enforcement situation, and
9 the example I can think is, you know, I may
10 have ideas how the local police department
11 should implement traffic laws, but the time
12 for me to tell them what that is is not when
13 I've been pulled over, right?

14 So we need to take that out of the
15 system so when we can sit back and talk about
16 what do we need to do here. We're going to
17 roll this out as a pilot program in New
18 England. We've already started with that.
19 We're looking for a compliance liaison
20 position there. We're looking for a new
21 outreach coordinator in the region as well.

22 Tim has started some interviews

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with some folks about those positions. But
2 I'm really interested in what is this program?

3 What does this person need to do? Is it what
4 Tim and I think they need to do? Probably to
5 some degree, but there are some other things
6 out there that we need to hear from the
7 community on, what will make this effective?

8 In addition to the compliance
9 liaison, the outreach coordinator position,
10 we've got a vacancy out that's closed now for
11 eight new enforcement officers in New England.

12 Over the years in New England, they had lost
13 all their enforcement officers for a variety
14 of reasons, and had only hired special agents,
15 plain clothes, more the detective side of
16 things.

17 We had lost a direct NOAA presence
18 on the docks. We had to work with our joint
19 enforcement agreements with the states to fill
20 that role. So we're going to put some more
21 NOAA folks back on the dock, to work on
22 primarily the COPPS program, that outreach but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in an enforcement context. So we also want to
2 think about this as outside an enforcement
3 context.

4 So what are we trying to do here
5 with compliance? One thing or several things
6 we thought of is, you know, if you're going to
7 assist people in complying, there's a couple
8 of ways to do that.

9 You can make regulatory
10 improvements; you can make some process
11 improvements on how you relate with the
12 industry, and you definitely can improve the
13 outreach and communication part of what we do,
14 probably both within our regional offices and
15 our enforcement offices around the country,
16 and we'll be looking for additional ideas
17 today.

18 One thing I've talked to the
19 councils about already is when you're issuing
20 regulations, we need to keep an eye toward are
21 they enforceable, do they make sense. Yes, it
22 may make sense biologically; it may make sense

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the industry, but you may not be able to
2 enforce it.

3 So, closures. A large number of
4 small closures. Do we really have the
5 resources to enforce those? Some of the
6 regulatory discard issue. Do we have the
7 resources or the ability to enforce those? So
8 we need to think about that as we move forward
9 with future regulations.

10 This document was drafted in 2007,
11 and has gone to the councils over the years.
12 We'll probably update that as we get going on
13 this. But it's some recommendations to the
14 councils on how do you work with your
15 constituents to make regulations simpler and
16 more understandable?

17 So some regulatory improvements.
18 You know, again, is it manpower intensive?
19 Well, think of how many people you have out
20 there. It's like the observers. If you
21 require 100 percent observer coverage, do you
22 actually have it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Complex, I think we all know.
2 Fisheries regulations are fairly complex, and
3 there's several reasons for that. At the
4 councils, they may start out with a very
5 simple regulation, but as the industry brings
6 up different issues, it gets complicated, more
7 complicated and even more complicated.

8 So a couple of other ideas on
9 there. We need to make sure things are
10 accountable, that we have a trail when we have
11 paper work. Don't have gaps. Don't require
12 the fishermen to report their catch, and then
13 have the retailers report it. You've missed
14 the whole processor/wholesaler part.

15 So make sure we look at enforcement
16 as more of a process, more comprehensive than
17 maybe we have in the past. This is a
18 table out of that council document. I won't
19 go into details simply because I don't think I
20 can read it from here, but it's a nice,
21 colorful slide.

22 Some potential process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 improvements. So as we're developing new
2 regulations, rolling new regulations out, what
3 are some process improvements we can do along
4 the way? We need to make sure the Office of
5 Law Enforcement and the general counsel for
6 enforcement and litigation is involved early
7 on.

8 Don't send them draft regulations
9 at the end where everybody wants those things
10 just to go through, and they go, well, wait a
11 minute. There's no way we can enforce this.
12 Nobody wants to hear that at the 11th hour.

13 So that's part of what we need to
14 have the councils work on that, and the
15 Enforcement people need to have an active role
16 up front. So we're talking about expanded use
17 of the enforcement committees of councils,
18 where we can have people on those committees
19 to advise the council from an industry
20 perspective how do we make these enforceable
21 and understandable regulations.

22 So that gets to -- I guess some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 councils hadn't had their enforcement
2 committees meet in several years. So we need
3 to reenergize those committees. We need to
4 get GCEL at the council meetings, and this
5 one, this is an important one here.

6 How do we better draw on industry
7 knowledge? How do we work with the industry
8 up front to say well, can you comply with
9 these? Does it make sense? Well, is there a
10 big loophole here we're missing, perhaps, or
11 is it too strict? Does it not meet our goals?

12 And so the bottom line suggestion
13 here is: do we need some sort of compliance or
14 enforceability assessment done at the council
15 level. Some potential outreach and
16 communication improvements. We've talked
17 about these as a response to the OIG reports.

18 We're going to have a compliance
19 liaison, at least starting in the Northeast.
20 We need to make sure that person has a very
21 defined role, that it's not enforcement, but
22 it leads to better compliance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Workshops, do those work? Forums,
2 compliance guides, frequently-asked questions,
3 on and on. What are the things that will help
4 improve compliance? How do we identify that?

5 For example, if the Ask The Agent
6 or frequently-asked question thing, if it
7 doesn't work, why would I do it? So some
8 folks have told me yes, you just need a
9 frequently-asked question thing. Well, can
10 you put together an FAQ on every possible
11 situation, and then answer every possible
12 situation without just repeating the whole
13 regs back to them?

14 I don't know. If it works, we're
15 going to do it. If it doesn't, I don't think
16 we should. We should put our resources
17 elsewhere. So that's a brief overview, some
18 of the ideas I've come up with, some of the
19 folks in the organization have come up with,
20 some of our responses to OIG reports.

21 Again, we're committed to
22 establishing a compliance program. But again,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I don't want to do that until it's well-
2 defined, supported by the industry and is
3 going to work. So I put together some trigger
4 questions for MAFAC that we can talk about now
5 or in the afternoon session.

6 The first one sounds simple. Now
7 what should be the goals of the compliance
8 assistance program? Well, compliance. Okay,
9 yeah, that's probably a goal. So you want to
10 increase compliance. You want to increase
11 your or improve your relationships with the
12 industry. The more we talk, I think the
13 better compliance, the better the
14 understanding will be.

15 And as I've been around the
16 country, I think, you know, where it's more of
17 an open exchange of ideas and what the
18 problems are, I think compliance may be a
19 little bit higher. Some of the problems
20 that we're experiencing in some parts of the
21 country right now are simply relationship. We
22 need to get people back in the room together

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to talk about issues.

2 Then we need some feedback to the
3 regulators. So when I do go back to SF, this
4 is something I'll be taking home. You can
5 issue regulations all day. If nobody complies
6 with them or understands them, what have you
7 accomplished? So we need a feedback loop to
8 folks on is it working.

9 Then this one is something we've
10 talked a lot or I've talked a lot to folks
11 about internally. How do you measure if it's
12 working? How do you know if compliance is
13 higher? That's kind of a hidden thing, it
14 seems. The Coast Guard will tell you they
15 have about a 96-97 percent compliance.

16 Well, as big white boats come over
17 the horizon, I think compliance increases. So
18 how do you measure compliance? We need to
19 look at that. We need to talk to our
20 constituents about how do we know if we're
21 complying? How do we know if there is non-
22 compliance, what's the effect on the resource?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 When we're managing, in our
2 regulations we often will take into account
3 bycatch as a removal. Do we take into account
4 enforcement, illegal harvests as something
5 when we go through the regulations? Probably
6 not. Is it a big enough problem that we need
7 to talk about it?

8 Then, some more questions. Here is
9 you know, what has worked around the country?

10 Each of you probably work with an enforcement
11 person or through the council or heard a
12 story. What's working, and then where is it
13 working? Why is it working? Is that
14 something we can transfer elsewhere? Are
15 there models occurring in other regions we can
16 transfer to New England or other regions where
17 we're having compliance problems. What hasn't
18 worked?

19 We've got a few ideas on that, but
20 as we design this new compliance program, I
21 want to start trying to implement things that
22 haven't worked elsewhere, just because it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what we could think of.

2 Then finally what are some key
3 activities around the country that initially
4 we can import into New England, to get this
5 sort of relationship-building with the
6 industry again with that broad goal of
7 compliance? With that, I will stop, Mr.
8 Chairman, and see if there are questions or
9 hopefully answers.

10 CHAIR BILLY: Okay, thank you.
11 Wow. We're obviously running a little behind.
12 So what we'd like to do is right now for
13 lunch, and shorten the lunch period to an
14 hour, 12:30 to 1:30, okay.

15 MR. DONOVAN: We don't get to ask
16 anything?

17 CHAIR BILLY: Hold on. Then when
18 we come back from lunch, we'll have a half
19 hour for questions on this topic, and then I
20 call your attention to the Commerce
21 Subcommittee meeting, which this is their
22 number one topic. So we can have some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions, get more information and if it
2 would be possible for someone to stay for that
3 subcommittee meeting, then I think we can get
4 into more detail and start to shape some of
5 our thinking in this area. Yes, go ahead.

6 MR. DONOVAN: Yes. I know this
7 eventually will be covered by the
8 subcommittee, but it would be a big advantage
9 over the lunch time if you have thoughts or
10 ideas as you're eating, so when we come back
11 in a half hour, you know, we can jump right to
12 some, you know, some positive improvements and
13 suggestions.

14 Like Alan said, we're very willing,
15 you know. It's going to be on my watch to
16 make this work up in the Northeast,
17 particularly in New England. So I'm very
18 supportive of any ideas, particularly
19 solutions because, trust me, I've heard all
20 kinds of complaints the last year.

21 Now I'm looking for some positive
22 solution that we can improve our operations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I have a different opinion on what actually
2 happens up there, and I've told Alan about the
3 silent majority, because when our agents were
4 out on the waterfront, we're hearing a really
5 different story than what you necessarily read
6 in the newspaper, from the folks that want a
7 level playing field and want us to continue
8 doing our job.

9 So I need to find a way to maximize
10 that, you know, that interest from the silent
11 majority, and build that in our compliance
12 program up here in the Northeast. I
13 appreciate it.

14 CHAIR BILLY: There is a Subway
15 shop right across the street. So someone,
16 anyone that wants to have a quick, go over and
17 get one, bring it back and we can have
18 informal conversations leading up to the
19 committee getting back together at 1:30.
20 Okay. You've got an hour for lunch.

21 (Whereupon, the above-entitled
22 matter went off the record at 12:36 p.m., and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 resumed at 1:45 p.m.)

2

3

4

5

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 What we have done in the past is
2 more project-based. We're looking at a
3 change, you know, something, either more
4 amendments coming out or policy we, you know,
5 prior to sectors we rolled out, and as a
6 result of other things we may look at, you
7 know, building the parameters around the
8 project.

9 One of the things that we haven't
10 really discussed was the change in the -- one
11 of the IG reports, early on one of the IG
12 reports in the first one had made reference to
13 our data capability, and how we didn't
14 necessarily talk to what general counsel is
15 doing and are we matching up our cases against
16 prosecutions, because really, I mean there are
17 two different agencies. A big shift is done
18 in how we electronically collect our own
19 information, our cases, our statistics.

20 One of their recommendations out of
21 that is some type of out-product from that,
22 which we have -- again, we can build

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 something, we can write scripts. But it's not
2 something that's done automatically, and I
3 think we're leaning towards going that route,
4 where when we go in front of them; if I go in
5 front of the council, I should be able to kind
6 of give them an idea.

7 I tell them what we're doing, what
8 we're working on, but not hard facts, hard
9 numbers. We've done that. Some of you may
10 have seen what Zach Cohen had done, and we did
11 a three-year study, and we tried to determine
12 compliance.

13 But again, I'll throw this out into
14 the group, measuring compliance is very -- you
15 know, measuring compliance is very difficult
16 in that role. I mean if there's less cases,
17 does that mean we're more compliant, or that
18 we have to focus on more a egregious violation
19 that took more of our resources to work that?

20 We're still struggling with that.
21 We hope this new -- what we call leads, for
22 lack of a better, you know, for information,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 leads what we report out on. We need to turn
2 that into a system where we can actually get
3 products from that as well.

4 MR. RISENHOOVER: Right, and we are
5 -- you know, I didn't mention it as a follow-
6 up to the IG reports, but they did criticize
7 our databases, and we're taking efforts to
8 improve those by the end of the calendar year.

9
10 CHAIR BILLY: There's precedent and
11 examples in other regulatory agencies for
12 designing these kinds of sampling programs to
13 measure compliance.

14 MR. DONOVAN: We actively looked at
15 trying to, particularly EPA was one of our
16 benchmarks, some of -- maybe a little bit --

17 CHAIR BILLY: The safety inspection
18 service has one that's FDA. So a second
19 question is when I was at a -- one of the
20 things that I did was I started publishing the
21 enforcement actions, and it was a matrix, and
22 you know, there was a threshold level to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the list, and once you got, made the list,
2 then as an enforcement action goes through its
3 steps, it was monitored and there was
4 notations, to see, for the world to see where
5 there was enforcement, what type of
6 enforcement, and where it stood.

7 No one wanted to be on that list,
8 and it was a significant deterrent. We tried
9 to measure how much, but we didn't get very
10 good data the way we did it. But nonetheless,
11 to the best of my knowledge, to this day
12 that's still there.

13 It keeps track of what, even at
14 general counsel, whatever stage it's at in
15 your step-wise process. That's how it was set
16 up there.

17 MR. RISENHOOVER: And that's one of
18 the comments we got at this national
19 enforcement summit and even previously. So
20 working with our general counsel's office, we
21 now post things at the NOVA level, once the
22 NOVA is issued. It doesn't have the specific

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 name of the company, though.

2 So yes, we're a step in that
3 direction. People can figure out, I think,
4 who it is. But we're not being as specific
5 as, you know, they've been charged, following
6 it through. It's more of the ones that have
7 been resolved, and that a notice of violation
8 and assessment has been issued.

9 CHAIR BILLY: That also had a
10 profound effect on enforcement people, you
11 know, the various types of people, because
12 they too could get their arms around what was
13 going on, see positive action, results,
14 disposition, et cetera. So it not only
15 impacted outside; it also impacted inside.

16 MR. RISENHOOVER: Yeah. Our first
17 attempt at that was put up at the end of last
18 month.

19 CHAIR BILLY: The final thing I had
20 was in terms of compliance assistance, again
21 when we put out fairly significant changes to
22 the regulations, we accompanied that with not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 only training for our own people, whether they
2 were inspectors, enforcement people, whatever,
3 but also we took an obligation to provide
4 training through cooperation with industry
5 trade associations and others, universities,
6 in teaching how to comply with the new
7 regulatory requirements.

8 Now some things weren't that
9 complicated, so you could do it
10 electronically. But some of the major
11 changes, it was actually hands-on. We did it
12 on weekends, because most operations are a mom
13 and pop, little tiny businesses; they only had
14 time during the week.

15 So we had to reach out in different
16 ways to make that work. But it's quite
17 doable, and it can have a profound effect on
18 compliance if people understand what the regs
19 are really looking for in terms of compliance.

20 Most people know how to comply, so it really
21 is very helpful.

22 MR. RISENHOOVER: (Inaudible due to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 telephonic interference.)

2 CHAIR BILLY: Paul.

3 MR. CLAMPITT: I was just going to
4 say, you know, one of the problems, you know
5 that those IT systems are pretty complicated.

6 You know, in the past we personally
7 have called the Enforcement agent, or called
8 and asked a legal question or a question, you
9 know, on the regulation, and they said to
10 check on the Federal Register.

11 I see that you guys are proposing a
12 more enhanced constituent outreach and
13 hopefully you'll have somebody that will
14 answer those questions more directly, because
15 I can't really dig through the Federal
16 Register. I mean I have a hard time digging
17 through the Federal Register I mean
18 practically without trying to figure out when
19 that law was published and what the heck --
20 you know what I'm getting at.

21 So you're in the right -- I mean
22 that is really, would be a huge improvement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 If you could call somebody and ask them if
2 we're in compliance and if this is what it
3 means, and they give us a direct answer.

4 MR. RISENHOOVER: And so that's
5 kind of the two sides I talked earlier about.

6 We'll need some input from the regional
7 office that designed and implemented the regs.

8 We'll need the help from the Office of Law
9 Enforcement, so if we say this is how you
10 comply and you follow that, there's not a
11 problem later.

12 MR. CLAMPITT: And you can't just
13 follow the law and if the agent was incorrect,
14 I mean that doesn't mean we cannot solve it.
15 I mean it doesn't have to be a violation, get
16 caught, and go on with our lives and do it
17 correctly in the future.

18 MR. RISENHOOVER: And I think some
19 of these forums, discussions or workshops help
20 with that, where you have somebody from either
21 the Sustainable Fisheries Office and the
22 region explain the regs; the Enforcement folks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talk about what they'll look for, how they
2 will implement it, and then have a discussion
3 between the group of fishermen.

4 I think a lot of those nuances are
5 coming out in that discussion, you know, hey,
6 what about this, what about that, what if I do
7 it this way?

8 MR. DONOVAN: One of the things,
9 you know, since New England's going to be the
10 rollout for how we're looking at it, we're
11 looking at it as the regional office has kind
12 of -- is building their communication team,
13 and we're going to, you know, the Enforcement
14 person will be part of that communication
15 team, both for leverage purposes, you know, as
16 opposed to other -- that work on the old wall
17 communication.

18 Because at the end of the day, the
19 biggest concern we officially receive back
20 from industry, that generally tends to be the
21 regulation itself. So we're going to try to
22 look at that as more of a teamed approach,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dealing with things which will probably be
2 similar to what the other divisions will look
3 at.

4 Also, our Enforcement offices, the
5 folks that actually, the boots on the ground
6 now, they'll be feeding a lot of the
7 information, the feedback they get from the
8 waterfront, back to that team, back to our
9 liaison point. So we're going to try to, you
10 know, complete that circle with the
11 information.

12 The regulations, you know, our
13 agents, you know, each of our agents, we ask
14 them to understand the regulation. We also
15 ask each agent in the Northeast to pick one
16 fishery, to be really good at that one
17 fishery. So when an agent gets a call about
18 lungfish, they know to call a specific person,
19 and if they can't answer right off the bat
20 they know the agent that does that.

21 That's kind of where the disconnect
22 that we're trying to deal with internally.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is something we're looking for your help
2 too, because up here, we get the calls up in
3 the Northeast, and our agents are constantly
4 on the phone answering these questions.

5 So now we've got to try to figure
6 out okay, how do we approve that? I was
7 talking to Terry. We don't want to change
8 that either. Now those are relationships that
9 were built on years of experience. So these
10 fishermen know who to call, and they'll get an
11 answer.

12 You know, I apologize for, you
13 know, on behalf of the west coast. They, you
14 didn't get the right answer.

15 MR. CLAMPITT: This is from -- I've
16 been involved, I had -- fishery from the first
17 one, and how -- well actually quahog was the
18 first one.

19 But from, you know, we've been
20 doing this since '95, and I've had many, many
21 -- you know, it's been hard to get positive
22 answers about regulations on the phone,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 especially in a timely manner.

2 MR. DONOVAN: And usually that's
3 what it is. They're just laying there.

4 MR. CLAMPITT: Exactly.

5 MR. DONOVAN: And so we -- you
6 know, we -- you know, our person -- they used
7 to call on the agent, you know. Sometimes
8 they're a bit afraid to say what exactly is
9 going on, because of the fear of okay, I'll
10 just get pinched for it.

11 So Alan's role, idea of having this
12 person that's non, you know, in a role that
13 they're not automatically going to be issued a
14 ticket or something like that, is something
15 that we're going to try to expand. How does
16 it work?

17 In no way do we want to take away
18 that existing relationship that has actually
19 been very effective, because when we did our
20 three-year study, you know, 170,000 fishing
21 trips, we're at two percent as far as
22 violations. So you know, is that good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compliance or is that just because we're
2 stretched on services and we don't have enough
3 resources.

4 I mean statistics can play either
5 way, but we, you know, that's a strong
6 relationship that's existed. Now we need to
7 try, you know, repackage it, try something
8 different, and that's why we're hoping for
9 more feedback from you.

10 CHAIR BILLY: Heather.

11 VICE CHAIR McCARTY: I want to just
12 make a general comment.

13 CHAIR BILLY: Or question.

14 VICE CHAIR McCARTY: Or question.

15 I have a response to something that you had on
16 one of your slides, where you talked about do
17 we need a compliance and enforceability
18 analysis at the time of reg writing. I think
19 that that's a pretty good idea, and I know
20 there's a couple of ways you could do that.

21 You could actually make it a formal
22 part of the analysis of any action, or what,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'm using an example now from the North
2 Pacific Council.

3 They have an enforcement committee
4 that's very active, and in our case, it's
5 usually headed by someone who's like a retired
6 enforcement person, perhaps with the state or
7 in this case is a retired enforcement head
8 from Oregon.

9 And every time there is a
10 significant action, the enforcement committee
11 is assigned by the chair to do their own sort
12 of practical analysis of the action, and make
13 recommendations for the council, soon enough
14 in the project so that the council can take it
15 into consideration.

16 So that's an alternate way. I
17 noticed you talked about beefing up the
18 enforcement committees. I think that's a huge
19 tool, I really do, and I think the more active
20 the enforcement committee and the more people
21 that are involved, and the more interaction
22 they have with the council is better, as they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 write the regulation or write the action, you
2 know, that results in the regulation.

3 I think they could play a huge role
4 in that process. So I would really encourage
5 you to do that.

6 MR. RISENHOOVER: And I think
7 that's one thing we need to talk to the
8 councils about is, you know, the enforcement
9 committee shouldn't be the last stop.

10 VICE CHAIR McCARTY: Exactly.

11 MR. RISENHOOVER: You know, we've
12 cooked the cake and you enforce it.

13 CHAIR BILLY: Put on the frosting.

14 MR. RISENHOOVER: Right. So just
15 maybe having that discussion up front, here's
16 the nature of the fishery, here's the nature
17 of the management program we're thinking
18 about. What are some of the enforcement
19 considerations as a first thought, instead of
20 the 3,000th thought.

21 VICE CHAIR McCARTY: And we also
22 have a Coast Guard presence that's ex-officio

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or doesn't vote on the council. Does every
2 council have that?

3 PARTICIPANT: Yes. The Coast Guard
4 --

5 VICE CHAIR McCARTY: That's a huge
6 tool as well, because the Coast Guard often
7 raises their hand and says "We can't enforce
8 those closures. We can't enforce, you know,
9 this line. We can't enforce these little
10 circles around -- and they have to be such and
11 such, such and such, they have to be
12 enforceable."

13 Those kinds of issues, real
14 practical, on the ground type of issues. The
15 Coast Guard is hugely important in that.

16 MR. RISENHOOVER: And does the
17 council react to those?

18 VICE CHAIR McCARTY: Absolutely,
19 always.

20 PARTICIPANT: Sometimes.

21 MR. RISENHOOVER: Right, and so --
22 and in the Northeast, I'm hearing sometimes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR McCARTY: They always do
2 --

3 PARTICIPANT: In the Southeast,
4 usually.

5 MR. RISENHOOVER: So it may be a
6 little bit mixed. But yeah, I think that
7 combined with some of the others is where we
8 need to go.

9 VICE CHAIR McCARTY: Yes.

10 CHAIR BILLY: Okay. A few more.
11 Remember, we'll get into more details during
12 the Commerce Committee meeting, but Paul, you
13 were next.

