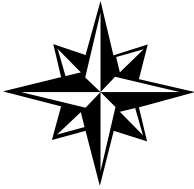


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Fisheries Management

Seafood Quality Control Assurance - HACCP Certified

Vessel and Crew Safety

**Testimony of James M. Kendall before
The Domestic Policy Subcommittee of the Oversight and Government Reform Committee
Tuesday, March 2, 2010
Kyrouz auditorium, Gloucester City Hall, 9 Dale Avenue, Gloucester, MA**

Good morning. My name is James M. Kendall, but I am better known within the fishing industry as Jim Kendall. I am a former commercial fisherman from New Bedford, MA, and I have been a member of the fishing industry and the fishing community for nearly 50 years. I fished actively for thirty two (32) years before a severe injury forced me ashore in 1994, and for the past 16 years I have worked & served in a variety of vocations and capacities within the fishing industry.

Some may wonder why I am testifying before this committee since so many years have passed since I last actively fished, and had actual dealings and/or interaction with law enforcement. It has been more than 25 years since I was cited for my one and only infraction, a scallop meat count violation, but the years haven't lessened the trauma of that experience. I won't go into great detail other than to point out that the infraction that I (as captain), was charged with and found guilty of, was for exceeding the 40/lbs. scallop meat count, by one (1) scallop; our final meat count average was forty one (41) scallops. A violation of the management regulations? Apparently. A criminal act? Unlikely. However, the monetary penalty for the infraction was \$14,070.71!

We had our day in court, but it did nothing to lessen that penalty, in fact the judge said "we were lucky that he didn't increase our penalty"! However, several good things did happen, with regard to enforcement procedures, following our trial. More effort was to be made to take random samples from scallop bags which also were to be randomly selected; captains were offered an opportunity to take their own counts if they felt that the agent's count was inaccurate, and an average of those two (2) counts would be used as one of the ten (10) samples taken; a tolerance range was also added to the final count. While these may be looked upon as favorable actions, the problem was what had to occur for us to get to that point.

Was this an unfair enforcement action? Not with the facts that I have presented, but there was at least one troubling issue that I raised at the trial where the agents forgot to document three (3) of the counts, which the agents admitted occurred, but the judge said was of no real consequence. Well it was to us!

In the subsequent years I have been asked to assist other fishermen or vessel owners who have run afoul of the regulations for one reason or another. In each of these cases I felt that while an infraction may have occurred, it was never a willful or deliberate attempt to break the law, but the resultant penalties would belie that. In fact there never did seem to be any rhyme or reason to most of the penalties levied, or many of the final settlements. I recall that a penalty schedule was to be developed and applied to the various NOVAs. I don't know that it ever was, but judging by the published enforcement reports it doesn't seem likely.

Now I've had what I would consider a fairly good relationship over the years with many if not most of the NOAA enforcement agents, and their Coast Guard counterparts, and I hope this testimony won't harm that, but there needs to be changes made! Fishermen are first and foremost fishermen, not criminals! Yes, there are some who undoubtedly are, but the vast majority of them are trying to provide for their families, and their crew's families. They are not looking to rape the oceans, kill the very last fish and destroy the ocean habitats as some have

proselytized. In fact, herein is where the very problems begin. Call them criminals, defile them and demean them enough, and soon you can see nothing else, so you treat them as such. Too many times fishery management regulations are designed and written with more concern for restrictions and regulations and how to enforce them, rather than for good fishery management and conservation.

There is ample evidence that even seemingly minor infractions have caused extreme, insurmountable hardships for the fishermen who are charged with them. Noncompliance of any sort is viewed as being willful, done with intent, or total disregard of the law, and many times subject to the most egregious fines and penalties. Once again, please remember that these infractions are for the most part civil infractions, not criminal.

The Magnuson-Stevens Fishery Conservation and Management Act as amended in 1996 authorized the Commander of the 1st Coast Guard District to establish the Coast Guard Law Enforcement Working Group, which was to serve “as an informal fisheries enforcement working group to improve the overall compliance with, and effectiveness of the regulations under the Northeast Multispecies Fishery Management Plan.” When the group was formed, I was chosen to be the Chairman, and for 5 or 6 years I believe that the Working Group was able to follow that charter. It afforded fishermen and industry members the unique opportunity to meet and discuss issues in informal settings with the various levels of enforcement, including NOAA General Counsel, federal and state enforcement agents, USCG officers, up to and including several of the Admirals who commanded the 1st District Coast Guard.

As Chairman, I was invited to attend the opening of the USCG’s Northeast Regional Fisheries Training Center (NERFTC), and soon after I was asked to address the training classes of Coast Guard law enforcement and boarding officers as an industry speaker. The intent was to try and put a face on the industry, which many of these officers had never even met before, and to help them understand what it was like to be a fisherman. While doing so I was often asked by some of the CG personnel what the fishermen thought of them. Many fishermen particularly Captain Rodney Avila, accompanied me to these classes, and met and spoke with them. I soon began to hear back from fishermen that the tenor of recent boardings had changed to a great degree, and soon even more fishermen were willing to accompany me to take part in the classes themselves.

After about 5 years the Group began to fall out of favor with one or two individuals, and the meetings with industry ceased to be scheduled, and the invitations to appear at the NERFTC classes also ended. I cite this simply as just another example of how efforts to encourage cooperation among fishermen and enforcement personnel can be undermined and destroyed by those who see fishermen only as crooks and violators who cannot be trusted, and must be constantly controlled by the threat of force or punishment.

While I hope that this hearing and other actions will bring about changes that will benefit both the fishing industry and enforcement, I fear that pending regulations implementing Catch Shares and/or sectors will soon place the New England fishing industry in a situation that will soon be totally untenable for many if not most. While we often fear the unknown, the near certainty of failure is much more terrifying. This uncertainty is particularly frightening if there is no safety net in place and failure is not an option!