14 MR. CLAMPITT: I just had one more
15 comment, and it has to do with timeliness. We
16 talked about timeliness of, you know, getting
17 a response when I ask, somebody called and
18 asked about a regulation.

19 Another one is, you know, timely
20 notification of a violation. I mean there's
21 some guys in our fleet that have had VMS
22 malfunction, and you know, they don't hear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about the violation or even know of it.

2 They're running around without it
3 working for it could be months later, and then
4 the -- of course then the fine is a lot larger
5 than it would have been if they would have,
6 you know, got ahold of them immediately.

7 I don't know why that is or what
8 happens or how it could be that, you know,
9 they notice, they don't notice the boats not
10 responding after months. I don't know how
11 that could happen, but it has quite a few
12 times.

13 MR. RISENHOOVER: And that's
14 something -- there's two reasons there. One
15 is, you know, the timely notification, and
16 that falls mainly on the general counsel's
17 side. It does fall on the Enforcement side
18 too, you know. We need to refer the case to
19 our general counsel for action in a timely
20 fashion, the issue of violation if needed.

21 So we're working on that. General
22 counsel has a fairly large background they're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trying to work on, to get that timeliness.
2 Then the second one is when you see something
3 happening, when you help people correct it. I
4 think that's a big consideration too,
5 especially on things like VMS. We need to say
6 hey, you know, issue.

7 In the Gulf, we did use that. When
8 they would change the closure area, sometimes
9 that would engulf a boat with a VMS. Well,
10 you can send them a message through VMS. You
11 can send them an email, you can call them.
12 You can call the boat next to them if you
13 can't get them, to get them out of there. So
14 trying to do that sort of thing helps as well.

15 MR. CLAMPITT: I don't want to
16 change the subject, but as long as we're on
17 VMS. Some of those systems are cheap ones.
18 They don't do a good job of letting the boat
19 know if it's working or not. I mean they've
20 put it in and they go out and there's really
21 no way of knowing. So I think they should
22 require that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: Yeah, or we need
2 some sort of VMS check sort of ability that --
3 I apologize I don't know.

4 MR. CLAMPITT: I don't really know
5 on what vessel.

6 MR. RISENHOOVER: Yeah, and I don't
7 think it's a big problem in the Northeast.
8 Where I've heard problems are in Alaska and
9 Hawaii, angles of satellites and stuff I don't
10 understand.

11 MR. CLAMPITT: Okay, well thank
12 you.

13 MR. RISENHOOVER: And we are
14 looking at VMS as well. We've got some
15 internal studies going on on how do we improve
16 our VMS services, not this -- our service
17 related to the VMS. The service obviously
18 comes from the folks that provide the units.
19 But watching that quicker, being able to tell
20 people when there are problems quicker.

21 CHAIR BILLY: You know, I've got
22 Steve, Vince, Terry and Mark. Steve?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JONER: Alan, I want to commend
2 you for what you've done here. You know, I
3 think you've truly appropriated a lot of the
4 recommendations. When I gave the
5 recommendation that was done from the
6 perspective of somebody on the Pacific Coast,
7 I think we have a pretty good, you know, well-
8 oiled machine there through the Pacific
9 Council or Portsmouth Consultants and people
10 who have been around a long time.

11 One problem we see, and this will
12 be a challenge to you, is how do you continue
13 on, to have it transcend change of personnel?

14 No matter how hard we've tried, that always
15 is a problem.

16 For example, we have a visiting
17 Coast Guard cutter coming up from Alameda and
18 boarding vessels. No clue about the tribal
19 fishery or treaty fishery, and on more than
20 one occasion we've had trips terminated
21 because they board.

22 They go on board a long line that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are fishing halibut, for example, and see
2 sablefish and think they're salmon, and the
3 skipper will say "those are black cod." Next
4 thing you know -

5 (Telephonic interference.)

6 Then we had one this past summer.
7 A new guy was out there and he boarded a
8 tribal vessel. It was during the chinook-only
9 season, and these are very specific tribal-
10 related. But I mean, we can apply them in
11 general. There was a fisherman who caught a
12 cod. It was a nice, big one. The tribal
13 fisherman -- goes on the ticket and his fish.
14 He had his trip permit. He already had the
15 dockside inspection. They went through -

16 And no matter how hard we try, we
17 can't seem to bridge that issue. When we had
18 our local enforcement agent, Bill Thompson.
19 He was there a long time, and we developed a
20 real good relationship with him, to the point
21 where when he'd first come on the reservation,
22 due to a distrust.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It was kind of fortunate, and it
2 got to where he would come at the beginning of
3 the year and hand me the federal regs and say
4 "Okay what do these mean." So while he was
5 there for at least 20 years, we didn't have
6 any problems. So he comes in, and he got
7 familiar with some very specific things.

8 Not just in the private fisheries,
9 but other fisheries as well. But I think
10 somewhere there has to be a process in place
11 where when there's a change in personnel, they
12 have to ride along with the old guy for six
13 months, meet everybody, whatever it takes to
14 make those connections and be able to make
15 this -- it helps continuity. That really is a
16 problem.

17 These changes you're recommending
18 are -- they're going to break down.

19 MR. RISENHOOVER: So there's one
20 thing, I'll tell you the sort of thing I
21 talked about, because you know, it's very easy
22 to start things. The other thing is training,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 where I've heard, you know, the Coast Guard
2 rotates every two years. So you've got to
3 prep the Coast Guard, we need to make sure
4 we've got a good training program for them.

5 We also need to make sure we've got
6 a good internal training program, and that's
7 where we have a field training program. We
8 need to make sure that that's working, that
9 folks are continually trained. So yes, it's
10 like that in any organization.

11 MR. JONER: And you've got -- when
12 the Coast Guard rotates, and the new guy
13 doesn't know what he's doing, they don't
14 really blame it on the Coast Guard.

15 MR. DONOVAN: We're going to, you
16 know, take advantage of Alaska, who has
17 existing programs, to use some of them to help
18 us with our training on that. But they'll be
19 working with our agents.

20 On the continuity part, you know,
21 that's something that we're going to see a
22 bigger problem within the next few years,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 since you know, unfortunately we have an aging
2 -- fortunately or unfortunately. Fortunately,
3 the guys that are there, you know, we have an
4 aging workforce.

5 So we're going through some
6 retirement, you know, work force issues in the
7 next few years where, you know, we just have
8 to really do a lot of hiring because everybody
9 was -- you know, most people want to kid NOAA
10 cops. They liked it, they never left. So we
11 didn't have a whole lot of turnover.

12 Unfortunately, I see some of this
13 coming downstream. So you know, it will be
14 some feedback. But we can, as we look at our
15 work force management, how do we maximize that
16 institutional knowledge of our existing folks,
17 and how does it get turned, passed down to
18 the, you know, the younger agents and younger
19 officers.

20 We probably haven't done a great
21 job with that because usually when a person
22 leaves, then under the government

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 requirements, we don't fill the position until
2 the person has leaved, has left already. So
3 we've got to try to maybe bridge that gap
4 somehow. So thank you.

5 CHAIR BILLY: Okay, Vince.

6 MR. O'SHEA: In the interest of
7 time, Mr. Chairman, I'll pass.

8 CHAIR BILLY: Okay. Terry.

9 MR. ALEXANDER: I just want to say
10 that I'm one of the silent majority. I've had
11 a few interactions with your group of law
12 enforcement, and we screwed up a time or two.
13 And I think the boots on the ground is going
14 to make a huge difference to you.

15 MR. RISENHOOVER: Thanks.

16 CHAIR BILLY: Thanks. Martin?

17 MR. MARTIN FISHER: Hey, Mr.
18 Chairman. Alan, you did a great job with the
19 OLE summit, and I just want to put some kudos
20 in for Southeast region, especially OLE down
21 there. They do an especially good job.
22 However, we do have some issues with the VMS

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 program that aren't necessarily the agency's
2 responsibility.

3 But they fall under the purview of
4 what I consider the agency, and that is we're
5 having vendor issues. The fishermen's
6 relationship with either Tran and Tran or
7 whoever, when there's issues with the machine
8 that sometimes aren't picked up by the VMS
9 monitoring system.

10 For instance, my boat was not
11 reported. It was receiving email and giving
12 email, but not reporting position for six
13 months, and I didn't know. How would I know?

14 So but Tran and Tran charged me \$850 for, and
15 there's no recourse for the fisherman to be
16 able to say to the vendor you can't charge me
17 that.

18 We need to find some way the agency
19 can provide some kind of dispute resolution,
20 so that while the stakeholder is in
21 negotiations with the vendor, he can still
22 fish. His unit isn't shut off.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And there is absolutely no
2 responsibility on NOAA's part to -- there's no
3 retribution towards the vendor, to make sure
4 that their equipment is up to date, working,
5 or anything like that. That's a big issue
6 with us, because Tran and Tran is one of the
7 major vendors down there, and there are some
8 serious issues with their billing.

9 MR. RISENHOOVER: And so I do hear
10 vendor issues, some in Alaska, some in the
11 Southeast, not so much in the Northeast. So
12 yes, part of that is a private relationship
13 between the fishermen -- you know, you're
14 required to have a unit. Which unit you
15 choose, you know, as long as it's one that's
16 compatible or approved, if it's approved.

17 MR. MARTIN FISHER: You know, at
18 the time that we had the choice, we didn't
19 really have a choice. We only had the choice
20 of two, and there was only one clear choice.

21 I also wanted to pick up one of the
22 other things you said, which I think is great,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and we need more of that, and that is if it's
2 obvious to you guys, to OLE, that a
3 stakeholder hasn't been purposefully violating
4 the law, for instance, non-reporting of a VMS
5 for several months, that even your own office
6 didn't happen to pick up. That the first thing
7 that happens isn't the issuing of a NOVA.

8 The first thing that happens is
9 let's find out why this happened, and I think
10 that would go a long ways to creating the kind
11 of trust and communication between the
12 stakeholder and the agency that you guys are
13 seeking.

14 CHAIR BILLY: I want to stop here.

15 You can pick back up in subcommittee meeting.

16 A couple of presenters have time deadlines,
17 so I know there's a lot of interest in the
18 area. So but let's continue it later this
19 afternoon.

20 So we're going to move on to marine
21 habitat assessments, and I think it's Karen
22 Abrams.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 PARTICIPANT: Steve's going to do
2 it.

3 CHAIR BILLY: Is it Steve first?
4 Okay, sorry. Stephen Brown is going to kick
5 things off, to be followed by Karen Abrams.

6 Marine Habitats Assessments/HAIP

7 VOICE: Two days in a row, Steve.
8 This is good.

9 MR. BROWN: (Off mic) Yes. I'll
10 get this thing figured out one day. I think
11 it's going to basically be me right? Karen is
12 --

13 MS. ABRAMS: I'm available to
14 answer questions, but will need to leave.

15 MR. BROWN: Okay, right. I'm going
16 to talk about the habitat assessment
17 improvement plan. I did actually want to take
18 just a minute to follow up on a couple of
19 questions that came up yesterday.

20 One of the questions was is there
21 some sort of science, long-term science plan
22 to deal with the Gulf spill, similar to what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was done with the Exxon Valdez, and one thing
2 that I should have mentioned actually is that
3 BP did commit to provide \$500 million over, I
4 think it's a ten, five or ten year period, I'm
5 not sure about that, for research and they're
6 working through the Gulf of Mexico alliance.

7 So far, they've put out \$10 million
8 to the Florida Institute of Oceanography, LSU
9 and Northern Gulf Institute, so that's up and
10 running. So that's one issue.

11 Another question that came up was
12 about studies of recreational fisheries, and I
13 did a little digging around, and there was a
14 study that was already done, kind of a small
15 study by a Brad Detmer and Associates, and you
16 can have the link actually to Heidi.

17 MS. ABRAMS: And it's been sent on
18 to the committee.

19 MR. BROWN: Okay, all right. So
20 there is not a lot of detail in that, and the
21 specific question is where tackle shops
22 included, and I think the answer would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 generically yes, they're included in the
2 business analysis. Exactly how they went
3 about doing that, I'm not too sure. But you
4 could probably follow up with Brad Detner to
5 get some more detail on that.

6 But so that's my follow-up on the
7 oil spill. Now I'm going to talk about the
8 habitat assessment improvement plan, better
9 known as the HAIP. I handed out a bunch of
10 them. If you had a document like this in your
11 place, this is what it is. I've got a couple
12 of more if people want them, and okay. So
13 let's move on.

14 So the first question is why are we
15 interested in habitat at NMFS, and this
16 diagram, we had a lot of discussion about this
17 diagram on our team, but basically the message
18 here is that habitat touches almost everything
19 the agency does.

20 So again, the three big circles
21 here. Here's habitat science, stock
22 assessment, there's some overlap. It could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 also mean spatial planning and integrated
2 ecosystem assessments, the sort of ecosystem
3 approaches to management. That has a habitat
4 component, and all these other things in these
5 circles around the edge here.

6 They all have a habitat component
7 for protected species, marine protected areas,
8 dealing with climate. So habitat touches most
9 everything that the agency does in one way or
10 another.

11 So when our team was set up to
12 develop this plan, the first thing we had to
13 do is decide what the scope was. We had quite
14 a bit of debate about that, but basically we
15 decided we would focus in first on really the
16 core issues that the Fisheries Service deals
17 with, the Magnuson Act, commercial fisheries.

18 So that's where the emphasis is on
19 this plan. The basic goal of it is to be able
20 to do a couple of these things here, to
21 improve our ability to identify and assess
22 impacts with essential fish habitat, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reduce habitat-related uncertainty in stock
2 assessments, and so that's essentially the
3 primary scope of the plan.

4 So then once we decided on that, we
5 actually had to kind of define what this
6 means. What is a habitat assessment? Here's
7 the definition that we came up with, which I
8 think is a pretty good one, so I'll just kind
9 of run through it. It's both a process and
10 product. Process and products associated with
11 consolidating, analyzing and reporting the
12 best available information on habitat
13 characteristics.

14 The key is down here. Relative to
15 the population dynamics of fisheries, species
16 and other living marine resources. So we're
17 applied science agency. We are concerned with
18 how habitat affects the dynamics of fish
19 stocks, and the graphics over here sort of
20 symbolize the kinds of information that goes
21 into a habitat assessment.

22 Here we have a benthic habitat map,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an ocean graphic map showing water temperature
2 and the critter and the living substrate one,
3 the specific broadfish that they're associated
4 with. So that's how we considered habitat
5 assessment.

6 Taking it then to the next step of
7 how do we think about these habitat
8 assessments in a planning context, we
9 identified what we called three tiers of
10 excellence in habitat assessments, and these
11 are not mutually exclusive.

12 All three of them can be done even
13 simultaneously. So they're different sort of
14 levels of habitat assessment. Tier 1
15 recognizes that although there's a lot of
16 information gaps, it's not like we don't know
17 anything.

18 There's existing information, in a
19 lot of cases, and I'll get to a little more on
20 this in a minute, the information is kind of
21 scattered. It's not systematic, but there is
22 information there. It's often hard to get a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 hold of and hard to interpret. So Tier 1 is
2 basically making better use of what already
3 exists.

4 Tier 2 then is to upgrade habitat
5 assessments to a minimally acceptable level
6 for all life stages, things like habitat-
7 specific biomass estimates or abundance
8 estimates, and we recognize this would require
9 some expanded capability to collect and
10 analyze data.

11 Then Tier 3 is taking it to the
12 next level, where we're really talking
13 productivity vital rates and ecological
14 assessments.

15 The scope of the plan then focuses
16 on the things that I just alluded to. We're
17 basically focusing on the 230 fish stock
18 sustainability index species. These are the
19 main commercial species that NMFS is
20 responsible for, 230 of them, and they
21 constitute around 90 to 95 percent of the
22 catch every year, commercial catch.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 However, we're concerned with other
2 life stages, all of the aspects of habitat
3 regardless of where they occur. So that's
4 essentially it. Whoops. That's the main
5 focus, is the major commercial species, all
6 their life stages, all the habitats in which
7 those occur. So when you start looking at
8 that, it ends up being a pretty wide scope.

9 So once we had it scoped out, we
10 had to gather some information, and this is an
11 internal exercise to understand what is
12 important to the agency in order to improve
13 our capabilities on habitat assessments.

14 So we developed questionnaires.
15 There are actually two questionnaires that we
16 had to sort of reach inward to our own staff,
17 to get a better understanding of what we
18 needed to do to improve our abilities in this
19 area.

20 So we had these basic objectives to
21 identify the factors that are kind of holding
22 us back, and just figure out what resources we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 needed to overcome those hampering factors.
2 We needed to do this on a region by region
3 basis, because each science center is an
4 individual situation.

5 So we actually did submit these
6 questionnaires. We worked pretty hard to try
7 and get nice, clear, crisp questionnaires, and
8 it's really amazing when you send these things
9 out to 100 or more people, what you get back.

10 Things that you thought were clear are not
11 necessarily clear. It's a lot of work to
12 interpret these things.

13 But we worked through it. Broadly
14 speaking, the results are kind of, you know,
15 the elevator speech level here. The habitat
16 data that we have are really not sufficient.
17 They're at low resolution. They're
18 incomplete. The best information that's
19 available is on the physical characteristics
20 of habitat.

21 On the flip side of that, though,
22 is where we're really falling the most short,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is the biological connections, what does that
2 mean in terms of productivity of stocks.

3 So drilling down a little bit here,
4 we -- the conclusions were that our data
5 collection and management programs need to be
6 upgraded. We need more staff, we need more
7 infrastructure, we need better technology, and
8 this is a sort of interesting one.

9 There's disconnect between how the
10 scientists operate and how the managers who
11 use their information operate. That
12 disconnect is kind of -- it's a temporal one
13 as much as anything.

14 If you're a scientist and you want
15 to do a new study, you've got to think up,
16 come up with your research question. You've
17 got to develop a proposal to get the funding.

18 You may have to do that two or three times
19 before you get the funding.

20 Then you've got to design the
21 study, get the resources, go out and do it and
22 interpret the data. That's multi-year

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 process. On the other hand, the managers, say
2 someone who's doing an EFH consultation or
3 something like that, they need answers in
4 weeks to months. So there's a disconnect
5 there.

6 So we really needed to focus in on
7 that, and understand how we can both support
8 the science and provide the information that
9 the managers, scientific information to
10 address their issues.

11 So we actually, one of the sets of
12 questionnaires that we had was sent to program
13 managers, to get an estimate of what the
14 resource needs are, and we go all the way out
15 to what would completely require the agency to
16 do, to fully be able to conduct our Tier 3
17 assessments, the total of staff.

18 We estimated we would need 557 new
19 habitat scientists, which is a big number.
20 Obviously, we're not going to get this next
21 week, but that's sort of the big picture. We
22 also assessed that about -- only about five

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 percent of our staff are currently working on
2 habitat science issues, and this is sort of a
3 major concern.

4 Many of these staff, 30 to 40
5 percent, it varies somewhat by center, are not
6 FTEs. They're not permanent federal
7 employees. They're contractors, they're
8 students, they're people who -- well, from
9 their point of view, they don't have a nice
10 steady source of employment, right?

11 If the contract goes away, then
12 their job is going to potentially go away.
13 From the NMFS managers' standpoint, they're
14 not necessarily going to be there. They can't
15 necessarily be reassigned easily to a new
16 project that needs change. So that's an
17 issue.

18 And also, it's pretty clear that
19 people who are working in this field are
20 already fully committed, so they're not
21 sitting around waiting for extra work, new
22 work that needs to be done.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So in thinking about addressing
2 these problems, what sort of benefits will we
3 get? Why is it important to the agency to
4 actually try and address these shortcomings,
5 and I don't think I'm going to want to read
6 through all of these things here, but
7 basically it helps us to identify, conserve
8 essential and critical habitat, and this is
9 not necessarily EFH specifically, but it would
10 be part of that.

11 But it will enable us to improve
12 our surveys and our stock assessments, to
13 deliver the science that managers --. In
14 addition, it will help us better address some
15 of the upcoming, the emerging issues like
16 climate change, like spills. This project
17 really predated the Deepwater Horizon, but
18 other anthropogenic impacts are important.

19 Another one that's emerging within
20 the federal government here is coastal and
21 marine spatial planning, and certainly habitat
22 is a spatial issue, and the better information

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we have, the better case we can make that
2 habitat is important, that it needs to be
3 considered in future allocation and uses of
4 space in the environment.

5 So there are a number of management
6 implications to realize these benefits and to
7 -- to the agency that allow us to do our job
8 better. The HAIP lays out a plan to bring
9 science into the decision-making process in a
10 better way, and better science to be brought
11 to these processes.

12 It provides a framework where we
13 can grow the programs, so that we can have
14 more effective habitat conservation, habitat
15 assessment, and it's clear that laws like the
16 Magnuson Act and the Endangered Species Act
17 point toward the importance of habitat for the
18 agency.

19 In terms of essential fish habitat,
20 probably you're familiar with the Magnuson Act
21 and how it defines essential fish habitat,
22 waters and substrates necessary for fish, for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spawning, breeding, all these other good
2 things here.

3 Fishery management plans have to
4 contain these EFH designations. NMFS and the
5 councils have designated EFH for about 1,000
6 species, and the HAIP will enable us to do a
7 more effective job at doing that.

8 In many cases, I would say that
9 higher quality information might actually have
10 the potential to reduce the footprint of EFH,
11 because if you have more refined information
12 and you know more specific information about
13 what habitats are important and what habitats
14 are less important.

15 In fact, EFH regulations recognize
16 sort of different levels of habitat
17 information, and the lowest level is
18 presence/absence. If all you know is that a
19 species occurs someplace, then you've got to
20 protect a large area. But if you have good
21 information about where their high abundances
22 are, you could potentially reduce the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 footprint of EFH.

2 Let's see. More reasons why the
3 HAIP is relevant to the EFH programs. The
4 fishery management plans need to contain
5 measures to minimize adverse -- whoops.
6 What's going on here? Okay. Bad fingering of
7 this thing here.

8 Fishery management plans need to
9 contain measures to minimize the adverse
10 effects of fishing, and since 2006, NMFS and
11 the councils have protected large areas,
12 especially on the west coast and Alaska, to
13 protect from adverse effects of fishing, and
14 these EFH provisions in the fishery management
15 plans need to be or supposedly are going to be
16 reviewed every five years.

17 Given the HAIP, it has the
18 potential to give us more refined information.

19 You can do a better and more effective job at
20 doing that, and be more targeted in our EFH
21 and the EFH consultations and conservation.

22 Let's see. As you are probably

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 familiar with the EFH process, the Magnuson
2 Act requires that federal action agencies
3 consult with NMFS on actions that could
4 adversely affect EFH and NMFS, and provides
5 conservation recommendations that the action
6 agency has to respond to.

7 Currently, we conduct about 3,000
8 of these consultations a year. So implementing
9 the HAIP then gives us a better information
10 base to do, go through that process, to
11 develop more effective EFH recommendations
12 through the consultation process.

13 Okay. So to achieve these benefits,
14 and the HAIP elucidates a number of
15 recommendations, some of them are big ticket
16 items. You know, disbursement of course.
17 Developing new budget and staffing initiatives
18 to fund the science through the NOAA budget
19 process.

20 Clearly, there are some things,
21 adding capacity, adding infrastructure, adding
22 staff, that costs money, and we are going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 use the HAIP to work the NOAA process, NOAA
2 budget process to try and increase our
3 funding.

4 Oh, but there are a lot of other
5 things that don't necessarily require a lot of
6 money, that are not big ticket items that
7 require us to maybe spend a little bit of time
8 and money to take some initiatives, and also
9 to just change how we do business, or
10 reconsider how we do business.

11 We are starting to do some of these
12 things already. One thing we're going to
13 start working on -- whoops, geez. Which way
14 am I going on this? There we go. We are
15 starting to work on this.

16 We're going to organize a workshop
17 to develop criteria for prioritizing stocks
18 and locations, prioritizing data gaps, so that
19 we can really target our efforts. Where
20 should we be working first? What stocks are
21 the most important to improve the habitat
22 information, for what regions? Where are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 big data gaps?

2 So we can do this by deciding to do
3 it, rather than getting lots of extra funding
4 and taking years to do it. This is something
5 we can do now and we are starting to work on
6 that.

7 We can implement some demonstration
8 projects to incorporate habitat data in the
9 stock assessments. I have a slide on this a
10 slide or two ahead on this, so I'll talk about
11 it a little bit. We are doing that.

12 We can talk about increasing the
13 habitat data that's collected during the
14 surveys that we already conduct, and we're
15 going to try and move ahead on that. Some
16 additional recommendations is to develop
17 partnerships within and beyond NOAA.

18 Clearly NMFS has needs and
19 capabilities, but there are other entities
20 within NOAA, within other parts of NOAA that
21 have capabilities and mandates that are
22 complimentary to ours, and this is also true

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 beyond NOAA and other agencies, academic
2 institutions, etcetera.

3 We can work to convene regional and
4 national workshops to improve communication
5 with the habitat managers. We are working on
6 that. We've got a couple of those in the
7 works. We discussed establishing a habitat
8 assessment fellowship program. That's
9 probably somewhat further down the line.

10 There's been some discussion,
11 although we haven't really taken any serious
12 steps about this yet, to try and further this
13 throughout the rest of NOAA, to develop a
14 larger NOAA-wide plan.

15 So what have we done so far? The
16 first thing we did is we had a National
17 Habitat Assessment Workshop. This was back in
18 May in St. Petersburg. We had two major
19 thrusts in that. The first one was to seek to
20 increase the collaboration between habitat
21 scientists and the habitat managers across the
22 agency.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It turned out, in the discussions
2 that we had, that communication between these
3 two groups is a big issue. So we're working
4 on trying to improve that.

5 The other half of the workshop was
6 focused on incorporating habitat information
7 into stock assessments, and we actually had a
8 joint session with the National Stock
9 Assessment Workshop during that same meeting.

10 So we had a lot of discussions and ideas
11 generated through that.

12 In regard to increasing
13 communication between the centers and the
14 regions, in terms of prioritization, we have
15 -- we are currently working with the Mid-
16 Atlantic Council and the Northeast Region and
17 Center, as well as the Science, Technology and
18 Habitat Office at headquarters.

19 We're designing a workshop here to
20 do just that, to provide a forum for
21 communication and priority-seeking between the
22 managers and the scientists.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 In addition, Alaska actually is
2 kind of the poster child for this. The region
3 and the center have a history every year of
4 getting together to talk about their habitat
5 issues, and they had a wider ranging meeting
6 back in September, to focus more broadly on
7 habitat and ecosystem issues between the
8 regions and the centers.

9 And I think it's my next slide
10 actually mentions these things. We have
11 actually funded three joint habitat stock
12 assessment pilot projects. Yes. Here are the
13 three projects. These are internal here. We
14 have one on blue marlin. Mark Schirrupa and
15 the Southeast Center and Eric Prince are the
16 PIs.

17 One also in the Southeast Center
18 but more focused on the Northeast. John
19 Quinlan's the PI, focusing in on tilefish and
20 lobster. The third one is on the west coast.
21 Mary Yoklavich is the PI, looking at
22 groundfish, certain groundfish. So these have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 been funded. The total funding for
2 these is 214,000. This is FY '10 funds, and
3 we are hoping to be able to do this again in
4 FY '11. We're polishing up the RFP actually
5 this week. We sent it out for comments. We
6 should be putting that out.

7 These are for NMFS people, so not
8 that other people can't be participants. But
9 we wanted NMFS PIs, partly because it's a lot
10 easier to move the money to NMFS people than
11 to move money someplace else.

12 Okay. So where are we going in the
13 future? We're looking for opportunities to
14 leverage the available resources and data, to
15 focus on these Tier 1 assessments, to
16 collaborate with outside partners.

17 I already mentioned this. We're
18 planning a workshop or potentially a series of
19 workshops so we can prioritize stocks,
20 geographic areas and data gaps, so that when
21 we get resources, we can target them, or if we
22 potentially have the opportunity to re-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 prioritize some of the resources we have, we
2 know where we want to go.

3 We are hoping, I already mentioned
4 this, we're hoping to -- we're planning to
5 develop some more pilot projects, both on the
6 stock assessment side as well as on the EFH
7 and habitat management side in FY '11, and
8 let's see.

9 We are focusing here also on
10 aligning with the ocean policy task force,
11 particularly their coastal and marine spatial
12 planning and ecosystem-based management
13 priorities.

14 And let's see, is that it? Oh,
15 yes. You can download the document -- whoops,
16 geez. You can download the document at the
17 NMFS Science and Technology website. I've
18 given hard copies, I think, to everybody here.

19 I've got a couple more if you still would
20 like one, or you can contact us.

21 And here's my team actually. This
22 is a great team. I've really enjoyed working

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with them. This is a hard-working bunch of
2 people, and we are all really pretty focused
3 on developing this plan. We had at least one
4 person from every NMFS science center and
5 several people from headquarters.

6 Actually initially we had two
7 people from the Habitat office on the
8 management side, a couple of people from S&T,
9 including me. So that's our team. That's it.

10 If anyone has any questions, I'd be happy to
11 answer them.

12 MR. CATES: Thank you. My first
13 experience with essential fish habitat was in
14 Hawaii 11 years ago, and I was surprised to
15 find out -- I didn't know much about it. But
16 I was surprised to find out that the council
17 and NOAA had designated all state waters as an
18 fish, essential fish habitat, including in
19 harbors.

20 And I had to present a plan, when I
21 had to develop, deploy a cage, and all these
22 restrictions were put on me. I had to weigh

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 zinc and the harbor that I did it at was a
2 sand blast operation. I've gone through that
3 three times now, and I've asked why, how is it
4 possible that this heavy industrialized harbor
5 is considered essential fish habitat?

6 The response is well, it gives us,
7 the council and the regional office, an
8 opportunity to comment on coral permits. It
9 didn't have to do with whether it was
10 essential fish habitat. It was a mechanism
11 for having a say in any project that ought to
12 occur in that area.

13 So I'm wondering is there a re-
14 evaluation on essential fish habitats, whether
15 it's really -- is it being misused?

16 MR. BROWN: Well, I'd like to punt
17 that one to Karen here from the Habitat
18 office, but I will say one thing, that they
19 are supposed to update or review the EFH
20 amendments every five years. So that's one
21 forum in which that can be done.

22 But this is kind of a management

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue, so I'm going to see what Karen might
2 have to say on that one.

3 MS. ABRAMS: So the designation of
4 essential fish habitat, the purpose is not
5 just to be able to comment on coral permits.
6 The reason EFH is required to be designated is
7 to figure out where that habitat is that's
8 necessary for the spawning, feeding, breeding,
9 growth and maturity of whatever the managed
10 species is.

11 Fortunately, the science we have to
12 distinguish between what is generally used by
13 all fish at all times during various times in
14 their life stage, and what is the most
15 necessary is not really there.

16 So we have this juggling act where
17 the law requires us; we can't just walk away
18 from not designating anything, to we have to
19 designate something for these fish.

20 So we wind up with these broad
21 areas. That doesn't mean that just because
22 your project is in EFH that there will be some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 kind of consultation, because the need to
2 consult with us is triggered by whether or not
3 you're adversely affecting that EFH.

4 Not knowing enough about the
5 specifics of your project, it's hard for me to
6 respond to that.

7 MR. CATES: I mean in the state of
8 Hawaii, every body of water is now considered
9 essential fish habitat. The Ala Wai Canal,
10 which is -- if any of you have been to Wakiki,
11 there's no possible way that is essential fish
12 habitat. So it just seems excessive that
13 they're using that as a precautionary
14 approach, and so we're just going to blanket
15 every body of water.

16 MS. ABRAMS: Well, I understand
17 what you're saying, but the law does require
18 us to designate those habitats necessary to
19 fish, for the spawning, feeding, breeding,
20 growth and maturity of those fish, and we have
21 to be precautionary.

22 In the absence of science that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tells us well this particular small area
2 doesn't have those habitat attributes that
3 would definitely lead to greater productivity
4 of the stock, in the absence of that we have
5 to be precautionary and broader.

6 That's why the implementation of
7 the habitat assessment improvement plan is a
8 very high priority for us, because in the
9 absence of that science, it's very difficult
10 for us to get sort of more constrained
11 geographic places where that EFH is.

12 So we have been handed a very, very
13 expansive, broad mandate, and we have about a
14 \$5 million budget to execute it, and not a lot
15 of science.

16 So it leaves us -- that's sort of
17 why we wind up where we are. But I do, I
18 would, but one other thing I'd add is that
19 just because EFH is in a lot of places,
20 doesn't only mean that there is going to be an
21 implication to a coral permit or some other
22 type of project that really has to do with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what the adverse effect is on that EFH.

2 Like I said, not knowing the
3 specifics about your project, but I'd be happy
4 to talk to you further afterwards.

5 MR. CATES: One final thing for the
6 group here is we have harbors where funding
7 has been designated for dredging. You can't
8 dredge in the harbor because there's corals
9 have grown in the harbor, and it is now an
10 essential fish habitat, to the point where our
11 inner island barge traffic has threatened not
12 to go over to certain islands any longer
13 because they can't get in there. The dredging
14 isn't done when it's needed to.

15 So this is a huge issue for
16 commerce. But what we in the state of Hawaii
17 are going well, corals shouldn't be in a
18 harbor that's been dredged, you know, for 100
19 years, and now we can't get in there because
20 we can't dredge because it's now an essential
21 fish habitat. It's really bizarre and it's
22 really affecting things.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. ABRAMS: I'd be happy to follow
2 up with you further. However, or we can
3 continue on this.

4 MR. BROWN: Well, maybe I shouldn't
5 jump into an area where I don't know anything,
6 but I'll do it anyway. If these things are
7 reviewed every five years, maybe there's an
8 opportunity to improve the designation.

9 CHAIR BILLY: Keith, then Tom.

10 MR. RIZZARDI: I'd like to get a
11 better understanding of how EFH and critical
12 habitat go together. How well are these two
13 consultation procedures and how you integrate
14 your information, so that you minimize the
15 duplication?

16 MS. ABRAMS: We have lots of -- we
17 have agreements. It's our standard practice,
18 right Jim, to integrate whenever possible and
19 whenever it makes sense. The places where
20 there's the most overlap is where you have the
21 designated salmon and salmon that are a
22 managed species, where you actually have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 habitats that are falling under critical
2 habitat and EFH.

3 It may not always make sense to
4 integrate Section 7 and EFH consultations
5 where you're not getting an overlap --

6 MR. RIZZARDI: -- that are
7 designated that are different than, they
8 require a different scope of view. What's the
9 standard to which you're evaluating? They're
10 both adverse effect, right?

11 MR. LECKY: Well, adverse effect
12 under the Magnuson Act. They only look at the
13 effect on the habitat element itself. They
14 don't go beyond that and try and extrapolate
15 what the loss or modification, adverse effect
16 of that habitat might be on the species.

17 MS. ABRAMS: And it's a fairly
18 broad definition. Any reduction in the
19 quantity or quality of EFH. It's a very
20 broad description of adverse modification.

21 MR. LECKY: So whereas we look at
22 adverse model and structure and adverse

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 modification. There, we're not just looking
2 at the habitat itself.

3 MR. RIZZARDI: Okay.

4 MS. ABRAMS: And what we provide is
5 that the end result of the EFH consultation
6 are conservation recommendations to the
7 federal action agencies, which are separate
8 from the biological opinion. But the analysis
9 is again coordinated in a seamless fashion.

10 But what we've provide on the
11 habitat side of EFH are recommendations, what
12 the agency has to consider but doesn't have to
13 actually use.

14 CHAIR BILLY: Okay, Tom.

15 MR. RAFTICAN: Yes. This is -- I
16 mean I just hear crying out for a really good
17 look at marine spatial planning. You know, if
18 you look at something like Randy's talking
19 about, where you've got industrial uses and
20 you know, maybe that's not the area to have
21 essential fish habitat.

22 I mean if you made all Hawaiian

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 essential fish habitat, there's got to be some
2 type of overlap, and you know, if there's
3 going to be any type of marine spatial
4 planning, you have to start looking at how you
5 start doing the designation.

6 At what point are you ready to kind
7 of say let's sit down and talk, and let's --
8 how we work with this stuff, and start putting
9 in additional uses?

10 MS. ABRAMS: Well, the designation
11 of EFH does not mean that any activity is
12 automatically restricted. All it's saying is
13 that this is an area that serves some purpose
14 to fish for some part of their life stage.
15 That's all the designations have said. It's
16 not even codified -- it's not even done
17 through a regulation. It's done through the
18 fishery management planned process.

19 It's strictly a scientific
20 determination of where the habitat is for
21 these fish. Then the Magnuson Act requires us
22 to do certain things for the conservation of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that habitat. But those conservation measures
2 do not always -- when it comes to non-fishing
3 impact, all we can provide are
4 recommendations.

5 We cannot constrain, we cannot
6 require the Corps of Engineers to change
7 anything. We would like them to, where we can
8 make that strong connection back to the
9 sustainability of the stock, which we can very
10 rarely do because we don't have the science to
11 make that link back to productivity.

12 MR. RAFTICAN: But yet the science
13 was required in the first place.

14 MS. ABRAMS: Yes, but the
15 designation of the EFH, there's multiple
16 levels of the designation process. If we can
17 show that there is evidence of presence of a
18 species there, then we can designate it as
19 EFH.

20 If we do not have to show that that
21 habitat results in any kind of quantifiable
22 productivity back to the stock, to designate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it as EFH. Like Steve was saying, the
2 councils are supposed to be reviewing and NMFS
3 is supposed to review the underlying
4 scientific information that supports all of
5 the EFH provisions of fishery management plans
6 every five years.

7 And I know that Hawaii is they've
8 been doing a big reorganization of all of
9 their fishery management plans and just trying
10 to get through that, and they have started
11 having discussions about what, how they're
12 going to embark on their review of the EFH
13 provisions. So that would be an appropriate
14 time to address, you know, some of the issues
15 that you're raising, and get that EFH running.

16 MR. CATES: One of the things that
17 really confuses all of this, everything you
18 said is correct. But the Corps is just asking
19 recommendations. Fish and Wildlife get
20 involved in this too, and they kind of feed
21 off of each other.

22 So Fish and Wildlife will say well,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it's essential fish habitat, and what's the
2 mitigation plan? So there's -- the Corps then
3 turns and says, okay, you want to -- I'll give
4 you a real world example.

5 We have a pier in Hilo. Its got a
6 wall on it, a metal wall that was put in
7 there, and corals now grow on top of it. They
8 want to repair the wall.

9 They can't, because it's got corals
10 in there, and they're worried about how
11 they're going to mitigate. What do we do with
12 these corals, and there's no consensus on how
13 to do that, to remove them and plant them
14 somewhere else, and dredging.

15 So it's not only essential fish
16 habitat, but Fish and Wildlife get into the
17 mix and then it's a new world out there.
18 Nothing's getting done.

19 CHAIR BILLY: Okay, Steve.

20 MR. JONER: You know Steve, that
21 coral assessment -- I hope that Coral
22 assessment works out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BROWN: I know.

2 MR. JONER: I'm up to my neck in
3 coral assessments, so that's what I think
4 about a lot. That workshop you had in May, I
5 saw it on a calendar somewhere and asked
6 around, and couldn't ever get an answer.
7 Finally, I was told that that was internal for
8 NMFS people. Is there a reason for that?

9 MR. BROWN: Yes. It was basically
10 that we wanted to promote this plan. This
11 plan was just published like the week before.
12 We wanted to essentially socialize it within
13 the agency, get some broader internal
14 discussions about how we would implement it,
15 and the opportunities to do that.

16 We did actually invite council
17 members. So we had several councils did send
18 representatives. But we didn't really intend
19 for this to be -- well, it was basically
20 inward-focused, and I think -- I didn't really
21 get into it here, but we're planning to do
22 these every two years.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The next one, which would be 2012,
2 we have not done anything in planning it yet.

3 But I think that that would be different. So
4 exactly how different that would be I guess is
5 yet to be determined. But we made a conscious
6 decision on that one to really try to
7 basically talk within the agency, just because
8 that seemed the logical starting point.

9 I will say we have a draft of the
10 proceedings document. It's a pretty hefty
11 document that's been sent out to our steering
12 committees. I hope to get -- let's see. We
13 gave them until the end of next week to
14 comment on it.

15 But since they gave us that text in
16 the first place, I don't think we're going to
17 have a lot of criticism from that. So we will
18 be publishing that within the next couple of
19 months, I'd say, no later than that. That
20 will be publicly available to anybody. It
21 will be on our website and we'll have maybe
22 some hard copies around.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So but I tried. You know, the main
2 findings, I did actually mention them here.
3 The main findings, I did actually mention them
4 here. The main findings were that we need to
5 have better communication. Again, this is an
6 internal NMFS discussion. So better
7 communications between the scientists and the
8 managers was a really big theme that emerged
9 from that.

10 MR. BROWN: Well, just to let you
11 know, on the Pacific coast northwest, we have
12 a situation where there's a sanctuary that's
13 located entirely within fishing grounds, the
14 traditional fishing grounds for three tribes,
15 and because of the difficulty in dealing with
16 the issues and natural resources management,
17 interacting with the sanctuary, we formed this
18 inter-government policy council.

19 National Marine Fisheries Services,
20 I think they're an ex-officio member. They
21 don't participate a lot, but we rely on the
22 National Marine Fisheries Service a lot in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dealing with the sanctuary focus, and in
2 particular, the coral assessment that's going
3 on there and the EFH designations.

4 A big chunk of the tribes' areas is
5 now EFH. It really complicates our management,
6 and so you know, it's more than just an
7 outside interest. I mean just keep that in
8 mind for future activities. It would have been
9 nice to have our, from the IPC, have our
10 habitat assessment specialist go. That's what
11 I tried to do, get him there, but was told
12 inside people only.

13 MR. BROWN: Yes. That one -- like
14 I said, that one was really our first shot out
15 of the block, and we wanted to basically talk
16 within the agency. But I'm sure we will not
17 be doing that in the future.

18 I would look to -- well, we talked
19 a lot about partnerships within this document
20 too, and we realize that there are a lot of
21 people with interest, and a lot of people with
22 expertise, you know, with a dog in the fight

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 essentially. So we realize that we need to be
2 working with these folks.

3 CHAIR BILLY: Tony.

4 DR. CHATWIN: Thank you, Mr.
5 Chairman. Thank you for the presentation. I
6 read with interest -- I didn't read the whole
7 thing, but the report and in particular the
8 staffing moves.

9 MR. BROWN: Yes.

10 DR. CHATWIN: Do you have a cost
11 estimate of what that represents?

12 MR. BROWN: You know, we had a lot
13 of discussion about exactly that point, and we
14 didn't put one in there. Well, we did put one
15 in there and then we took it out. I mean what
16 you would do is our -- well, I guess I can say
17 this.

18 Our NOAA budget, when we do our
19 budgeting, we sort of figure 160,000 per FTE.

20 So you can do the math, and it comes out
21 about 84 million to get those 557. We didn't
22 put that in there, because we wanted this to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have some shelf life, and you know, five years
2 from now, that would be a different number.

3 But those are the sort of
4 magnitudes that we're talking about. And one
5 other thing I would mention is that we didn't
6 make a real serious effort in this document to
7 sort of say what beyond, what's the cost
8 beyond the staff, you know, because when you
9 have the staff, we need days at sea, we need
10 ship time, we need equipment, lab space, you
11 know, all those things.

12 What we said in here basically is
13 of similar magnitude. But I think we are
14 going to probably organize a workshop or maybe
15 a series of workshops to look at that in more
16 detail, because that's sort of something that
17 needs to be fleshed out some more.

18 DR. CHATWIN: So it just seems to
19 me that I think it's good to make, have an
20 overall cost estimate with a clear vision of
21 what those additional resources would
22 accomplish, and I think you're making progress

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 towards that.

2 One thing when you have that then,
3 you can see what are the possible options to
4 achieving the same goal a different way. One
5 thing I think would have been valuable, that I
6 didn't see in the report, is an assessment of
7 non-NMFS capacity to do habitat research that
8 you can tap into, because the more outside
9 partners you bring into this, the more
10 advocates you would have to help you get the
11 resources that are needed.

12 There may be a trade-off between
13 staffing up at that level and engaging all
14 those partners.

15 MR. BROWN: Well, that's a good
16 point, and we do have some recommendations in
17 here about seeking partners. I agree with
18 you. There's a lot of capabilities out there.

19 There are some things that we will probably
20 never be the world leaders at, and other
21 people are.

22 So I agree with you, that we need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be working on partnerships. We have some
2 ideas on that, but clearly, even within NOAA,
3 there are parts of NOAA and the National Ocean
4 Service, for example, especially in coral reef
5 assessments and OAR, you know, with their
6 ocean exploration program and sea grant
7 programs, there is certainly a lot of
8 potential out there for us to work with other
9 people, and I agree with you.

10 One other thing I would say is that
11 there is a table in here. It's in about page
12 53 or so, where we break out these staffing
13 needs in a variety of different ways.

14 You know, in each tier, that 557
15 that I gave you is sort of the big number.
16 But there's components of that, and to get to
17 Tier 1, I think it was like 100 staff or
18 something like that out of that 557.

19 So you know, we recognize that this
20 is something we're going to have to attack
21 incrementally. We're not going to get -- if
22 somebody gave us 557 people right now, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be shocked and it would be hard for us
2 to absorb that kind of thing.

3 But we need to build toward that,
4 you know. So you want to have the end point
5 in mind as you move in that direction. But we
6 break it out by tiers. We broke it out by
7 science center, so -- and we broke it out by
8 function too, as I recall. There's a couple
9 of different ways that we split it out in
10 there.

11 DR. CHATWIN: Just a quick follow-
12 up. One model, I worked for the Nature
13 Conservancy for a number of years, and they
14 helped set up a Heritage program.

15 MR. BROWN: Yes.

16 DR. CHATWIN: Which I think where
17 pretty good at collecting a lot of information
18 from each of the states for species
19 distributions and not only distributions but
20 abundances. So I think that there are models
21 there where you can develop that capacity and
22 get the information that you need on a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consistent basis.

2 MR. BROWN: Yes. I think that
3 would be what we would have called a Tier 1
4 assessment, making better use of the
5 information that exists. Because you know,
6 the Nature Conservancy is one place. There's
7 a lot of universities that do research. There
8 are state agencies, there's other federal
9 agencies.

10 So there's a lot of information out
11 there, but it's not easily accessible. So
12 that's sort of something that's, I guess,
13 relatively low-hanging fruit compared to
14 building up the capacity. Not that we -- we
15 want to do both, and I think it is important
16 for us to have our own capabilities.

17 But we can also make better use of
18 what's out there and that's a priority too.

19 CHAIR BILLY: Okay. I think we
20 need to move on. Thank you very much. Good
21 discussion. The next is the Critical Habitat
22 Designation Process for Endangered Species.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Welcome Jim back to our fold, Director of the
2 Office of Protected Resources.

3 Critical Habitat/Endangered Species

4 MR. LECKY: Okay. I wanted to talk
5 about basically what critical habitat is, what
6 it does, how it's used, and then a little bit
7 about how we go about designating it. So I
8 thought I'd throw the map of the next critical
9 habitat regulation to come out of our office
10 is likely to be the Cook Inlet beluga whale
11 designation, which I'm sure will be
12 controversial, at least in the state of
13 Alaska.

14 And so sorry for this, but I'm just
15 going to speak from the statutory language
16 because I think the statutory language
17 actually has embedded in it a process about
18 how to go about designating it and how to go
19 about using it.

20 It's unfortunate that it's in the
21 definitions part of the statute, but
22 nevertheless it does have a process in it. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just generally looking at it, and there's a
2 lot of confusing terminology as a result of
3 the way Congress drafted this language.

4 So first of all, we start with
5 specific areas within the geographical area
6 occupied by the species at the time it's
7 listed. So critical habitat's not necessarily
8 the historical range of the species. We're
9 looking currently, you start off with what's
10 there, where's the species now.

11 Then we have to look at within that
12 area, what are the physical and biological
13 features that are essential for conservation
14 and may need special management. So we look
15 at essential under occupied habitat, we're
16 looking at features that are essential. We
17 can go beyond occupied habitat if we make a
18 determination that existing habitat's not
19 adequate to provide for conservation recovery.

20 We can include unoccupied habitat.
21 That requires a determination that the area
22 is essential for conservation. So in one case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we're looking at is the area essential; in the
2 other case, we're looking at an area but we're
3 asking the question: are the features there
4 essential. So it gets a little confusing and
5 a little complicated, but nevertheless that's
6 what we're doing.

7 There also has been a fair amount
8 of litigation over what may require special
9 management considerations and protection
10 means. For example in the salmon world, we're
11 worried about keeping dirt and sediment out of
12 the streams.

13 Well, there's a thing called the
14 Northwest Forest Plan, and it does that. It's
15 directed at kind of doing that. There's also
16 a lot of federal lands that have federal land
17 management policies.

18 Well, those are things that manage
19 considerations or protections. Does that mean
20 that we don't need to worry about them
21 anymore, or is that an indication that they
22 may require management?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So the courts are interpreting that
2 to be a fairly low bar. If there's an issue,
3 if we're already managing, that means that
4 there's a need to manage it and we should
5 consider it as a feature that needs to be
6 managed. So that's sort of the definition.

7 There are limitations on the
8 designation of critical habitat. So actually
9 these provisions were put in, I think, in
10 1978, after the statute had already been in
11 place for a while. So there was a grandfather
12 clause that you didn't have designate critical
13 habitat for species that were already listed
14 at that time, unless we wanted to.

15 And slowly we're working our way
16 through those. But for a lot of the large
17 whales, for example, there isn't currently
18 critical habitat designated. There's also a
19 very specific direction that it shall not
20 include the entire geographic range of the
21 species.

22 So from a conservation, strictly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 conservation biology point of view, sometimes
2 it doesn't make a lot of sense that we've got
3 a species. Maybe we've eliminated 95 percent
4 of its habitat. We're trying to conserve it
5 in five percent of its habitat, and the
6 legislative framework is maybe not all that
7 habitat's necessary or critical. But
8 nevertheless, that's the direction we have to
9 do it.

10 So what does it do? It really
11 focuses on federal actions. There's a broad
12 perception that critical habitat designation
13 is akin to setting up a monument or a refuge
14 or a sanctuary, but it's not. All it does is
15 it asks the second question in an interagency
16 consultation project on federal actions.

17 Every federal agency has an
18 obligation under the Endangered Species Act to
19 look at its actions to make sure that those
20 actions -- ensure that those actions are not
21 likely to jeopardize continued existence of
22 the species. Where we have designated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 critical habitat, we ask the second question.

2 Is that action likely to result in the
3 destruction or adverse modification of
4 critical habitat?

5 So if the answer is yes, we have to
6 modify the action so that it can go forward in
7 a way that doesn't adversely destroy --
8 destroy or adversely modify critical habitat.

9 Our current challenge here, the courts have
10 thrown out our definition of destruction and
11 adverse modification of critical habitats.

12 So we're sort of struggling with
13 what does that mean. We think it means
14 modifying the habitat to the extent that it no
15 longer provides for conservation of the
16 resource.

17 So if you modify foraging habitat
18 to the extent a species can't get enough
19 energy to adequately grow and reproduce at a
20 rate that will allow it to recover, that would
21 be an adverse modification. So we try and
22 make that link from the effect on the habitat

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 back up to the likely conservation of the
2 species.

3 But we are struggling to get a new
4 definition out. We tried eight years through
5 the Bush administration, never got it out.
6 We're trying again in this administration, in
7 looking at some language that might help us
8 better define that and -- achieve more
9 consistency in how we use it.

10 So I'm going to go back through the
11 designation process, talk about it. Section
12 4(b)(2) of the statute is where the process is
13 laid out. It says that we'll use best
14 available scientific data after considering
15 economic impacts and other relevant impacts of
16 specifying a particular area.

17 New term, particular area.
18 Specific areas with features, specific areas
19 that are essential, particular areas. So it
20 gets complicated, and then the Secretary may
21 exclude any area, we think that means
22 particular areas, from the designation, if the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 benefits of excluding it outweigh the benefits
2 of including it. That's an economic test
3 typically, trying to compare the conservation
4 value to the economic value there, or
5 basically any other reason that the Secretary
6 determines, and we've looked at factors under
7 those other reasons we look at of potential
8 effects on partnerships, particularly with
9 Navy, state agencies, and tribes. So we tend
10 to exclude tribal lands, for example. And
11 there also is an amendment to this process in
12 the Act called the Sites Act, which deals with
13 military installations and reservations. It
14 allows the Navy or military agencies to
15 develop integrated, what are called
16 "integrated natural resource management
17 plans."

18 Those are plans that speak
19 specifically to maintaining habitat on those
20 installations. If there's an approved one of
21 those, we defer to that instead of critical
22 habitat. So we tend to exclude a lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 military installations from our designations
2 as well.

3 There's a fair amount of discretion
4 on the part of the Secretary available here to
5 exclude habitat. We, in some circumstances,
6 try to put a limit on that. The statutory
7 limit is you can exclude all the way up to
8 where it results in -- it can't result in
9 extinction of the species.

10 That's pretty hard to argue that,
11 excluding habitat at all would result in the
12 extinction of the species because there are so
13 many other tools available to conserve
14 species, whether or not it's designated as
15 critical habitat.

16 We've tried to constrain that a
17 little bit by looking at the impact on
18 conservation as a result of designation, okay.

19 So how does NMFS do it? Let me go back to
20 the statute.

21 I should point out this is supposed
22 to be done at the time the species is listed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So we rarely do that because of the economic
2 test. At the time of listing, we're
3 prohibited from considering the economics.
4 We're only looking at the status of the
5 species, its risk of extinction. So that's
6 the basis for the decision to add a species to
7 the list.

8 We don't usually have it in hand a
9 lot of economic information about what are the
10 economic activities that occur within the
11 range of that species, how might the listing
12 of the species affect those economic
13 activities. So we have to go out and get that
14 information and do that analysis.

15 So invariably we defer, for at
16 least up to a year from the listing, to go out
17 with a critical habitat proposal. But the
18 first thing we do as we convene our team of
19 experts, and we try and pin down as accurately
20 as we can where is the species, where does it
21 live. So what is the current geographic range
22 of the species?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Then we ask those guys okay within
2 that range, why are they there? What are the
3 biological features that they're -- that are
4 attracting them there, causing them to be
5 there, the physical features that are
6 attracting them there? You know, is it gravel
7 of the right size for spawning? Is it the
8 copepods that whales feed on? What is it that
9 has -- that causes them to be there?

10 So we try and identify those
11 features. Then we make it -- call it
12 essential for conservation. Then we ask the
13 question is there a chance they might require
14 special management. And, again, that's --
15 this is the way courts have read that. We
16 interpret that as a pretty low bar.

17 If we think there's some activity
18 that could risk or put that resource, that
19 physical and biological feature at risk, then
20 we would say yes, it probably needs special
21 management.

22 Typically, well then we also ask a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 second area, can we conserve the species in
2 this existing range, and if the answer to that
3 question is no, we would look outside the area
4 to see if there are areas that are essential
5 for conservation. We understand the proposal
6 to include those currently unoccupied areas.

7 We've done that a couple of times,
8 but it's pretty rare that we do that. That's
9 actually one of the aspects that a lot of
10 critics of critical habitats suggest that it
11 shouldn't be designated at the time of
12 listing, but it should be designated as part
13 of the recovery planning process.

14 One of the rationales there is you
15 get, during the recovery planning process, get
16 more and more information about where species
17 are and what you need to conserve them, to
18 actually inform that decision about special
19 management of specific areas better. Okay.

20 So then we've got the biology side
21 lined out as a result of consulting with our
22 experts. We try to take that range and divide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it up and describe what those specific areas
2 are. So for something -- and some of our
3 challenges there are in the marine
4 environment, what attracts an animal to a
5 particular area is quite ephemeral.

6 So it's not necessarily here
7 because it's here one year and it's here next
8 year and it's over there next year. So what
9 do you describe? That's a real challenge for
10 us in the marine environment. But in some
11 areas, there's generally concentrations of
12 forage.

13 Or we know for whales, they breed
14 up here and they forage down here, and we can
15 kind of identify those areas specifically.
16 For salmon and sturgeon and things like that
17 that migrate upstream, we tend to break them
18 up according to watersheds. So we'll call a
19 specific area a watershed, and then we'll look
20 within that specific area.

21 So then we go back. We try and
22 collect the economic activity. What are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 human activities that go on in that specific
2 area? This is where we get into the 4(b)(2)
3 analysis. We look at those specific areas.
4 Okay, there's forestry. What's the value of
5 that forestry, you know, and how will
6 consulting on those activities and ensuring
7 they don't adversely modify that habitat
8 reduce or diminish that economic value.

9 So we can come in and look at and
10 compare a watershed, for example, that's a
11 really high conservation value because it's
12 got pristine conditions in it, good quality,
13 clear, cold water, lots of gravel, lots of
14 healthy riparian habitat with lots of forage,
15 high conservation value.

16 It may be a federal reserve that
17 nobody can harvest in so it's got a low
18 economic value. So that gets designated
19 critical habitat right off the bat.

20 Next door may be a piece of
21 privately owned forest land that's a little
22 bit degraded, so you give it a moderate value,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but it's got a high economic value. So there
2 the benefit of designation would not
3 necessarily outweigh the -- the benefit of
4 excluding it would not necessarily -- this is
5 always confusing to me. I'm sorry.

6 High economic value. So the
7 benefit of excluding it would outweigh the
8 conservation value of including it. So that
9 would get excluded as part of the economic
10 reason.

11 Then I talked about the other
12 actions, the other reasons that you might
13 exclude something, or primarily for national
14 security reasons or some administrative
15 priorities, or do you conserve a special
16 relationship with tribal government, things of
17 that nature, would result in excluding those
18 habitats.

19 So once we've got that all
20 identified, I think that's the end. So that's
21 the process we go through. Then once we get
22 it all identified, we throw it out to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 public, and it's a notice and comment
2 rulemaking.

3 So there's a proposed rule, take
4 public comment, hold public hearings, and then
5 the final rule. Then we'd actually implement
6 it. That's it.

7 CHAIR BILLY: Questions, comments?
8 Yes, Heather.

9 VICE CHAIR McCARTY: I have a quick
10 question. You talked about a court threw out
11 the old language that -- and that you were
12 putting together new language?

13 MR. LECKY: Our old definition of
14 adverse, destruction and adverse modification
15 dealt with diminishing the habitat to the
16 point that it affected sort of both the
17 survival and recovery of the species, and the
18 court read that to essentially focus on the
19 lower end of that range, survival only, which
20 in fact it mostly did, and suggested that we
21 needed to talk about recovery in that
22 definition.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We needed to give meaning to the
2 word "recovery." So we've been struggling
3 with how to do that.

4 VICE CHAIR McCARTY: Do you have a
5 time line for that development?

6 MR. LECKY: Other than it's way,
7 way overdue.

8 CHAIR BILLY: Ten years so far
9 you've been working on it.

10 VICE CHAIR McCARTY: Yes. So are
11 you saying you're using the old definition,
12 even now?

13 MR. LECKY: Well, we have provided
14 written guidance in a letter from Bill Hogarth
15 basically to the regional administrators, that
16 suggests they should be looking at the
17 conservation value of that habitat. Since the
18 purpose of critical habitat is to provide for
19 the conservation of species. So clear
20 guidance. It's a little bit difficult for
21 staff to interpret and implement it.

22 But that's the direction right now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Don't use the definition; just look at the
2 conservation value of the habitat, and are
3 they doing anything that diminishes the
4 conservation value.

5 CHAIR BILLY: Keith.

6 MR. RIZZARDI: Thanks, Mr. Chair.
7 So Jim, we go forward and if NOAA goes forward
8 and does that habitat assessment improvement
9 plan, that would be a world that gets a whole
10 bunch of money to do all that stuff. I assume
11 it adds a lot of utility to your critical
12 habitat process for starters, right?

13 MR. LECKY: Well, is Steve still
14 here? So nobody asked Steve why doesn't that
15 have protected species in it.

16 MR. BROWN: Yes. I received a
17 proffered amendment about a year ago. It was
18 -- someone focused on that question, and the
19 short answer was that we decided we didn't
20 want to take on every possible thing that the
21 agency is responsible for.

22 That's not to say that we shouldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do that in the future, and I would think that
2 at some point we'll see. I don't know. I
3 don't have a time line, but in the relatively
4 near future we can do that.

5 MR. LECKY: So I also want 557 new
6 people.

7 (Laughter.)

8 MR. BROWN: I'll take that.

9 MR. LECKY: So I guess but in part,
10 to defense of why protected species aren't in
11 there, we do have a protected species stock
12 assessment improvement plan, which has
13 likewise three tiers in it.

14 The first tier basically is to give
15 the information. The second tier is actually
16 understanding trends of abundance, so you can
17 have a sense of the health of the species and
18 the stock. The third tier is really
19 understanding where it fits and how it fits
20 into an ecosystem. So that's the habitat
21 component of protected resource management.

22 Very few of our stock assessments

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are in Tier 2. None of them are in Tier 3.
2 But that's the work we need to do there. Now
3 there is overlap with some of the commercially
4 managed species and endangered species.

5 So for example, well salmon is the
6 best example. But we also are starting to
7 list some groundfish species as well. We've
8 got three rockfish in Puget Sound that we just
9 recently listed under the Endangered Species
10 Act. To the extent that there's work on EFH
11 for those species, that likewise would be
12 affected.

13 As we continue to go forward, that
14 program will inform perhaps new listings.
15 But the process for designating EFH is much
16 less vigorous than this process. It doesn't
17 have these provisions for inclusion like we
18 do.

19 It likewise doesn't have the
20 implications, the regulatory implications of
21 not avoiding adverse modification of essential
22 fish habitats. There, there are mechanisms

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that are particularly dependent on say, for
2 example, the Corps of Engineers in the cases
3 we've talked about, putting conditions in
4 there for NMFS, or deciding not to put
5 conditions in there for NMFS.

6 Here, under the ESA, we suggested
7 there's a term and condition that would avoid
8 adverse modification of habitat. That's got
9 to be done.

10 MR. RIZZARDI: All right. To
11 follow on this point. We recognize that we
12 don't have adequate information on some of
13 these marine species to really get it right.
14 We're dealing with less information than we
15 need.

16 But right now what we're doing is
17 we've got a plan that's going forward, to
18 somehow develop more habitat information for
19 potentially 550 stocks, but excluding the same
20 kind of evaluation for protected resources.

21 So then my question is how about
22 coming at it in a different direction, using

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an ecosystem approach and studying your
2 ecosystems, and taking an ecosystem at a time
3 and getting as many species as you can, and
4 inverting your model? Instead of going
5 species by species, go ecosystem by ecosystem.

6 MR. BROWN: Well, that one gives us
7 another way of thinking about it. One other
8 thing I'd like to mention is that to some
9 extent, it's the same habitat. So a habitat
10 map would essentially provide information.

11 It could be used, you know, just
12 because we're doing it under the guise of
13 looking at it for a managed fishery species
14 doesn't mean you can't use the information for
15 other things as well. So you know, we're not
16 excluding it; but we're just focusing
17 initially on the exclusions. That was our
18 thinking.

19 CHAIR BILLY: Okay. Tom?

20 MR. RAFTICAN: Thanks, Mr.
21 Chairman. Could you comment -- dealing with a
22 three-dimensional habitat, and you make --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 when you talk about salmon and riparian, it's
2 closer to two-dimensional.

3 But if you're talking about
4 rockfish that are at risk, you're talking
5 about potentially with a habitat that may be
6 several hundred feet to a quarter of a mile
7 away from the same aerial habitat. How do you
8 deal with that?

9 MR. BROWN: Well, with HAIP, we
10 talk about it. You know, we're not
11 distinguishing between the need to get
12 information on the commercial habitat versus
13 just water columns. So we -- we're, and this
14 is not a technical document, so we're not
15 analyzing the actual information.

16 But we consider all of it to be
17 important. So it depends on the species
18 you're interested in. But water is habitat,
19 and we recognize that.

20 MR. RAFTICAN: I'm just considering
21 if you've got a quarter of a mile of water,
22 there can be an awful lot of difference

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 between dragging a net along the bottom and
2 sanding at the surface, and yet you know, at
3 what point -- aerially, they're the same
4 habitat.

5 Effectively, they're different
6 habitats, and there would be -- there
7 potentially could be massive economic
8 consequences back and forth. Have you
9 addressed this at all?

10 MR. BROWN: Well, I'm saying from
11 the science perspective, you know, we think of
12 this in three dimensions, really four
13 dimensions, because there's a temporal aspect
14 to it too. So if we're looking at habitats
15 for rockfish, I mean we're looking at the
16 habitat of where it occurs.

17 So if the adult stays there down at
18 the bottom, that's where we would look at it
19 in terms of research. Unfortunately, I'm not
20 really involved with the designation process.

21 But I would think based on scientific
22 information, they would be looking at it also,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as to where they go and look first.

2 Then it also may occur up in the
3 water column at different life stages. So you
4 have to consider that too. But you know, in
5 the larval stage or something like that, it
6 may be up in the water column for the same
7 species. So --

8 MR. LECKY: Yes, and there will be
9 a different story under the ESA though. So
10 what we're going to do under the ESA, if the
11 rockfish is designated -- we haven't
12 designated the habitat, we'll look at the
13 specific areas within the geographical area.

14 So where in that geographical area
15 are they rockfish in Puget Sound? Then we're
16 going to ask what are the physical and
17 biological features that draw them to that
18 area? So for rockfish, it tends to a hard,
19 rocky bottom as opposed to a big, expansive
20 mud flats.

21 We'll talk about the importance of
22 those physical and biological features and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make a determination of whether they're
2 essential and whether they need special
3 management. So that -- but then we'll go back
4 and designate that specific area. The reason
5 that specific area is designated is because it
6 contains those elements.

7 Then when you get into a
8 consultation, you'll be looking at okay, what
9 is the activity you're considering doing to
10 those special features? So we'll be looking
11 at are you dredging the rocky piles or are you
12 doing something that's going to eliminate that
13 habitat, as opposed to sanding at the surface,
14 where there is no effect on that habitat.

15 So that would be the difference
16 between the decision potentially of adverse
17 modification and no effect.

18 MR. RAFTICAN: Thank you.

19 CHAIR BILLY: Okay. I'm going to
20 stop this. There can be further discussion in
21 the subcommittee if that's appropriate. Thank
22 you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Public Comment

2 CHAIR BILLY: Heidi, has anyone
3 from the public expressed an interest to
4 comment?

5 MS. LOVETT: Not now.

6 Chair Nomination Process

7 CHAIR BILLY: Okay. Thanks. Okay.
8 Now I'm going to call on Mark for a brief
9 discussion on the criteria that will be used
10 for the nomination of someone or people to be
11 considered for the chair of this committee,
12 and how we will then carry out the actual
13 selection tomorrow afternoon. So Mark, the
14 floor is yours.

15 DR. HOLLIDAY: Yes. I wasn't
16 planning to speak about this, because we had
17 asked to put this off until Thursday. There
18 seems to be a lot of questions and discussion
19 going on about it.

20 So I just walked into the room. I
21 thought I'd just discuss what our
22 understanding of the nomination process was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and what the charter says about electing a
2 chairperson for this office, and then give it
3 to back to the committee.

4 People have come up to me and said
5 well, we'd like to have some separation or
6 some discussion about this process, and
7 perhaps identify people who are interested in
8 serving on that, so there'd be some distance
9 between that and identification of that in
10 tomorrow's action to actually go through with
11 the formal nomination and voting process.

12 So my point, purpose this afternoon
13 is just to provide some clarity as the
14 executive director, our interpretation of what
15 our charter says about nominations and who
16 would be eligible for serving as the
17 chairperson.

18 So I've discussed this with Eric in
19 his pre-briefing before the meeting, and you
20 know, our common understanding of what the
21 process was is what I'd like to discuss. Is
22 there a question, Tom? Oh, I thought you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 raised your hand.

2 So the way the charter reads is
3 that we changed the charter a year ago to put
4 the responsibility for electing the chair in
5 the hands of the committee, to elect somebody
6 for a two-year term by majority vote of the
7 members that are appointed. So the appointed
8 members are the ones who vote from among their
9 peers to do that.

10 We're in a situation, you know, we
11 also at the same time decided that no more
12 than one-third or our intent was no more than
13 one-third of the committee would roll off at
14 any given time. So we've been approaching
15 that equilibrium of a mixture of new members,
16 medium term members and people who are rolling
17 off.

18 Prior to this meeting, we looked at
19 the table of who was eligible, who was a first
20 term member, who were second term members. We
21 looked at the various expirations of that, and
22 who would be eligible to serve out a two-year

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 term should they be interested in serving as
2 the chair of the committee after this meeting.

3 So I asked Heidi, and she printed
4 this out. This is -- we were going to discuss
5 this on Monday, and then we deferred it until
6 Thursday. But I thought I'd, we might as well
7 just give it out for your information. This
8 is sort of the spreadsheet of membership, of
9 people who are -- and you'll see the
10 designations.

11 I'll just pass around copies in
12 each direction and see what I'm talking about.

13 So there's like a cohort of people whose term
14 expired. The simplest -- well, the people who
15 are identified in red, whose name is on that,
16 term expires in January.

17 Erika Feller has contacted us just
18 prior to this meeting and says, because of her
19 -- she's extending her detail with CEQ, that
20 she's going to step down from the committee
21 and that will create a vacancy. So that's
22 what those two red boxes on this handout mean.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So those are people who are imminently
2 rolling off the committee.

3 Then we have a cohort of people who
4 are in the second term, and 2011 will be the
5 last year of their second term. Those expire
6 in December 11th, I think it is. Okay,
7 thanks. December 8th. Well, the 11th is
8 pretty close. December 8th, 2011. I knew
9 there was an 11.

10 So they have about a year left in
11 their term. Then the other members who are
12 shown in green are those people who are in
13 their first term, but their first term expires
14 in October. The Secretary has discretion of
15 whether or not to reappoint them for a second
16 term.

17 So at this point in time, we don't
18 know if they have two years beyond their first
19 term expiring in October. So our
20 interpretation was those people who had two
21 years of eligibility at the present time were
22 those people who are not identified in any of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those colored boxes.

2 So that's how we understood the
3 intent of the charter was, to elect somebody
4 for a two year term, and as we progress, you
5 know, we have these rotating people coming
6 onto the committee, will be in their first
7 term. We'll have a mix of people in their
8 second term.

9 So we won't be in the situation we
10 were a couple of years ago, where we had, you
11 know, nine people almost simultaneously
12 rolling off at the same time. We're having a
13 more balanced structure to keep this
14 continuity going, of people rolling on and
15 rolling off.

16 We always will have people who, for
17 whatever reason, have to leave the committee
18 in advance of their term being up. You know,
19 they have other commitments or whatever.
20 That's inevitable.

21 But we're trying to keep this sort
22 of one-third, one-third, one-third, so that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's always this core of people who have
2 some experience, some fresh ideas coming in,
3 and some people serving in the middle.

4 So that was the basis for which we
5 were going to explain on Monday or tomorrow.
6 I thought I'd explain it to day and answer any
7 questions people have, to the best of my
8 ability.

9 MS. FOY: I have just a quick
10 heads-up. As far as the continuity of the
11 leadership of MAFAC, just a suggestion, I'm
12 looking down here and I'm noticing that
13 Heather and I and Tom Raftican and Steve
14 Joner are -- we're all going off at the same
15 time.

16 It might be helpful, as far as
17 establishing a continuity of process, if we
18 have some subcommittee nominees beforehand.
19 And also, this is not -- I don't know if this
20 is what we really intended when we changed the
21 charter on a three-year or two-year term, to
22 have a disjunct, where only a few people were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 eligible for --

2 DR. HOLLIDAY: Well, we didn't have
3 anything in the charter with respect to
4 chairmanship, part of this because the chair
5 was the NOAA administrator, and the vice chair
6 was the NMFS Administrator. So there wasn't
7 any reference to three-year, two-year or
8 whatever.

9 We looked at what other committees
10 have done and used, and we had a discussion
11 and we voted to specify a two-year term for
12 the vice chair and the two-year term for the
13 chair, I mean two year terms for the two
14 nominated offices.

15 MS. FOY: Can you remind me about -
16 - I have a vague sense, but not some real
17 concrete memory of what happened with why we
18 extended some members for a year before. Was
19 that because you were having nine come off at
20 the same time?

21 DR. HOLLIDAY: Because exactly
22 right. So we, if you recall it was Tony and -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -

2 MS. FOY: Fletch.

3 DR. HOLLIDAY: Fletch, right, and
4 right, yep. Christopher. So to avoid having
5 those nine people and to help in this -- once
6 we decided we wanted to have that one-third,
7 one-third, one-third by extending them a year,
8 we then put us on a cycle so that these
9 staggered, we kind of realigned it that way.

10 CHAIR BILLY: You want to go ahead?

11 MR. RAFTICAN: A couple of things.

12 I think it's going to be important to try and
13 retain somebody who's got some history, some
14 experience with MAFAC. The way this system's
15 working out, we're going to be very limited in
16 who we can choose.

17 So is it possible for us to amend
18 the charter would be the first question, and
19 if not, can we -- would it help if whoever
20 became chair would agree to a possible
21 extension right away, so that it would meet
22 the two-year criteria?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Because we're very limited in our
2 options here, and I'd rather have somebody
3 sitting there that (a) has got some
4 experience, and (b) who wants to do the job.
5 I think that's going to be really important.

6 DR. HOLLIDAY: So the question, can
7 you modify the charter? The charter's
8 approved for two years. The charter is
9 actually -- the charter is a joint product of
10 the agency that responsibility and the
11 Department of Commerce has authority to create
12 a backup committee and the membership.

13 You can amend the charter, you can
14 submit it, but it has to be vetted through the
15 Department. It's approved by the Department
16 and submitted to the General Accounting
17 Office, I think, or the General Services
18 Administration.

19 MS. LOVETT: GSA.

20 DR. HOLLIDAY: Sorry. It's one of
21 those G's.

22 MS. LOVETT: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. HOLLIDAY: So to answer your
2 question, you can amend the charter between
3 intervals, but there's a process to do that,
4 and it would take -- we normally give
5 ourselves three or four months of time in
6 order for that happen.

7 So we started probably in the
8 summer before the charter, which is -- the
9 charter expires in January of 2012.

10 MR. RAFTICAN: Would the extension
11 clause fulfill the charter? For example, if
12 somebody that was willing to sit as chairman
13 but would agree to extend their term now, will
14 that fit the criteria?

15 DR. HOLLIDAY: I was not following.

16 MS. LOVETT: He's suggesting to
17 extend their term, not the vice chair or
18 chairmanship for actual three year terms.

19 MR. CATES: Like we've been doing.

20 MS. LOVETT: Like we've --

21 MR. CATES: Correct. So if we --
22 if somebody wanted to be chair but they only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 had a year left, for example, but would agree
2 to extend their term, then they would meet the
3 two-year criteria, and that might open up our
4 options.

5 DR. HOLLIDAY: Again, what we did
6 with Chris, Fletch, we drafted a
7 recommendation from MAFAC to the Assistant
8 Secretary for Administration of the
9 Department, laying out a rationale for
10 extending them for that, for -- defended the
11 purpose of why we would do that, and we did
12 receive approval for it.

13 So we'd have to go through that
14 process in order to -- you could, we don't
15 have the -- the executive director doesn't
16 have nor Eric nor Jane Lubchenco have
17 unilateral authority to extend people's terms.

18 MR. CATES: Because the way I
19 understand it is the only way you could
20 possibly be chair would be in your first year
21 of your first term, or on the first year of
22 your second term. That's going to be --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: That will be two-
2 thirds of the people subsequent.

3 MR. CATES: I don't think so.

4 CHAIR BILLY: Yes, it sure will be,
5 because we're third, third, third.

6 MR. RAFTICAN: Yes. That would
7 essentially exclude one-third of the people
8 from ever being the chair or co-chair, and
9 there are things I remember from when we did,
10 and I haven't checked back in the notes, was
11 essentially allowing a two-year term for the
12 chair mainly to make it -- sometimes it can be
13 difficult coming in and just simply working as
14 a chair for one year. You need a year to get
15 your feet wet.

16 Or the other thing we did was
17 basically establish the category of a co-
18 chair, a vice chair, to get that type of
19 expertise. You know, I don't remember that we
20 said that it was distinctly a two-year term,
21 but I had the thought that it was up to two
22 years.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It was as the optional that you
2 could do two years, instead of simply a one-
3 year term, where you had to vote every year.
4 That seemed to make a lot of sense to me at
5 the time. And again, like I said, my
6 recollection is the part that's very specific
7 about it, the conversations, you know. I
8 think we were all on cell phones at the time.

9 But the big part of it was having
10 that vice chair person there in the chair,
11 getting the expertise to be able to move
12 forward and fill in after the chair leaves.
13 That way, you get the institutional knowledge
14 right there as far as, you know, what we do,
15 how we run meetings, and where we're at.

16 CHAIR BILLY: Martin?

17 MR. MARTIN FISHER: Thank you, Mr.
18 Chairman. I've got the verbatim minutes right
19 here. It's Mark Holliday, you're talking,
20 this is your voice. It's a little, like five
21 minutes before three on the last day in
22 Hawaii. So here's Mark.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 "So the charter change or the
2 political lesson was that the committee
3 nominate and vote by majority, including its
4 own committee chair and vice chair, by vote of
5 the eligible voting members for a term of two
6 years for both positions, and a term would be
7 eligible for a one-year extension by a
8 majority vote."

9 If I had really focused that day at
10 three minutes, at ten minutes to three on the
11 final day of the meeting, what to ask what
12 "eligible" meant, I just assumed that
13 "eligible" would mean anybody that, you know,
14 that was sitting on the committee.

15 You know, I certainly would have
16 questioned that word. I would have questioned
17 the concept of what does "eligible" mean. I
18 can't go back and redo that, but I just wish I
19 had been paying more attention. So clearly,
20 so the record is there, the word "eligible" is
21 there.

22 I can't find any definition of what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the word "eligible" means, and I would also --
2 I circulated a letter to the committee
3 earlier, which pretty much mirrored this. I
4 made a couple of errors -- sorry Randy, sorry
5 Tom.

6 But from my viewpoint, I think what
7 Randy and other people around the table -- I
8 felt the same sentiment, that you need tenure
9 for your chair. Certainly, we need someone
10 to run the meeting with fairness, a fair hand
11 and an open mind.

12 PARTICIPANT: A good heart.

13 MR. MARTIN FISHER: And a good
14 heart.

15 PARTICIPANT: A heart.

16 MR. MARTIN FISHER: How did you get
17 there?

18 (Laughter.)

19 MR. MARTIN FISHER: But so I think
20 that's important. Certainly, anybody who's
21 qualified should have an opportunity. But I
22 think for the continuity of the committee,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because of our round-robinness and losing
2 people and gaining people, the fish-like
3 school-like nature of our process, it seems to
4 me we need continuity along the way.

5 CHAIR BILLY: Steve?

6 MR. JONER: Well, that's pretty
7 much what I was going to say. My only
8 addition to that is that I recall the
9 conversation and the two-year, and I wonder
10 does that require as a minimum two years, or
11 was our intent a maximum of two years?

12 DR. HOLLIDAY: Well, you can have
13 as a maximum two years and you can have a
14 third year, I think, is the way the charter
15 reads. So I think the intent was for two
16 years, and if you wanted to extend it by vote
17 of the committee for a third year, the
18 committee had that option.

19 So we read that as the intent was
20 two years, not one year with an option for two
21 or an option for three. It was a two-year
22 term with an option for a third. I think Mark

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 --

2 MR. RAFTICAN: The thing is it
3 didn't preclude a one-year term, you know.

4 DR. HOLLIDAY: I have no idea. I'm
5 not an attorney or an administrative person
6 that's going to cross fine hair, you know,
7 find words here. I'll do whatever the
8 committee wants to do within the rules of FACA
9 and the Department of Commerce to try to make
10 that happen.

11 I'm trying to present to you what I
12 understood the charter said, and based on the
13 record we looked at it. I think Martin,
14 you're looking at the Honolulu meeting, which
15 was when we actually took a vote to do
16 something. But the charter change was --

17 (Off mic comment.)

18 DR. HOLLIDAY: Yes, much earlier
19 meetings than that. So what our intent was
20 two and a half years ago, you know, and what
21 we want to do now? My position is I can work
22 with anybody.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'm happy to work with everybody,
2 to try to get the committee what they want to
3 do, without violating FACA or getting me or my
4 boss or anybody else around the table in hot
5 water. So I have no other motivation here,
6 other than that.

7 CHAIR BILLY: Steve?

8 MR. JONER: I need a chance to make
9 sure -- so my recommendation is that we fix
10 it, because it's kind of a luck of the draw
11 who gets to be chairman then, you know. It's
12 a quirk of the calendar. So somebody said a
13 third of the people would be ineligible when
14 the opportunity came.

15 I see that looking at the yellow
16 and green, half of the membership is going to
17 be gone within a two month period at the end
18 of this year. So you know, that's --

19 DR. HOLLIDAY: Well, if there were
20 no --

21 MR. JONER: So I guess, so you're
22 anticipating additional extensions for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 number of people to --

2 DR. HOLLIDAY: I can't guarantee
3 you what would happen. But I can look at, you
4 know, since I've been involved with MAFAC,
5 people who have come up for a second term have
6 been offered the opportunity to serve a second
7 term, and I think that's been the --

8 I mean MAFAC's been around since
9 1970 or something. I think the Secretary
10 almost -- I don't know if there have been ever
11 any exceptions, because I don't have that
12 history. But my experience in talking with
13 other executive directors has been it's more
14 than likely those people will be reappointed.

15 So I don't think we're looking at
16 all those people rolling off of MAFAC. I
17 don't think that's not in the interest of the
18 Department to do that. But it's not a
19 guarantee.

20 (Off mic comment. Laughter.)

21 CHAIR BILLY: Pam?

22 DR. DANA: Well, I don't think that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Chairman Billy does not complete his term
2 until January. Perhaps there's an
3 opportunity, if the committee wanted, to go
4 back revisit the one-year chairmanship that
5 can be extended to a two-year, in the time
6 frame between now and that January time when
7 Chairman Billy's term's up. Either that or
8 just keep Chairman Billy forever.

9 (Laughter.)

10 DR. HOLLIDAY: Oh my God. Let's do
11 that before the dinner, all right.

12 (Laughter; simultaneous speaking.)

13 DR. DANA: If people wanted to
14 alter the current charter and go through the
15 process of, you know, GSA or whatever.

16 I don't -- I actually disagree that
17 it has to be a chairperson who has an extreme
18 amount of experience or term on the committee.

19 The chair of this committee involves a
20 willingness to promote a healthy dialogue. So
21 a newbie can do that.

22 CHAIR BILLY: They still can't vote

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for me.

2 DR. DANA: I don't want the --

3 (Laughter.)

4 CHAIR BILLY: All right, thanks.
5 Heather and then Keith.

6 VICE CHAIR McCARTY: I just had a
7 quick question. If the people who are nearing
8 the end of their first term, but don't know
9 yet whether they would be reappointed or even
10 if they would apply to be reappointed, does
11 that mean that under your interpretation
12 currently, would be eligible to put their name
13 in for chair, considering the two years as
14 part of the requirement? That's just a
15 question.

16 DR. HOLLIDAY: The people whose
17 names are in green?

18 VICE CHAIR McCARTY: Yes.

19 DR. HOLLIDAY: Are they eligible to
20 serve as chair?

21 VICE CHAIR McCARTY: To be elected
22 or nominated would be the question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. HOLLIDAY: Well, our discussion
2 in NMFS was that since they don't have two
3 years of current term at the point of being
4 elected, that they wouldn't be eligible to
5 carry out that election, so they would not be
6 eligible to be nominated.

7 VICE CHAIR McCARTY: So just a
8 comment. It seems to me that that's an
9 unintended consequence of the rule that we
10 seem to be bound by now, because those people
11 obviously -- the person that chairs the
12 committee needs to have a certain style and a
13 certain, you know, non-agenda if you will.

14 It doesn't matter if you're new or
15 old, I believe that. But certainly these
16 people could have been in the middle, they
17 aren't eligible, and if they are, you know,
18 reappointed, then it seems a shame that they
19 wouldn't be eligible to put their name in for
20 chair because of the two-year rule. I mean
21 that doesn't seem right to me.

22 DR. HOLLIDAY: Well, they would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Heather in two years, as long as the meeting
2 was before this meeting, or before the
3 expiration of their term.

4 VICE CHAIR McCARTY: Right. But
5 they wouldn't be now.

6 DR. HOLLIDAY: No.

7 CHAIR BILLY: Keith?

8 MR. RIZZARDI: Mark, I appreciate
9 the box you're finding yourself in. I
10 understand. I understand the interpretation
11 that you're putting out here, so I have two
12 paths that I wanted to inquire about us going
13 forward.

14 The first one is along the lines of
15 what Pam is saying. If we were to try to as a
16 committee amend the charter, can that happen
17 before Chairman Billy's expiration, or just as
18 a practical matter, is that impossible within
19 that time frame?

20 DR. HOLLIDAY: The charter expires
21 in January. I wouldn't be my mortgage on it
22 being approved, because this is the end of,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 middle of October.

2 MR. RIZZARDI: So if we put out
3 modified language, it would be approved before
4 the end of the year, which would be before the
5 end of the chairman's term?

6 DR. HOLLIDAY: I don't think the
7 charter -- you said from a practical
8 standpoint, would a change to the charter be
9 approved before January 11th? I don't think
10 so.

11 MR. RIZZARDI: No. Okay. So then
12 my next question is --

13 DR. HOLLIDAY: Based on the history
14 of how slowly these charter changes have been.

15 MR. RIZZARDI: I understand. So
16 that would mean that the fix the charter
17 option is probably out, which makes it a
18 little bit more complicated for us. So then
19 my next question is do we have the opportunity
20 to have an interim chair, in the event that we
21 don't fix this problem now.

22 We can't get to a chair now. Can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we have a person who is the acting chair or
2 the interim chair while we go forward with the
3 fixing of the charter process?

4 DR. HOLLIDAY: In the absence of
5 the chair, that's why there's a position
6 called vice chair.

7 (Off mic comment.)

8 MR. RIZZARDI: So then if we just -
9 - yes. So that's what would happen. If we
10 don't fix this problem now, we move forward
11 with the charter. Okay.

12 (Off mic comment.)

13 MR. RIZZARDI: So NOAA, what your
14 understanding is that if we do nothing,
15 Heather effectively becomes chair and operates
16 as chair for some interim period until we fix
17 the charter and do the elections like this
18 body would want to do them?

19 CHAIR BILLY: Dave, you had your
20 hand up?

21 MR. WALLACE: No, I'll pass.

22 CHAIR BILLY: Oh, okay. Randy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CATES: Tom, this is a question
2 for you, because I think you're the only one
3 who can answer this.

4 A lot of the concern is how much
5 time does it take, outside of the MAFAC
6 meetings as chair, how much commitment? I
7 think that's a lot of the question that people
8 have been asking is well, they may not have
9 the time.

10 CHAIR BILLY: It's not an
11 inordinate amount of time. It takes probably
12 a week's worth of time for the process of
13 developing the agenda and sorting it out, with
14 give and take and some phone calls and that
15 kind of thing.

16 If in fact we're successful in
17 terms of having more direct contact with the
18 leadership of NOAA and/or the Department that
19 would add some time for preparation.

20 MR. CATES: And is everything by
21 phone, so the chair doesn't have to
22 necessarily --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: A lot of it's by
2 phone, yes. Well, we've had meetings and
3 mostly by phone. So it's not a lot of time.
4 I mean I do sit and think about the agenda,
5 and how much -- like a perfect example was I
6 had a concern a week or two ago that our
7 agenda was too busy, just the practical sense
8 of how much you can cover.

9 We did take a couple of
10 things off. But now here we are again and
11 we're behind, and I was right-on. It was too
12 busy and we had too much. So it takes some
13 effort to think through the agenda, managing
14 it and providing adequate time for discussion,
15 and the subcommittees to do their thing.

16 So it takes, you know, a couple of
17 weeks of time, I guess, would be a good
18 estimate, in preparation for a meeting. Not
19 all at once, but a fair amount of it towards,
20 for the work-up for the meeting itself.

21 MR. JONER: Mr. Chairman? Would it
22 be appropriate to offer a motion? This is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to take some time to fix, so I move that
2 we defer election of chairman until our next
3 meeting.

4 MR. RIZZARDI: I'll second that.

5 VOICE: When is our next meeting?

6 CHAIR BILLY: We don't have a next
7 meeting. Okay.

8 VOICE: Don't look at me.

9 CHAIR BILLY: I don't make the
10 rules.

11 MR. CATES: Well, we have a vice
12 chair.

13 CHAIR BILLY: I understand.

14 MR. CATES: We're not going to be
15 in a gap.

16 MR. RIZZARDI: Steve, would you
17 accept an amendment? What would be your
18 vision for dealing with the charter issue? I
19 mean that's the part of this whole motion that
20 needs to be on the record.

21 MR. JONER: That would be a
22 separate thing, and then we would on a second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 motion make recommendations.

2 MR. RIZZARDI: Would you accept
3 this friendly and move forward with an
4 amendment to the charter that allows a chair
5 to be elected as long as they're eligible to
6 serve at least one year?

7 MR. JONER: Yes, I would.

8 CHAIR BILLY: Yeah, Dave.

9 MR. WALLACE: I was recognized.

10 CHAIR BILLY: Yeah, all right.

11 MR. WALLACE: I think I would like
12 to offer an amendment to that motion, to say,
13 to amend the motion to have an election this
14 year, an election now for one year and
15 possibly three if the person is near the end
16 of their first term.

17 So that then includes -- it
18 essentially almost doubles the number of
19 eligible people.

20 VOICE: It would not be in the
21 charter.

22 MR. WALLACE: Pardon?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VOICE: We would need to -- but
2 that's what I was suggesting, but I thought
3 you said --

4 MS. FOY: No. Can I ask a question
5 about your motion, Dave? So you're suggesting
6 that the amendment to the charter that Keith
7 is suggesting --

8 MR. WALLACE: Well actually --

9 MR. RIZZARDI: He's taking it a
10 step further.

11 MS. FOY: He's taking it a step
12 further.

13 MR. WALLACE: I don't think that
14 the charter would have to be amended, because
15 if the person isn't reappointed, then we would
16 have to have another election to replace that
17 person. So we elect them for two years, but
18 in fact they may not be able to serve their
19 two years.

20 So we'll just turn it around on the
21 second year, until -- and I'm not a lawyer and
22 I'm not going to practice law, but I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think that requires an amendment to the
2 charter.

3 VICE CHAIR MCCARTY: May I ask a
4 question please? Are you suggesting that the
5 charter amendment on that motion stay in or
6 would you -- because basically what you're
7 talking about is a totally different thing.

8 VICE CHAIR MCCARTY: Is this a --

9 PARTICIPANT: It is.

10 VICE CHAIR MCCARTY: Nobody
11 seconded it.

12 CHAIR BILLY: Yes. Well, and I'd
13 like to make a suggestion, which is I like
14 this idea, and getting something in writing
15 that the committee can deal with clearly
16 tomorrow, and if there are questions, there's
17 different things.

18 My suggestion is to withdraw the
19 proposal, but those that are interested sit
20 down together, put it in writing, deal with
21 either one or both of the issues together or
22 separately, the charter part and what action

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you want to take with regard to a chair for
2 next year.

3 VICE CHAIR MCCARTY: That's why we
4 should just take the motion that's currently
5 on the table, which is I would recommend.

6 CHAIR BILLY: Okay. But we will
7 deal with it tomorrow, and also important,
8 Eric will be here as well.

9 VOICE: Boy, you sound hungry.

10 CHAIR BILLY: I'm not hungry.

11 VICE CHAIR MCCARTY: So Mr.
12 Chairman, I move to table the motion that's
13 currently on the table, unamended.

14 CHAIR BILLY: Okay. Do you need a
15 second for that?

16 MR. RAFTICAN: I'll second that.

17 VOICES: I second.

18 DR. HOLLIDAY: No, you just
19 withdraw. You can just withdraw your motion.

20 VICE CHAIR MCCARTY: Well, I made a
21 motion to table.

22 MR. RAFTICAN: As stated, I second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that motion.

2 CHAIR BILLY: Any further -- any
3 further discussion?

4 DR. CHATWIN: Yes, I have thoughts,
5 if I may. You know, I think this is okay to
6 go forward. But there's likely a group that's
7 going to work on this.

8 I mean, little groups that go off
9 and discuss these things. So it sounds to me
10 the proposal that's going to come forward is
11 going to be something like anyone who is on
12 the committee is eligible, independent of how
13 much time they have left on the committee.

14 That just seems to go counter this
15 idea of the continuity that everybody espouses
16 as such a great, important value. So I mean I
17 think we need to be consistent with that. I'm
18 saying it here, so when you go off and work on
19 it and then come back, it's a problem that I
20 would hope that you address. Thank you.

21 CHAIR BILLY: Thank you.

22 MR. RIZZARDI: So are we sort of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussing the motion to table.

2 CHAIR BILLY: Yes.

3 MR. RIZZARDI: Is that procedurally
4 where we are?

5 CHAIR BILLY: Yes.

6 MR. RIZZARDI: I also would rather
7 not table. I would rather have an open
8 discussion and just air out what we think, and
9 understand it as a committee so that we can
10 move forward, because I don't want to have,
11 you know, small groups and have division
12 amongst it.

13 I'd rather just, all of us be
14 playing with the same set of rules. So I'd
15 rather air it out. I mean I think we can air
16 out a proposed concept in ten minutes if we
17 have the discussion.

18 What we've talked about so far is
19 allowing us not to move forward with an
20 election now, which would mean that Heather by
21 default would become chair for the next
22 meeting, and allow us enough time to seek an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 amendment to the charter, that a person can
2 become chair, as long as they had at least one
3 year of eligibility.

4 Obviously, from a continuity
5 standpoint, more than one year would be
6 desirable. If we get a person with more than
7 one year, that would be great. Then they'd be
8 able to serve the full two. But we put a new
9 standard into the charter. That's the concept
10 that's out there.

11 I think that's sufficiently well
12 thought-out for us to use as a platform and to
13 move forward, and hopefully middle of next
14 year have that adopted and then go forward
15 with an election.

16 I understand others may disagree.
17 I would just like to hear what people have to
18 say.

19 CHAIR BILLY: Okay. Pam?

20 DR. DANA: I'm just trying to work
21 through how we're going to vote on a
22 leadership for this committee tomorrow. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think obviously there's a lot of issues going
2 on. So all that said, we need to go the route
3 that he just described.

4 Way in advance, we need to have
5 established the mechanism for a vote for
6 leadership. We need to also be looking at
7 mechanisms to ensure that each of our members
8 who may not be present today, or may not be
9 present at the next meeting, have their vote
10 counted.

11 PARTICIPANT: She supports us.

12 (Laughter.)

13 CHAIR BILLY: Heather?

14 VICE CHAIR MCCARTY: I think the
15 chairman said that he wanted to have the
16 discussion when Eric is here. Was that your
17 intent of putting it off until tomorrow?

18 CHAIR BILLY: In part, yes.

19 VICE CHAIR McCARTY: Okay. I think
20 that -- can you tell us why you think that's
21 important?

22 CHAIR BILLY: Sure. As the head of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 NMFS, I think it's important that he have some
2 input in terms of whatever strategy we decide
3 to recommend, so he's comfortable with it, you
4 know.

5 In terms of the committee and its
6 function and so forth. It's just, I think
7 it's the right protocol, to have the head of
8 NMFS. I'd love to have the head of NOAA, but
9 we're not going to get that.

10 So the head of NMFS involved in the
11 discussion and be clear about yeah, that
12 sounds like an acceptable approach, you know.

13 That will work for me, in the important work
14 that we're involved in.

15 VICE CHAIR MCCARTY: Mr. Chairman,
16 do you think that we're going to lose more
17 members tomorrow, so that there will be fewer
18 people? I have --.

19 (Off mic comment.)

20 CHAIR BILLY: Anyone not going to
21 be here tomorrow afternoon?

22 (Show of hands.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIR BILLY: Two.

2 VICE CHAIR MCCARTY: May I comment?

3 I understand what you're saying, and I think
4 that's important too. But I also understand
5 what Keith was saying.

6 I think that's important. I don't
7 think that we need to do anything under the
8 cover, so to speak, but it would be good to
9 have Eric part of the discussion. I don't
10 know how to solve that conundrum.

11 CHAIR BILLY: Yes. Bill.

12 MR. DEWEY: I agree with that. I
13 mean it's unfortunate that some people aren't
14 here at the meeting. The chairmanship is
15 probably something everybody would like to
16 participate in that decision.

17 So you know, I think it would be
18 good to discuss a process, to get a balance
19 together and get it done electronically. I
20 don't know if a vote has to happen here at the
21 meeting. If there's something in the charter
22 that says you can't vote electronically, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't know.

2 You know, just something that's
3 all-inclusive and a ballot process that also,
4 you know, makes people feel comfortable in
5 putting their name forward if they want to.
6 That would be considered, and having a voting
7 process maybe that's not sitting in a room in
8 front of your peers raising your hands and
9 saying well, I want you, not him or whatever.

10 I just think that that might make
11 the whole situation more comfortable and more
12 inclusive.

13 CHAIR BILLY: Okay. Martin?

14 MR. MARTIN FISHER: Thank you, Mr.
15 Chair. I'd like to concur with what Bill
16 said, in terms of the actual technical
17 procedure of voting, and I think Pam was
18 really right on about it. I don't think that
19 it should be an open -- I think we should be
20 able to vote with privacy. Whatever mechanism
21 we can achieve to do that, whether it be
22 electronic or a piece of paper.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But I agree, you know. This isn't
2 about -- this shouldn't be a personality
3 contest. It should be who we best think is
4 going to run the meeting, and we shouldn't,
5 you know, there shouldn't be any retribution
6 on any level or any embarrassment or concern.

7 MR. RIZZARDI: Yes, but if you're
8 going to do a ballot, we need candidate
9 statements. I'd rather not.

10 (Laughter.)

11 (Off record discussion.)

12 VICE CHAIR MCCARTY: There's a
13 motion on the table, Mr. Chairman.

14 CHAIR BILLY: Yes.

15 MR. MARTIN FISHER: The motion on
16 the table is to table.

17 CHAIR BILLY: Yes. There's a
18 motion on the table to table the earlier
19 motion. Is there further discussion on that
20 motion?

21 MR. JONER: So the motion was table
22 it until tomorrow?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DR. HOLLIDAY: Yes.

2 VICE CHAIR MCCARTY: That was my
3 motion.

4 CHAIR BILLY: Okay. Seeing no
5 further discussion, I'll call for the vote.
6 All those in favor of the motion?

7 VOICE: Can you read it again?

8 (Off mic comments; laughter.)

9 CHAIR BILLY: All those in favor
10 say aye?

11 (Chorus of ayes.)

12 CHAIR BILLY: All those opposed?

13 MR. RIZZARDI: Nay.

14 CHAIR BILLY: Okay. One nay. It
15 carried, so we'll finish this tomorrow.

16 MR. RIZZARDI: Always one lawyer in
17 the room.

18 VOICE: Well gee, that doesn't
19 preclude you from making another motion.

20 MR. RIZZARDI: No. It just means
21 that we're all going to be meeting and the
22 caucusing is going to continue, and there's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to be drafting of language.

2 CHAIR BILLY: We're going settle it
3 like we've done all the other problems.

4 (Off mic comments.)

5 CHAIR BILLY: All right. I'd like
6 to move on and we have two subcommittee
7 meetings, simultaneous meetings, one on
8 ecosystem management. Where will that be?
9 This room behind us, and Commerce Committee
10 will -- Steve, as the head, will be here?
11 Okay.

12 VOICE: Could you tell us what
13 they're both going to talk about?

14 CHAIR BILLY: Yes. Well, Commerce
15 is going to talk about the -- yes. OLE. I'm
16 getting too tired to remember what that is.

17 DR. HOLLIDAY: Law Enforcement.

18 CHAIR BILLY: Law Enforcement,
19 that's it. Law Enforcement.

20 DR. HOLLIDAY: If there are any
21 findings or recommendations that you want to
22 recommend to the full committee tomorrow,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relative to the presentation by Alan, and his
2 questions that he raised about helping to
3 improve the community oriented policing and
4 communication strategy. That's what the
5 Commerce Committee -- it seemed to be the
6 closest committee to where that jurisdiction
7 would be.

8 The Ecosystem Committee, relative
9 to the habitat assessment improvement plan,
10 critical habitat, if there any concerns or
11 feedback or findings or recommendations, that
12 -- the committee may not have any, but that's
13 the relevant jurisdiction for the habitat
14 presentations we heard this afternoon.

15 The Commerce Committee is the
16 relevant committee for the OLE stuff.

17 MR. RANDY FISHER: Could I say one
18 thing, Mr. Chairman?

19 CHAIR BILLY: Yes.

20 MR. RANDY FISHER: I have to leave
21 in the morning, but I think this committee,
22 and I've been around this committee for like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 15 years, and I think there should be some
2 serious thought given about where you hold the
3 meetings and what the purpose is, because
4 you've had people from Silver Spring coming
5 out here.

6 You've had people from here going
7 to there. There was a reason when this
8 committee used to meet in different places,
9 and there was a logic to a lot of that. But I
10 think there should be some serious thought
11 given to where you go and the kind of facility
12 you sit in and all of that, because my feeling
13 is that there was a hell of a lot of wasted
14 time.

15 I mean this is nice, but you know,
16 it could have been downtown, I think. So it
17 seems to me that one of the things this
18 committee should think about is in the future
19 where you really want to -- what's the purpose
20 of where you're going and why you're going
21 there, and the kind of place you want to go.

22 CHAIR BILLY: Very good. Randy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CATES: Yes. My memory
2 recollects that we used to go to D.C. for one
3 meeting and then somewhere else for one
4 meeting, and am I right in this, that one of
5 the problems when we went to D.C., and maybe
6 it was the people that were on MAFAC, we would
7 lose a lot of the members, because they would
8 go and visit their Senators.

9 So I thought there was some
10 discussion on that. That was kind of a
11 problem being in D.C. It was valuable and yet
12 it was a hindrance, because we were able to go
13 and meet with our Senators and talk about some
14 of these issues.

15 Then we would lose people. Am I
16 right on that? Do I remember that correctly?

17 MR. RANDY FISHER: Yes, that was
18 the discussion then. But I think it's
19 worthwhile talking about again, because I
20 mean, you know, if you're going to be in D.C.,
21 you've got a better chance of having Lubchenco
22 here or somebody here, who you want to really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be talking to.

2 They're not going to come up here.

3 You had Medina here today or, you know, I
4 mean that kind of thing. But I think it's
5 worth discussing, for the committee discuss
6 again, so when you're looking down the road
7 for the next year, you should figure out
8 strategically where you think you want to be,
9 Randy, and what the purpose is, you know, that
10 kind of thing.

11 MR. CATES: I agree.

12 MR. RANDY FISHER: That's the only
13 reason why I bring it up. You do whatever you
14 want, I don't really care. But it just seems
15 to me it's worth talking about it again.

16 CHAIR BILLY: Okay, very good.
17 We'll make sure that happens.

18 (Simultaneous discussion.)

19 CHAIR BILLY: Yes. All right.
20 Yes, we're breaking up. Habitat, Commerce.

21 (Whereupon, a recess was taken.)

22 Commerce Subcommittee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: So the first
2 thing I thought with any program, we need to
3 outline fairly specifically what our goals
4 are, what are we trying to achieve.

5 So we talked a little bit about
6 yes, compliance is what we're trying to
7 achieve, but also a little more confidence in
8 the whole process, improving relationships,
9 creating some sort of feedback to assist the
10 client's person or the client's group works,
11 that there's a feedback loop to the regulatory
12 side of things as well.

13 So lessons learned keep being
14 repeated over and over in different areas.
15 Then I think the other key thing is how do we
16 know if it's working. So, you know, some of
17 the workshops that we've had in the past, yes
18 some have been well-attended. Others haven't
19 been well-attended. Do we know if the
20 information exchange is actually working?

21 Next, basically you need feedback
22 from the industry on that. I think the focus

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to start with will be primarily on the
2 fishing industry, but we do want to expand
3 that to other things, whale watching, furry
4 mammals and on and on, and aquaculture.

5 We do have some aquaculture
6 precepts, much like the council ones, that
7 we'll put up on the website.

8 VOICE: Okay, it's been already
9 sent to me?

10 MR. RISENHOOVER: Yep, and the new
11 one that you heard about today.

12 VOICE: Okay.

13 MR. RISENHOOVER: So what I'm
14 looking for, I think, is you know, ideas on
15 how do we conceive of the program. So when
16 Tim and I start looking for who's going to be
17 the liaison in the Northeast, what does that
18 person need to do?

19 What's the scope of their work, and
20 then also what activities actually work? Once
21 we know what the goals are, what are the
22 activities that get us there, and how do we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 measure those?

2 MR. JONER: Who will this liaison
3 work for?

4 MR. RISENHOOVER: Right now, I
5 anticipate them reporting directly to the
6 staff, or maybe one of the deputy special
7 agents in charge. They won't report to
8 headquarters. But I wanted somebody that's
9 tied into the regional folks, the regional
10 enforcement folks, but then also tied in to
11 the regional office folks. So since I see
12 Randy here, I'll mention Dana Matthews in the
13 Northwest.

14 MR. CATES: Yes, I know Dana.

15 MR. RISENHOOVER: That's kind of a
16 model we've been looking at, as something I've
17 heard is working, where he's not an
18 Enforcement officer or a special agent, but he
19 does work for Enforcement, but kind of crosses
20 those lines between the regional office and
21 the Enforcement office.

22 MS. LOVETT: It's kind of -- is it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 kind of like an ombudsman?

2 MR. RISENHOOVER: No. I'm not
3 looking for this person to like take
4 complaints and try to resolve them.

5 MS. LOVETT: Right, okay.

6 MR. RISENHOOVER: We're going to
7 have a whole separate process. So if somebody
8 has a complaint regarding an agent or an
9 officer or me, there will be a separate
10 process for that. So that's going to be more
11 independent than that.

12 MS. LOVETT: Separate, independent.

13 MR. RISENHOOVER: This person's
14 going to be a facilitator, a troubleshooter,
15 kind of a traffic cop with questions. So if I
16 have a question about how to comply with some
17 regulations or to set my gear up, and I don't
18 happen to know an agent.

19 Here's a number, a name, a person
20 to call, that I can call, that will then find
21 the person that knows the answer and get back
22 to me, given that more timely circumstance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Now obviously, you know, you can't
2 be on your way to go to fish and expect a
3 return call in any minute answering some
4 complex question. But how do we get in front
5 of those things? How do we have a routine way
6 to liaison with our folks on compliance
7 issues?

8 MR. CATES: Now the agent has only
9 got jurisdiction in federal waters and
10 federally mandated fisheries; correct?

11 MR. RISENHOOVER: Well, federally
12 mandated fisheries.

13 MR. DONOVAN: An area of concern
14 for commercial fishing is EEZ, but our
15 jurisdiction isn't tied to the EEZ.
16 Certainly, it involves Lacey Act violations,
17 certainly it involves marine mammal-ESA.

18 So you're really kind of, you know,
19 boxed into the EEZ. However, the bulk of our
20 work is based on EEZ fisheries.

21 MR. CATES: You mentioned
22 aquaculture.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NARDI: Well no. If somebody
2 is growing something, I might not be in the
3 EEZ, but I'm growing a species that's under,
4 could be viewed as being under --

5 MR. DONOVAN: That's one of our
6 concerns. You're talking about a dinner
7 plate fish that's below the size limits for
8 everything else, and all of the sudden it's in
9 the market, our agents want to know is that
10 aquaculture or is that wild caught. If it's
11 wild caught --

12 MR. NARDI: There's an FMP for
13 that.

14 MR. DONOVAN: So that's where the,
15 you know, I know we've provided numerous input
16 to the overall aquaculture policy, and we've
17 looked at certain areas where Enforcement
18 should play in that. We also got to start
19 looking at whether we spend a lot of money on,
20 with our JEAs.

21 Should JEA, you know, as
22 aquaculture starts building up and it bumps up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 against some federal priorities, do we need to
2 be looking at some of that too.

3 MR. NARDI: What's a JEA?

4 MR. DONOVAN: Joint Enforcement,
5 the state partners.

6 (Simultaneous discussion.)

7 MR. CATES: If you use U.S. Coast
8 Guard to enforce the fisheries enforcement
9 also, if you have a theft, for example, on an
10 aquaculture facility in state waters, does the
11 Coast Guard have any authority to investigate?

12 I mean obviously the state fish and
13 wildlife would have, because that's state
14 waters. They would certainly have primary
15 jurisdiction. I'm not sure, but I'm assuming
16 most have some other waters.

17 MR. RISENHOOVER: Yes, but the
18 Coast Guard's jurisdiction in fisheries comes
19 out of the Magnuson Act, which says that it
20 has the authority to enforce the Magnuson Act,
21 and that jurisdiction for the Coast Guard and
22 NMFS wherever the product may be found.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CATES: That's different.

2 MR. NARDI: But I think that a
3 clear understanding, particularly for those in
4 aquaculture that may be growing species,
5 whether it's in federal waters or species that
6 are under federal management plans, to have a
7 clear understanding that if it's aquaculture,
8 it's not under the same conservation rules as,
9 for example, a wild caught fish is.

10 So I think that fact that we need
11 to not have confusion, and that's something
12 that if, you know, if you have a guy in the
13 field or somebody that's go and, you know,
14 talk to the aquaculture operation. Yes, it's
15 not just pinfish. It's the shellfish people
16 who've dealt with it as well in years past.

17 You know, I've gone to the effort
18 of calling each state up, you know, because if
19 I've got a product coming from Maine to
20 Massachusetts, I'm going to call New
21 Hampshire. I call each state that I'm passing
22 through, just to say this is what's going on.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And so that there's no confusion.
2 So that everything, you know, there's a paper
3 trail and all the rest of it. But I'm just
4 trying to think of a way, because this is
5 going to get bigger rather than smaller over
6 time, you know. It's going to be a growing
7 concern, and maybe more species will come
8 under federally managed plans over time as
9 well.

10 So I think looking at, you know, a
11 clear, some clear guidance, and I know years
12 ago the Atlantic States Marine Fisheries
13 Commission at one of the meetings had provided
14 guidance in terms of that.

15 MR. DONOVAN: I believe Alan was
16 going to provide MAFAC a copy of our
17 aquaculture. We had a team looking at
18 Enforcement, where is Enforcement going to fit
19 into aquaculture; how do we make it, you know,
20 how do we suggest enforceability.

21 I don't want to take too much time
22 away from compliance questions that we need to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 answer, but I believe if we're going to add
2 that to your website so you can get an idea of
3 where the experienced agents out there are
4 saying "Okay, this is where aquaculture going
5 to hit a speed bump in terms of enforcement."

6 Obviously, you know again it's
7 that, you know, that they're in a market and a
8 short fish. You know, a classic example. How
9 do we know that, you know -- I mean all those
10 different issues? I mean you kind of answered
11 -- I'm sure not going to answer it today, but
12 you'll get an idea of kind of what the folks
13 were thinking about as we look at aquaculture.

14 MR. RISENHOOVER: Yes.

15 MR. CATES: I can offer a real
16 quick bit of advice on that. In Hawaii, the
17 way we've handled that is you have to have an
18 aquaculture permit to grow it, and each place
19 of sale has an aquaculture license.

20 So if any agent comes in and you
21 have undersized fish, they pull out the
22 permit, they pull out the receipt, this is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 facility I got it from, it's done. After a
2 few years it's --

3 MR. DONOVAN: We saw some of the
4 stuff come up in one case that don't
5 necessarily fall into a set, specific
6 guideline.

7 MR. ALEXANDER: Well, how do they
8 handle interstate lobsters, because there are
9 all different lobsters, Maine, sizes all over
10 Massachusetts. I mean there's got to be, you
11 know, I mean you could just model that.

12 (Simultaneous discussion.)

13 MR. DONOVAN: Nobody's denying
14 that. We're trying to stay -- we're really
15 trying to stay ahead of the curve.

16 MR. ALEXANDER: Yeah.

17 MR. DONOVAN: We're trying to look
18 at it and say okay, what -- you know, what is
19 the easiest way to get enforcement. So
20 obviously nobody wants -- we don't want to jam
21 up somebody that is legitimate.

22 At the same time, you know, we want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to go after the person that's, you know,
2 looking for that loophole to violate and
3 squeeze the person that obeyed the law in the
4 first place.

5 MR. NARDI: I hear what you're
6 saying. We can look at the website.

7 MR. DONOVAN: Yes, exactly.

8 MR. NARDI: The only thing I don't
9 want to get in one of these issues where it's
10 not being pushed forward and thought out
11 because of trying to protect one industry
12 versus another. You know, I don't -- if just
13 because there's a rule that says a fish is
14 this big, it's because the reason that rule is
15 in place is for a totally different reason,
16 then in aquaculture case.

17 MR. DONOVAN: Yes.

18 MR. NARDI: So, and I've run up
19 against it, where people would say well, you
20 know, they're just pigheaded. Nope, the rule
21 says that, and until you change the
22 legislation, you know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We understand that you're not
2 affecting the stock, but we just don't want
3 you to sell that small fish, you know, because
4 it's going to interfere with our market, so
5 they think, even though it's a totally
6 different market. But it's beside the point.

7 You know, I'm just alert, alerting that it's
8 --

9 MR. RISENHOOVER: Well you know, in
10 the extreme, it could lead to okay, I'm
11 selling a fish that's 12 inches, and the reg
12 says 16. Well obviously all those fish are
13 aquaculture. So there could be a, you know, a
14 resource damage associated with that.

15 So it's, you know, how do we
16 document that? We have the paper work, the
17 permits, so that the reporting, so folks know
18 from the aquaculture pen to the plate, that
19 that is an aquacultured species, and whatever,
20 you know, if there are size limits or
21 whatever, that's being obeyed.

22 Versus maybe you don't have that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from the wild stock, because you're trying to
2 protect that size. So that's been an issue in
3 the past with imports. It's been the issue
4 with state to state regulations.

5 So we're not trying to solve those
6 problems. The problem we're trying to solve
7 is how do we communicate those things? How do
8 we make sure you as a businessman know what
9 the rules are, so you're not frustrated along
10 the way or, you know, at the ends of the
11 process?

12 MR. CATES: I mean, we should do a
13 contact that says what are the rules for our
14 business.

15 MR. RISENHOOVER: And is this
16 something you've run into?

17 MR. CATES: Yes. Not only have I
18 run into it, I have seen this very issue being
19 used to prevent a business, an aquaculture
20 business from starting.

21 MR. RISENHOOVER: Okay. So that
22 may be a larger issue than what we're getting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at today, where there needs to be some sort of
2 aquaculture exemption from the rules or
3 something else, to allow those different-sized
4 fish to be sold.

5 MR. CATES: It kept -- it only
6 occurred early on in my business, and I've
7 seen it occur in the Gulf states, to prevent
8 aquaculture from starting.

9 MR. RISENHOOVER: We're not talking
10 about changing rules here. We're talking
11 about enforcing the current rules, and not
12 whether they're right or wrong.

13 MR. CATES: Brian O'Malley told me
14 that happened with him. He thought, he was
15 told he had to grow it over a certain size
16 because of the law, and the Enforcement was
17 telling him that, and it didn't make sense.
18 He was forcing this guy to cut his fish in
19 half.

20 MR. RISENHOOVER: Are you saying it
21 didn't make sense?

22 MR. CATES: The enforcement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VOICE: The interpretation of law,
2 I think, yeah.

3 MR. NARDI: That's all I was saying
4 in the beginning about, you know, having. But
5 you guys are talking about having somebody on
6 the ground, getting out there, getting to know
7 what's going on, so that there's no confusion
8 and there's an understanding.

9 MR. RISENHOOVER: And I think we
10 have a level of that now. What we're talking
11 about is somebody that's dedicated to that,
12 enhancing that, and trying to get out in front
13 of that.

14 MR. JONER: So pull us together,
15 because we need that -- you know, this
16 discussion is good. We're limited on time and
17 we want to direct our comments toward your
18 questions.

19 So would the regional coordinator
20 be the person to do this, or I guess Randy's
21 recommendation that it be done through the
22 Aquaculture Office, somehow bring them on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 board. Is that --

2 MR. RISENHOOVER: Or I think you
3 just need kind of that liaison.

4 MR. JONER: Do you have a specific
5 recommendation?

6 MR. RISENHOOVER: So that if we do
7 get that call, we know to reach out to the
8 Aquaculture Office, or to reach out to the
9 regional office. It's more of finding the
10 answer than absolutely always knowing the
11 answer, and doing that in advance of the
12 problem.

13 MR. CATES: Right.

14 MR. RISENHOOVER: And so that's
15 kind of the two-way street. I see this as,
16 you know, don't wait to find out if it's going
17 to work. Find out first before you do it. It
18 sounds like you have. You said you called the
19 state --

20 MR. NARDI: Oh yeah. I talked to
21 the regional administrator and she basically
22 was telling me to just go ahead, but you can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make that -- you know that -- well, it's
2 another issue. But yeah no, I talked to
3 everybody and you know, everyone understood.
4 It's just that there was nothing really in
5 place to deal with it.

6 MR. DEWEY: I think that should be
7 a recommendation. I mean it should be a topic
8 to make that case up and develop some
9 recommendations, and as the dialogue here with
10 Enforcement, to try to identify the issues and
11 what the solutions are. We're talking
12 together now past each other, and it's great
13 that you guys have commented on the policy,
14 and I understand that that's kind of where
15 it's at right now is in the federal bandwidth
16 for comment.

17 But it would be great to have some
18 dialogue towards solutions as well with the
19 industry.

20 MR. JONER: Do you have a specific
21 recommendation on that?

22 MR. DEWEY: I'm not sure exactly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 how to word it, but it's essentially to have
2 MAFAC work with NMFS Enforcement to identify
3 the problems and solutions relative to
4 aquaculture product.

5 VOICE: Versus wild.

6 MR. DEWEY: Versus wild.

7 MR. JONER: So this would be done
8 through our ongoing meeting process then? We
9 get --

10 MR. DEWEY: It could be part of our
11 ongoing meeting process or it could be outside
12 of that. I don't know what the --

13 MS. LOVETT: But to go back, I
14 think there are policy solutions between
15 aquaculture --

16 MR. DEWEY: Between yeah,
17 Enforcement issues relative to aquaculture and
18 wild fish.

19 MS. LOVETT: Oh, wild fish you
20 said.

21 MR. DEWEY: Is this just for
22 product in the commerce, or is it also during

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 production?

2 MR. NARDI: I think it's products
3 in commerce, yes. Working out all the issues
4 between the two.

5 MR. DONOVAN: We've identified a
6 couple of them a couple of -- another office,
7 division has done that as well, identifying
8 you know, folks to kind of focus. I mentioned
9 earlier about studying the fishery management
10 plans, so I can go to one person for one fish
11 and all that.

12 We've got a couple of folks focused
13 on about the aquaculture, you know, because we
14 all -- you know, we know it's coming down the
15 pike, and we know it's going to, you know,
16 we're going to have, you know, address it
17 correctly.

18 So we're trying to, you know, we've
19 been slowly trying to balance it and stay
20 ahead of some of the issues, which is what
21 drove those precepts.

22 MR. CATES: Another issue that I've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 seen with regard to Enforcement of
2 aquaculture, one is the collection of root
3 stock for your hatchery. Some species, you
4 have to catch them when they're small, and
5 that may not be legal. You want to catch them
6 when they're small. They're easier to keep
7 alive.

8 In Hawaii, some of the bottom fish
9 species, that was a real issue, because the
10 size limit protects maybe, you know, a pound
11 and a half. But I'm trying to catch the root
12 stock alive. Now luckily in Hawaii, they
13 didn't have any real enforcement. We're going
14 to get away with it, but that's going to be an
15 issue --

16 MR. DONOVAN: That could change.

17 MR. CATES: It's going to change.

18 MR. DONOVAN: But I was working for
19 NOAA.

20 MR. CATES: So that's one issue.
21 The other is coming down is catching a
22 regulated species, the tunas, and where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they're going to start putting them in cages
2 and fattening them up, and how they catch them
3 and the size that they catch them.

4 That's a regulated species on the
5 west coast. So those are the two things that
6 are kind of on the horizon.

7 MR. JONER: Is there within the
8 aquaculture program, they've talked about
9 regional coordinators. Has that been set up
10 yet?

11 MR. NARDI: Yes. I think the ad is
12 out for the Northwest, right? The Northeast
13 has David Ellis.

14 MR. DEWEY: Yes, the Northeast. In
15 the Northeast, Southeast and Northwest, I know
16 the ad's out.

17 MR. JONER: So as part of this
18 recommendation for us to work with Enforcement
19 would be to get some communication on the
20 regional enforcement coordinator and
21 aquaculture coordinator. That would be a
22 specific topic that we'd want to hear back on,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the progress reports.

2 MR. RISENHOOVER: And again, with
3 this compliance assistance thing, it's how do
4 you, you know, our compliance liaison work
5 with the aquaculture liaison, work with the
6 regional liaison to solve these sort of
7 questions, if they're not handled in the full
8 aquaculture policy.

9 MR. JONER: I'd like to say these
10 problems are different than all the fishing
11 regulation problems, because all of those have
12 to have the same, whether they're
13 recreational, commercial, whatever. They all
14 have the same size limit, but there's not one
15 saying that they can keep undersized fish or
16 can keep the species and everybody else can't.

17 So these are unique issues that
18 need to be addressed at different, yes,
19 specific options, with specific people, rather
20 than just the general fishing industry.

21 MR. NARDI: But they're real
22 issues, and enforcement is going to be key,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because there is a market and there is a
2 temptation, you know. It's, you know, I want
3 to make sure that fish that are in the market
4 are the right fish in the market.

5 MR. RISENHOOVER: Oh correct,
6 exactly, exactly. The only way to do that --

7 (Simultaneous discussion.)

8 MR. RISENHOOVER: --to have an
9 effective program to determine the difference.

10 MR. NARDI: Yes, right.

11 MR. RISENHOOVER: And then to, you
12 know, obviously target those that aren't.

13 MS. LOVETT: Is there documentation
14 that sort of stays with aquaculture product
15 from --

16 MR. NARDI: Well, each state's
17 different. Just as a quick example, in
18 Massachusetts, I can use or have been using
19 almost something like the ISSC, but like paper
20 trail, so the people in the state know what
21 stores, restaurants, markets, those fish will
22 be in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's predetermined. So
2 Enforcement, if they find those fish in some
3 other place that's not on that list, that
4 better not be my fish, and or if they are, you
5 know, I'm not going to sell to my guy anymore.

6 He's just lost his distributor capability, or
7 that place is in trouble, because those are
8 illegal fish.

9 Or in New York state, I've got to
10 tag every fish, which adds to price. I'm, you
11 know, tagging a live fish, put all of the
12 information on it. Name, species, farm, date
13 of production. It's all on the fish.

14 MR. DONOVAN: I certainly don't
15 want to.

16 MR. NARDI: No. I wasn't trying to
17 go that way, but Enforcement basically came
18 back and said --

19 MR. DONOVAN: New York state.

20 MR. NARDI: Yes, New York state,
21 New York state, came back and said, you know,
22 everyone's a crook in New York until proven

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 difficulty, until proven -- they want the
2 opposite. They said everyone's guilty until
3 proven innocent. So you're the same.

4 MR. RISENHOOVER: The fish market.

5 MR. NARDI: Yes. That's basically
6 what they said, and said so you're no
7 different, and the trouble is the tagging
8 techniques. They fall off, and I've had my
9 wrist slapped once or twice. You know, they
10 said well, we found a couple of tags in the
11 bottom of the tank. We assume they were
12 yours, because there were a couple of fish
13 that didn't have tags. Well, you're probably
14 right. But you've got to come up with a
15 better means of tagging the fish.

16 MR. RISENHOOVER: So that's an
17 example of, you know, kind of the problem-
18 solving I was talking about, is how do we
19 solve that problem.

20 Tagging may not be 100 percent
21 effective, probably not cost-effective. So
22 how do we design something that does preserve

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the -- you know, because you want to make sure
2 your aquaculture fish are contained. We want
3 to make sure they're contained.

4 MR. NARDI: Right, the species, you
5 know, natural markings work. We've got, you
6 know, clams and with the fluke that are
7 produced, the underbellies are mottled.
8 Filefish are never, you know. They're always
9 white. So in Massachusetts, that worked.
10 That was a little bit of a brew-ha a few years
11 ago, but then that fish had a natural tag.

12 But some fish are identical, you
13 know. So how -- so that's where I was kind of
14 pushing NOAA to kind of do some research on,
15 you know, tagging or marking. You know, you
16 looked at oxytetracycline dyes to create a
17 fluorescent mark, where --

18 But when I talked to Enforcement,
19 they said no, we want it simple. We want to
20 be -- the Enforcement guys wants to just come
21 into a shop and just see it. They don't want
22 to have to have anything fancy to, you know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. CATES: You've got to be real
2 careful with that, because we can quickly
3 create a system. It's pretty hard. We don't
4 tag imported salmon. We don't tag any
5 imported fresh fish that I know of.

6 MR. RISENHOOVER: And then again
7 there's a document trail that has to come in
8 with it. A document trail will work.

9 MR. JONER: Bill?

10 MR. DEWEY: Well, I was just going
11 to suggest that you know, it would seem the
12 Interstate Shellfish Conference, I've chaired
13 the Traceability Committee there for a few
14 years, and it's been dormant now for the last
15 couple, and one of our last charges, it sort
16 of fell by the wayside, was to think outside
17 the box.

18 But since the last time we reviewed
19 traceability in the shellfish program, it was
20 over probably 15 years ago, and the technology
21 has changed dramatically. So you know, people
22 were interested in thinking outside the box,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 looking at new technologies that were out
2 there that could provide traceability.

3 Now whether it's RFED tags or UPC
4 codes or, you know, different systems to
5 identify. We were looking at nanotags, which
6 are kind of interesting. We had a
7 presentation on those, the food grade
8 particles. It's just part of your washing
9 process in the water and it's there with a
10 microscope. If you look, you can, you know,
11 see these particles with identification on
12 them.

13 So different technologies are out
14 there, and it might behoove us to, you know,
15 try to engage NOAA, both from a shellfish and
16 finfish side of it, to have a technology
17 workshop to look at different traceability
18 technologies.

19 MR. RISENHOOVER: Well, that's huge
20 in the market, for everyone's benefit.
21 Basically the consumers are demanding it --

22 MR. DEWEY: Well, that's it. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mean you've got country of origin labeling
2 requirements, and just from an Enforcement
3 standpoint being able to know for sure.
4 Certainly mislabeling in seafood is huge.

5 MR. NARDI: Yes, it's huge.

6 MR. DEWEY: Having better ways of
7 identifying seafood.

8 VOICE: It's getting better.

9 MS. LOVETT: So from the things
10 that mentioned earlier, and from your
11 conversation, if there's an aquaculture
12 liaison person who kind of knows the
13 aquaculture community really well, or should
14 be getting to know the community well in their
15 region, and there's a new Enforcement liaison
16 person, it sounds like setting up potentially
17 an ongoing like quarterly meeting, with those
18 two liaisons bringing that particular
19 community together to discuss and talk about
20 compliance or, you know, enforcement and
21 compliance-related issues might be a strategy
22 or a particular --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: What we need is
2 that routine engagement, not just when there's
3 a problem.

4 MS. LOVETT: Right.

5 MR. RISENHOOVER: And so on the
6 wild caught side, we get that more at the
7 council meetings or commission meetings.
8 Aquaculture, I don't know that we get that
9 and, you know, I don't want to focus entirely
10 on aquaculture, because what we design I want
11 to work for aquaculture as well as other
12 things.

13 MS. LOVETT: That's just -- I'm
14 just throwing that out as an idea that might
15 be applicable, and might come to different
16 conclusions.

17 But each region probably has their
18 own particular issues, and just bringing the
19 parties together could be a responsibility of
20 your compliance person reaching out to the
21 aquaculture liaison, and likewise to the
22 recreational liaison.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DEWEY: The other thing that
2 would be helpful is not only for existing
3 operations, which is kind of what we're
4 focusing on, but hopefully at some point in
5 time just kind of the aquaculture gets moved
6 forward, and there's going to be new
7 operators, and they should know the game and
8 know what the rules are and how they can
9 address enforcement issues, what's required of
10 them.

11 So having that information
12 available, whether it's at the NOAA
13 aquaculture program here in D.C. or through
14 the regional office coordinators is going to
15 be important.

16 MR. JONER: Vince?

17 MR. O'SHEA: Thanks. Listening to
18 what Alan said this morning about putting into
19 effect change, but then making sure it's
20 followed through early on, the first thing I
21 thought of when he said that was the need for
22 a law enforcement advisory type committee that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be established advise NOAA periodically,
2 and quite frankly hold their feet to the fire,
3 to stick with the improvements and changes
4 that Alan's now making.

5 But then if you think -- in
6 listening to this discussion here, I'm
7 wondering if this may be something that would
8 be perhaps MAFAC could offer to do, and not
9 just for aquaculture, but just say that, you
10 know, on sort of a national level Alan, an
11 oversight group that would periodically get a
12 report from the agency about what you're doing
13 to maintain the changes and do all these other
14 things.

15 We have the components here. You
16 have commercial harvesters, you have
17 aquaculture guys, you have NGO guys, and maybe
18 that ought to be a role for -- and not just a
19 subcommittee of MAFAC but the full MAFAC.
20 It's just a thought.

21 Because what Alan's looking for is
22 a process to say if we're having problems in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 enforcement in aquaculture, how do we get that
2 off -- how do we be proactive to head those
3 things off at the pass, before there's a
4 problem. If Harriet Dee had the microphone, I
5 would suspect he'd say the same thing. How do
6 we make sure that the lines of communication
7 are established and we're impacting things
8 proactively, to promote compliance? Thank
9 you.

10 MR. JONER: This is something that
11 perhaps would need to be done on a more
12 frequent basis to start out until this is up
13 and rolling, and then back off to --

14 MR. O'SHEA: Twice a year. You
15 know, in the whole history of government,
16 twice a year actually is pretty frequently.

17 MR. JONER: But if you're having
18 quarterly meetings, and I think Bill made the
19 recommendation that MAFAC gets involved in
20 this, not only in the aquaculture but the rest
21 of it now, that if there are quarterly
22 meetings there would be a way for MAFAC, or at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 least a committee of MAFAC to participate.

2 But then twice a year give a
3 progress report to the full committee, so that
4 those who are tracking this on a more regular
5 basis then can help guide the rest of the
6 committee along. I know that I'm not trying
7 to expand our duties or the time we meet, but
8 something like this, where it's a development
9 thing, is there a mechanism where we could
10 have a subcommittee that meets?

11 MS. LOVETT: You mean a face to
12 face or --

13 MR. JONER: Well, face to face or
14 on the phone. But if there's a quarterly
15 meeting, if we've got a person from the
16 region, you know. If it's on the west coast,
17 Bill or I could attend, or from New England
18 and so forth.

19 MS. LOVETT: Yes. I can't -- so
20 you're saying if there's a meeting going on
21 out there with MAFAC funds, your operating
22 funds would have to pay for me to go at times.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think that's happened on occasion,
2 depending on the activity and what it is. The
3 other thing is -- oh, I'm sorry.

4 MR. JONER: So, let me okay. So is
5 that something you see would be helpful? You
6 know, are you looking for that participation?

7 MR. RISENHOOVER: Well yes, and
8 again, you know, that's kind of an ongoing
9 oversight, "how are we doing" role. So that's
10 -- yes, that's helpful. The other thing is,
11 you know, that constant input on well, maybe
12 you've forgotten about aquaculture. Let's
13 bring you back and remind you need, you know,
14 as aquaculture develops, you know, grow that
15 together.

16 But again, you know, my short-term
17 is I need to put some compliance assistance
18 programs, some activities in place fairly
19 soon. What is most effective? So we've
20 talked about liaison, we've talked about
21 getting in front of things. We've talked
22 about meeting, you know, the other key people

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the region.

2 We've talked about, you know, maybe
3 a quarterly meeting or some sort of routine
4 thing, not just as, you know, Alan thinks
5 about it. Let's have something in place. So
6 it's a whole range, Steve, I see as -- and I
7 don't know if it's something MAFAC wants a
8 committee on.

9 You know, it seems like you come
10 and go a little bit with committees, you know,
11 budget committees and others on an on-needed -
12 - as an as-needed basis. The recreational
13 stuff you've been doing. If that's something
14 MAFAC wants --

15 MR. JONER: Well, there's, I guess,
16 a bad answer is a working group.

17 MR. RISENHOOVER: A working group.

18 MS. LOVETT: Yes. Working groups
19 tend to be more ad hoc, short-term, not -- and
20 come under generally the auspices of one of
21 the standing committees, which is the Commerce
22 is the standing committee.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JONER: Terry, did you want to
2 finish? You said one other thing.

3 MS. LOVETT: No, that was it. It
4 was essentially have that working group
5 framework of doing work.

6 MR. ALEXANDER: Well, all these
7 different areas have observer programs, and
8 the observer coordinators are like on the
9 boats all the time, coming down, seeing how
10 your observer was the last time.

11 I mean that guy is your liaison and
12 IAR in all those areas, I think, should be
13 working directly with the observer
14 coordinator, because he knows all the
15 captains. He knows all the, you know, people
16 and get his face up there and say hey, if
17 you've got a problem, call me. Let me know.

18 MR. DONOVAN: To follow up with
19 this, you know, one of the things that I'm
20 picking up on is -- one of the things I was
21 going to -- okay, what's this person, you
22 know, 9 to 5, 8 to -- you know, what's this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 person's day going to look like?

2 You know, because it's a new
3 program, it's a new style for us to do it.
4 Obviously, things I'm picking up on is, you
5 know, that person, I already knew that they
6 were part of the regional office communication
7 team in some fashion.

8 But the other thing I'm picking up
9 on we need to identify what groups exist, be
10 it, you know, MAFAC, the New England council,
11 the Mid-Atlantic council. Is there an
12 aquaculture working group? I mean who are the
13 different players in our area? That liaison
14 person, the observers, the outside monitors
15 now on catch shares. We've got all these
16 sectors, you know.

17 So each sector has their own group
18 of people. They meet, you know, the sector
19 managers meet periodically and we're going to
20 be trying to find places to plug that person
21 in as often as is reasonable, as often as
22 needed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But also, when you mention the
2 working groups, you know, I'm not a big fan of
3 every committee and every group to have a
4 separate law enforcement group, because
5 seriously there isn't that much work for
6 everybody to do for us.

7 However, what I'm also seeing is
8 maybe in the past is not necessarily for our
9 community to have a subgroup that deals with
10 just enforcement, but that the existing
11 working groups and committees understand where
12 Enforcement should play into those decisions
13 they're making.

14 So if there's already an existing
15 aquaculture committee, you know, somewhere on
16 their agenda or their goals and objectives
17 should be, you know, where is Enforcement, or
18 how does Enforcement play? When they look at
19 catch shares, somewhere on there should be
20 where is Enforcement?

21 And I would say my compliance
22 person, you need to plug into those existing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 places. You should go there, give them the
2 presentation, and give them the brief. This
3 is Enforcement; this is what we do. What are
4 your concerns, what are your issues?

5 Take that feedback back to OLE, and
6 you know, we've got our own subject matter
7 experts. Okay, what was the big issue? Well,
8 the big issue was traceability. Okay. What
9 does it really mean and how does it work and
10 what is enforceable, what isn't? How does it
11 work?

12 We already meet quarterly with
13 Coast Guard, general counsel. We meet with
14 our state partners far more than quarterly.
15 So we've already got the enforcement part
16 covered. Now we need to flip it back, close
17 the loop, bring it back out to the state,
18 saying okay.

19 And so if there's existing groups
20 out there, not necessarily we need them to
21 break up, to have their own enforcement
22 working group. I just need them to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 thinking hey, where does enforcement or new
2 groups or new issues pop up. Who do we call?

3 Well, obviously you can always
4 call, you know, the SAC, our office or your
5 local counterpart, Tony or Janie. But you
6 know, internally, in-reach, where we do change
7 differently. Hey, we've got a person. So my
8 staff needs to know hey, you need to call
9 Frank, because Frank handles the compliance,
10 or Frank's collecting that information.

11 So it's a clearinghouse, one
12 source, because where we want to get away from
13 is having three different answers out there
14 too.

15 MR. JONER: Vince was next.

16 MR. O'SHEA: Alan, a question back
17 to you. At one point I thought I heard you
18 ask the question, you know, in each region you
19 establish, you're thinking in each region you
20 establish this sort of compliance specialist,
21 compliance outreach thing, and then listening
22 to him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'm sort of hearing that you might
2 have that in some regions already. So that
3 means I'm a little confused about both of your
4 questions.

5 MR. RISENHOOVER: So we want to
6 have more of a defined compliance assistance
7 program in each region. So right now, we have
8 in each of our divisions, in our enforcement
9 divisions, people do outreach as part of their
10 normal job.

11 MR. O'SHEA: Right, right, right.

12 MR. RISENHOOVER: So we need to
13 highlight what they do, so if they don't have
14 someone dedicated to it like in New England,
15 we get them one. In the Northwest, we already
16 have someone.

17 Well, is one person enough? And
18 then, you know, have those people talk. So
19 what Dana Matthews is doing in the Northwest
20 that we found very effective, maybe we can
21 transfer that to the new person in the
22 Northeast, and have it be effective as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So right now, not every division
2 has someone specified as that. I think that's
3 where we're going. We're going to try it out
4 in the Northeast first, at least that's where
5 we need it the most right now.

6 MR. O'SHEA: So just to follow up
7 on that, so I mean I think two things are
8 important. From your slide this morning, I
9 think the mission statement is great, saying
10 that the mission is compliance. So labels are
11 important.

12 So having one person with the
13 compliance officer title, the cynic is going
14 to suggest that only that person's interested
15 in compliance, and everybody else is
16 interested in catching, which works against
17 you.

18 So what my only thought would be,
19 be careful with selecting the title and the
20 image of this person. Everybody should be
21 responsible. Based on the slide, everybody's
22 responsible to promote compliance. But this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 person is going to be a bit different in the
2 sense that this is pushing out to the public
3 and responding to the public in a dedicated
4 way, is what you have in your mind.

5 MR. RISENHOOVER: That's what I
6 have in my mind, is you've got the person
7 dedicated, and then as you have a spectrum
8 through the rest of the organization. The
9 next group would be the enforcement officers
10 we're also going to bring on, that are going
11 to have more of that COPPS function.

12 Remember that slide, which it is
13 more enforcement-related, that yes, you've got
14 a violation. Here's a way to fix it. Here's
15 a fix it ticket. You fix it, it's not a
16 problem. Or talking to them about specific
17 problems that they can help, you know. And
18 then the special agents also have an outreach
19 function, but they're not the on-the-dock
20 presence.

21 So we're getting a compliance not
22 with the person, but with the program that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 involves somebody dedicated to it, somebody
2 that works in outreach, more enforcement
3 officers to be on the dock, you know, work
4 hand in hand with the fishermen, and then if
5 we need the investigative side of it, then
6 you've got the agents for that.

7 MR. DONOVAN: Plus there's a
8 clearinghouse, a collection point. So you
9 know, as the SAC, when I get a data call and I
10 want to put together a product for a council
11 meeting or to respond back to headquarters,
12 something like that, I'd like to go to maybe
13 one person and say okay, how are we looking at
14 compliance?

15 You know, so that person, that
16 person should also be in tune with -- in the
17 Northeast, we've got 25 field agents from Maine
18 to Virginia, all right. I don't want to make
19 25 calls. I don't have time to make 25 calls.

20 But I also want -- I want a broad
21 response to what are the issues on the
22 waterfront. Granted geographically, Maine's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 got different issues than Virginia, okay. But
2 some of them are going to, you know, come back
3 to either the regulation or a perception.

4 How do we handle that? That one
5 person is going to be in tune, very
6 coordinated with the concerns we have within
7 the states of the enforcement officers, all
8 right, being boarded multiple times, because
9 now you've got one more uniform on the docks
10 boarding your boats.

11 Well, the best case scenario is
12 it's going to be coordinated between us, the
13 Coast Guard and the JEA, you know, our state
14 partners who are primarily funded by us to do
15 federal fisheries enforcement.

16 That compliance person's going to -
17 - you know, that's three more people that that
18 compliance person's going to collect
19 information, to make sure that the
20 information, we'll give it to the regional
21 administrator.

22 The region will give it -- the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 information that will be given to the councils
2 and given to headquarters, is pretty much
3 similar to what the real issue is, so we can
4 fix it faster.

5 MR. JONER: Randy and George, did
6 you have something?

7 MR. CATES: No. I just had a
8 comment on what you were earlier stating about
9 MAFAC's role. Maybe I don't know that it is
10 our role. Our role is to advise the Secretary
11 of Commerce. I don't know if we're
12 overstepping what we've been tasked to do.

13 MS. LOVETT: Well, we provide
14 advice on migrational issues, to help provide
15 advice to the AA, and that's not necessarily
16 relevant to the Secretary at this point in
17 time. It doesn't necessarily go up to him.
18 But it's certainly helpful to the agency to do
19 the work that we're trying to do.

20 MR. JONER: And I think, to answer
21 that, our advice is going to the agency.
22 We're not a stand-alone committee that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 funded by Congress or something. So --

2 MR. O'SHEA: Well, two things. One
3 is the Secretary of Commerce is up in New
4 England answering questions about law
5 enforcement, so we might be interested in
6 getting some advise with law enforcement on
7 those exports.

8 But second, just stand back ten
9 feet and looking at the political dynamics, it
10 looks -- someone other than me is going to
11 come up with the idea of the national law
12 enforcement advisory committee, to hold
13 National Marine Fisheries Service accountable
14 for the changes they're putting in place.

15 Just the way government works, is
16 this going to be an advisory committee likely
17 to come out of this whole process? So the
18 question to the agency is you want to go
19 through the whole deal of setting an
20 independent one up, or do you want to -- is it
21 more advantageous to use something that's
22 already established.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The second point that I wanted to
2 make, if you're going to measure compliance as
3 Tim is talking about, Alan, from your
4 perspective, I think it would be important
5 that that methodology be somewhat consistent
6 throughout the whole country, and there should
7 be a --

8 Maybe it is already. Maybe you
9 guys have that. But it would seem to me
10 you're going to be -- while fisheries is
11 regional, the accountability is national, and
12 there may be some value in having a
13 methodology that's consistent and accepted
14 through all the regions, for you guys to deal
15 with compliance.

16 MR. RISENHOOVER: And I think we
17 need to move that way. That helps us not only
18 show, you know, the value of kind of that
19 third stool like I talked about this morning,
20 but it also helps us in budgeting in the long
21 run.

22 MR. O'SHEA: And it would also help

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a guy like Tim, who's not sitting there with
2 his 28 guys trying to figure out how do we --
3 what's the right answer to give to the council
4 relative to compliance, that he has a plug and
5 chug formula that you put right in there, and
6 he's not inventing it. Well, now he's down in
7 Florida trying to do the same exact thing.

8 (Off mic comment.)

9 MR. JONER: Did somebody over here
10 put your hand up?

11 MR. DONOVAN: No. Go with Randy.
12 I'll follow up. I have another comment.

13 MR. JONER: Okay.

14 MR. RANDY FISHER: When we're --
15 say for a process of setting up catch shares,
16 we were talking to Dana and questions starting
17 coming up how is Enforcement going to deal
18 with it, and he said from their perspective,
19 it was going to be a lot different, which was
20 interesting.

21 He said we're going to have
22 different kinds of enforcement than we ever

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 had before, because what we're going to have
2 to be doing is tracking whether or not
3 somebody who has more than three percent of
4 the shares of, you know, the total thing.

5 So it almost sounded like a
6 different kind of Enforcement person, and I
7 was wondering whether or not that was true and
8 whether or not you guys had talked about it,
9 and whether you were prepared to move forward
10 in that way.

11 MR. RISENHOOVER: Yes. I don't
12 know if they've talked much about it, but you
13 know, from the management side, we had talked
14 about it, that instead of, you know, your
15 typical enforcement officer or your
16 enforcement agent, you may need more of an
17 enforcement auditor, someone that has a
18 different skill set than perhaps what we have
19 now.

20 MR. RANDY FISHER: Right.

21 MR. RISENHOOVER: To go back and
22 audit the books, look for inconsistencies and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then follow up on those inconsistencies.

2 MR. RANDY FISHER: Yes. That's
3 kind of the impression I was getting from him.

4 MR. RISENHOOVER: So that's a
5 training issue and a future workforce issue
6 that we may need to look at, and I don't know
7 --

8 MR. DONOVAN: In my old days with
9 NCIS, you know, when we look at procurement
10 and fraud, we went to the Defense Commission
11 of Audit. They had auditors, and they would
12 look at contracts and come back and say you
13 know, you've got some issues here. So there
14 was more of a referral.

15 Internally, you know, this is a new
16 side of paper cases, and we would need either
17 an auditor or some type of analyst that tells
18 the specialist to actually follow it and
19 determine trends, issues, what we need to
20 watch for. There is going to be a different
21 approach to that.

22 MR. RANDY FISHER: Well, starting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 January 1 --

2 MR. DONOVAN: Yes. Well, the
3 inspections started May 1 for us, and this
4 whole year we're learning as the year goes,
5 what are the things we're seeing differently.

6 How do we approach this new style of
7 management that has been changed?

8 MR. RANDY FISHER: We already have
9 that. I mean you guys must have a model for
10 that right here on the scallop fishery. I
11 mean there is a cap on that. We have to sign
12 a paper saying who owns part of that boat.
13 Nobody's allowed to own more than five percent
14 of the scallop fishery.

15 I mean so there is a program out
16 there already in place, that you guys have the
17 model for that.

18 MR. DONOVAN: Again, you know, does
19 it involve another position? Do we dedicate
20 somebody to look at that? Again, it's a
21 different style of, you know, training that
22 we've been necessarily providing our folks to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gather, you know, who, what, when, where type
2 of facts, to the next step.

3 MR. JONER: I want to draw the
4 committee's attention to the time. I think
5 one of them says ten after five. Are those
6 clocks on there?

7 VOICE: Yes.

8 MR. JONER: So think about the
9 time, and what would you like to finish by
10 5:30, you know, get a half hour to get over
11 there, or is that good time?

12 MR. RISENHOOVER: I think Tim needs
13 to step out fairly soon to catch a plane.

14 MR. JONER: Okay. So then I want
15 to make sure that we're answering your
16 questions, you know. This is all good
17 discussion we're having here.

18 MR. DONOVAN: Actually, throw one
19 on the table. Strawman. Who is this person?
20 Former, you know, agent, somebody out of the
21 fishery, somebody that's actually written
22 regulations. Somebody that's totally

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unbiased. I mean that's the other thing we're
2 struggling with. Who best fits this --

3 MR. JONER: For the coordinator.

4 MR. DONOVAN: Yes, our lead person,
5 I mean for the compliance liaison person.

6 MR. JONER: Liaison, that's what I
7 meant.

8 MR. DONOVAN: As well as the person
9 that actually has buy-in, both from the, you
10 know, the industry, you know, and credibility.

11 That's the other thing we're kind of screwing
12 around with this. What is the background of
13 that person that best fits this mold?

14 I do have to leave now to catch
15 that plane, so if you don't mind. Thank you
16 all very much.

17 (Simultaneous speaking.)

18 MR. JONER: Thanks so much.

19 MR. NARDI: I would say it's
20 somebody that at least knows the industry, the
21 seafood industry anyway. I don't know, you
22 know, and I'm curious what other people think,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know. Are we biasing things if it's
2 somebody that's got a long history in
3 enforcement or a long history in regulation?
4 I don't know.

5 But I think somebody that's --
6 they've got to know the region. They've got
7 to know the players. What's going on in their
8 region? They've got to have, hit the ground
9 with some credibility.

10 MR. CATES: I don't think it's a
11 law enforcement person.

12 MR. RISENHOOVER: And that's what -
13 - that was my initial thing was, I just can't
14 say all right Tim, name somebody.

15 That's not going to work, and
16 that's why we slowed this down a little bit,
17 to define the program better, and define the
18 person better.

19 MR. ALEXANDER: I would almost
20 think that you'd want somebody that, because
21 nobody's going to be able to know all the
22 regulations for every fishery from Virginia to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Maine, you know.

2 Somebody -- you're going to have to
3 have somebody that can have their face seen on
4 the dock, and know who the hell to call when
5 they can't answer that question, excuse my
6 French, and know who to call when they can't
7 answer that question for that person.

8 But I mean I guess you guys have
9 already figured that out though, when you were
10 designing the thing, saying okay, we want this
11 guy to know the most about monkfish, we want
12 this guy to know the most about scallops. He
13 would be the guy to call.

14 MR. RISENHOOVER: Right, and so a
15 lot of this position is not going to be
16 knowing the answer.

17 MR. ALEXANDER: Right.

18 MR. RISENHOOVER: It's going to be
19 knowing how to find the answer, and then
20 having the trust, the trust of both with the
21 industry and the trust within the
22 organization.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. O'SHEA: Well, you know, it's
2 interesting that it shouldn't be enforcement,
3 that comment. But I think the other part of
4 this dynamic, to be honest with you, if you
5 think about it, is this has got to be a person
6 that agency trusts.

7 Because if you bring somebody in
8 that the agents think is a ringer, you're
9 going to have "Well, Dewey told me it was
10 okay." If that person isn't lined up with the
11 agents, I mean then now all of the sudden it's
12 let's trick -- you know, it just -- it's not
13 going to help.

14 The other part is with the
15 technology you have today, it's possible like
16 the guy can find the answer, so the guy
17 doesn't have to memorize all the regs. He
18 needs one of these things that you've been
19 looking at, like the Ipod that has all the
20 answers on it, and he understands how to read
21 it and apply it, and knows how it's being
22 enforced.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: And knows enough
2 to know that if he or she doesn't know the
3 answer, not to wing it. Don't give an answer,
4 because it jeopardizes the person he's giving
5 the answer to if it's wrong.

6 MR. O'SHEA: You know, there's a --
7 you know, the other view of that is in my
8 experience, there's been some agents that have
9 been around for a long, long time, and I
10 remember dating myself with my Coast Guard
11 stuff, where I used to love having those folks
12 come down to the ship, because they would sit
13 down and talk to the crew and say you're going
14 to be looking for this, you're going to be
15 looking for that.

16 They were just very, very
17 knowledgeable, very experienced, and I think
18 it's going to be hard finding a non-law
19 enforcement guy or gal that's seen all that
20 stuff and you know, is able --

21 MR. RISENHOOVER: And see that's
22 it. You know, when this first came up, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 said let's get somebody on board immediately.

2 "Alan, have me a name by Friday."

3 I sat there and no, no, no. Talked
4 to Tim, talked to some other people, and
5 that's when we decided we need to slow this
6 down, to make sure we do this right, because
7 the damage could be bad either way.

8 MR. JONER: Well, just to answer
9 Vince, you know, I think there are people out
10 there, you know. I think you get somebody
11 that started out as a port sampler, observer,
12 worked their way up and has done regulation
13 and enforcement.

14 MR. O'SHEA: Dana was pretty high
15 up in Enforcement.

16 MR. JONER: And it doesn't, you
17 know, former fish cop is not disqualified, but
18 you know, it's going to have to be the right
19 person there.

20 MR. O'SHEA: It could include that.

21 MR. JONER: It could include it,
22 but there are plenty of people that I work

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with at NOAA that had enough exposure, and a
2 lot of it is picking the right person.

3 MR. O'SHEA: Yes.

4 MR. JONER: So --

5 MR. RISENHOOVER: I know we've kind
6 of benchmarked Dana a little bit on what type
7 of person works.

8 MR. RANDY FISHER: He works really
9 well with the council and the state cop very
10 well. He's effective.

11 MR. DEWEY: So we just need five
12 more of him.

13 (Off mic comments; simultaneous
14 discussion.)

15 MR. DEWEY: I'm at a little bit of
16 a disadvantage because I didn't hear your
17 presentation this morning, and I really
18 appreciate Vince's wisdom here.

19 You're Coast Guard and I'm MAFAC as
20 well, and I don't know if it was a
21 recommendation of establishing an advisory
22 committee or not but that's something you've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 raised, and I think that would be a logical
2 recommendation coming forward from MAFAC, is
3 that there be an enforcement advisory
4 committee established, and that NMFS consider
5 using MAFAC as that vehicle.

6 MR. JONER: I'll put that down,
7 what you said, as a good option, because you
8 have the people here that can do it. If he
9 wants to form a new committee or give us an
10 extra --

11 MR. DEWEY: Please consider it as
12 the vehicle and then I was looking at your
13 trigger questions in your presentation here,
14 and I guess some issues have been raised
15 already in the discussion earlier today, but
16 as far as the goals of a comprehensive
17 compliance assistance program, it seemed like
18 one of the goals to me, the logical goals
19 would be an improved understanding of the
20 regulations, and then measuring if the program
21 is working would be fewer violations which
22 involved ignorance of the law.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: And there's
2 problems associated with trying to figure out
3 if they were ignorant of the law or just
4 thought I haven't been caught yet. So we've
5 talked a lot, and it comes into our
6 performance measures in the organization. How
7 do we measure our performance?

8 But on compliance assistance, yeah
9 I think understanding, and then as you
10 interact with folks, fewer interactions that
11 result in problems is the way to measure that.

12
13 And I think, you know, the middle
14 bullet here is the one I think is really
15 important as well, and that's improved
16 relationships between whatever the regulated
17 industry is and not only Enforcement, but the
18 agency as a whole.

19 I think it's the, you know, the
20 quarterly meetings, having the right person,
21 getting questions answered timely and not
22 having the backfire of oh no, that was the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wrong answer, because that scares everybody.

2 MR. JONER: Vince.

3 MR. O'SHEA: Thank you. Alan, the
4 first answer to this question is going to be
5 "everyone," and that's not a helpful answer.
6 But it seems to me that who the primary
7 customer is for enforcement or enforcement
8 services is perhaps an important exercise to
9 go through.

10 You know, one obvious answer it's
11 well, the lower whiting fishermen, because if
12 you don't have a course when they get stuck by
13 the chiefs. On another level, maybe it's the
14 councils, the folks that have the political
15 clout, the access, the plans. They don't have
16 a plan without Enforcement.

17 Or maybe it's the agency, but you
18 know, there's a whole list there. But I think
19 going through that exercise may be useful in
20 terms of bargaining some of the other things
21 that you have in your core questions, of at
22 least understanding who your primary -- who's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the most important group to keep happening.

2 You know, because you're doing your
3 job and providing a needed service, and can
4 therefore be part of the silent majority that
5 will step up and say, you know, we need
6 enforcement. We need resources to put towards
7 enforcement; we need to keep these studies
8 going.

9 I don't know that you can answer
10 that question in the 20 minutes that we have
11 here, but I think that's one of the things you
12 need to, what you might think about.

13 MR. RISENHOOVER: Can I add one
14 thing to that too, and that is you've got to
15 start thinking about the resource in one
16 sense, because you may have somebody that
17 thinks they're important, but we may need
18 those Enforcement guys over here because
19 something's happening with resource that's
20 damn serious.

21 MR. O'SHEA: Well, that's right.

22 MR. RANDY FISHER: And I'm not sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that will really happen, to tell you the
2 truth. It may; I just don't know.

3 MR. RISENHOOVER: And that's
4 something that likely will happen more, and
5 then when I talked this morning about our
6 priority-setting, you know, it's not going to
7 be we're going to say okay, we're going to be
8 on this dock at this hour. That's a little
9 more priority than you'd want to do.

10 But in general here are higher
11 priorities and why, so that the regulated
12 community knows that you're there for a
13 reason, because it's a high threat to the
14 resource, and the resource could be damaged by
15 that, as opposed to maybe it's a high threat,
16 but the resource is in really good shape.

17 There's a difference between taking
18 probably one right whale and one extra --

19 MR. O'SHEA: And if I can just,
20 just to follow up. So the value of
21 identifying this key customer group is that at
22 the end of the day, you have them advocate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your mission, your activities and what you're
2 doing, in addition to the agency.

3 So I think you're always -- and
4 that message always goes a lot further than
5 NOAA saying "we're doing a great job."

6 MR. RISENHOOVER: Right, and we do
7 get the sporadic press. There was an article
8 today from Sacramento Valley on, you know,
9 NMFS needs to invest more in enforcement. We
10 have all the biological things you want, you
11 know, tell us how to manage the water.

12 But until you actually enforce it.
13 So it's kind of where you say okay, that is a
14 big priority for us. Follow through on it and
15 create a constituency that supports you. But
16 there's two sides to that, and the water folks
17 may have a different perspective than the fish
18 folks.

19 (Laughter.)

20 MR. JONER: Well, I think we've
21 covered a lot of ground and made some good
22 recommendations, and we tried to cover

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 everything and come up with them all. But
2 that will save us something to do at our next
3 meeting.

4 MR. RISENHOOVER: Well, I think
5 that it focuses me on a couple of key areas,
6 and also that we're not way off base. You
7 know, another person doing compliance is the
8 last thing you need. I'm not hearing that.

9 Then as we move forward, I can
10 report back to MAFAC on things, whether
11 there's a working group or a subcommittee or
12 another session like this, get a feedback from
13 you all just to see how we're doing, and I
14 think we will be doing more in the Northeast
15 in particular.

16 MR. JONER: Anybody else have
17 something to add? I mean should we go --

18 MR. O'SHEA: Not to add, and I know
19 you want to get out of here, so just quick.
20 But didn't the protected species guys, haven't
21 they deployed some on the water frontier
22 technology guys to promote, you know, critter-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 friendly gear, and I'm thinking of John
2 Higgins up in your neck of the woods, and Sal
3 whatever his name is down in the Mid-Atlantic.

4 MR. RISENHOOVER: You mean like
5 pingers and --

6 MR. O'SHEA: Yeah. This guy shows
7 up; he's all these gill nets, breakaway knots.
8 He's got all his stuff there, and you can go
9 up and you can talk to him. You don't have to
10 worry about getting a ticket, and his whole
11 deal is these work really good. Don't waste
12 your money on this.

13 It's not the, you know, it's just
14 the issue of a NOAA employee that's there,
15 telling the fishermen how they can stay out of
16 trouble.

17 MR. ALEXANDER: Kind of the Coast
18 Guard's dockside inspections.

19 MR. O'SHEA: Yeah, so when we
20 question Terry --

21 MR. ALEXANDER: These don't get
22 written up. They just say these are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 things that need to be fixed.

2 MR. O'SHEA: Yeah, yeah, but he's -
3 - but Terry's one of the guys that potentially
4 interacts with them, and I don't know what the
5 reaction of those guys is.

6 MR. ALEXANDER: I mean we like it
7 when people come around and tell us, you know,
8 what, how. I mean we're constantly calling
9 somebody up and asking them, okay, the end
10 lines are how? How do we have to have these
11 breakaways, you know, and stuff like that.

12 I mean so I mean we want to be
13 complaint, and so --

14 MR. O'SHEA: But my question is
15 does that guy, to get back to Alan, does
16 having that guy in Acquisition doing that,
17 does that help?

18 MR. RISENHOOVER: Yes, I think it
19 does.

20 MR. O'SHEA: Do people trust him?

21 MR. RISENHOOVER: Yep. I think --
22 so that's what we were thinking in all of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this, if can we just rely on them, and the
2 answer is no.

3 We need our own Enforcement person
4 that ties into those PR folks, that ties into
5 the Sustainable Fisheries folks, that ties
6 into the port samplers, that ties into the
7 observer program, and then ties into all the
8 external stakeholders, you know, to be the OLE
9 person, the Enforcement person that does just
10 that.

11 MS. LOVETT: Can I add something?
12 Earlier, there was a little bit of discussion
13 about with the councils, and I've been on the
14 ground working on amendments and I think that
15 that is really key, to make sure that the
16 councils really do consider the ramifications
17 of some of their plans and their various
18 amendments in the early stages.

19 Because I remember doing essential
20 fish habitat in the Gulf, and one of the
21 recommendations was we needed some special
22 breakaway chain for -- or a special ring, like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what is it called, a ring that would break.
2 What are they? There's a special, a breakaway
3 ring, okay, on the shrimp trawls, to help
4 protect how --

5 So if they get snagged, they're not
6 -- they lose it, but they're not destroying
7 stuff while they're trying to pull it off.
8 Anyway, you know, they went through all these
9 discussions of is it enforceable, is it not
10 enforceable, and it was good to have that
11 discussion.

12 On the other side of it too, they
13 decided to design habitats of particular
14 concern, and people were wondering why the
15 boundary was square, because it's around, you
16 know, additional pinnacles near the flower
17 gardens that are mostly round.

18 But the issue was, you know, the
19 fishermen need to -- it has to be easy for
20 them to be able to understand where the areas
21 are, and everybody decided it was smart to --
22 it's covering a bigger area. They're going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lose a little bit of fishing area, but it's
2 something that fishermen can follow more
3 easily.

4 Those conversations are not heard
5 all the time, and they're not discussed early,
6 early on. When it gets to that last point
7 when they're voting on something and then it's
8 contentious, you know, you sort of lose the
9 baby with the bathwater sometimes. It's not -
10 - the end result is not good.

11 So I think both having it out of
12 focus with councils.

13 MR. RISENHOOVER: And I'm going to
14 stay on the councils on that. So you know,
15 the council training program is going on
16 tomorrow or this week. The Enforcement
17 presentation is tomorrow, and I hope to be
18 there to make that.

19 That same sort of compliance slides
20 you saw from me today will be -- some of them
21 will be given to the new council members
22 tomorrow.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LOVETT: That's when I'd like
2 to talk about it.

3 MR. O'SHEA: If you could do one
4 thing for those, and I've sat through at least
5 one of those council training things and I
6 gave probably four or five of them to my
7 clients, if you could give one takeaway
8 message as council members, would be to
9 encourage them to seek out the NMFS
10 Enforcement Guide and the Coast Guard Guide
11 that will both be in the council process, and
12 to talk to them informally and develop a
13 relationship with those guys.

14 So don't count, you know, in other
15 words, they should be, count on them to
16 necessarily become enforceability experts, but
17 just encourage the new council members to
18 develop a relationship with the Coast Guard
19 and NMFS's Enforcement guy, and consult with
20 them offline.

21 If they could get one takeaway, I
22 would suggest that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. RISENHOOVER: Right, and I
2 think, you know, as we work more with the
3 councils on enforcement, it's just not the
4 enforcement committee.

5 It's the plan development teams or
6 it's those more ad hoc things, and that's
7 where I think Dana has started doing, is to
8 the plan development teams, the early on
9 stuff, and not just the formal part of the
10 council, because it's usually cooked by then.

11 MS. LOVETT: Yes.

12 MR. JONER: It's 5:30, so we'll
13 adjourn and Heidi, I appreciate you taking
14 notes.

15 MS. LOVETT: May I just send them
16 to you?

17 MR. JONER: Well, I would
18 appreciate if you'd send them to a couple of
19 other folks to help on it. Randy?

20 MR. RANDY FISHER: I have them
21 blocked out on the emails.

22 MR. JONER: Okay, Bill. Co-edit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this for tomorrow.

2 MR. DEWEY: Sure.

3 MR. JONER: Okay.

4 MS. LOVETT: So I tried to
5 highlight the notes that came out. I have on
6 my notes they're highlighted, or made it in
7 bold those things that were more of the
8 recommendation-type sentences, that yes, so
9 you can see it.

10 MR. JONER: And then like I
11 suggested, tomorrow take a few minutes to sit
12 down and do a final. Because our last one up
13 in Juneau, we didn't have time to do it,
14 because we went right from our committee
15 meeting, get back into MAFAC, and we had a lot
16 of errors in our notes because we didn't have
17 a chance to go through it.

18 I was trying to edit them during
19 the discussion, but it didn't work out.

20 MS. LOVETT: Okay. So Bill, you
21 said no?

22 MR. CATES: I don't have email at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all.

2 MR. JONER: George, can you?

3 MR. NARDI: Yes.

4 MR. JONER: Okay, the three of us.

5 Thank you.

6 (Simultaneous discussion.)

7 MR. JONER: So thank you everybody
8 for your attention tonight.

9 (Whereupon, at 5:33 p.m., the
10 meeting was recessed, to reconvene on
11 Thursday, October 21, 2010 at 8:30 a.m.)

12

13

14

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701