

TESTIMONY OF  
RICHARD E. BURGESS  
BEFORE THE  
**Domestic Policy Subcommittee**  
**Oversight and Government Reform Committee**  
**U.S. House of Representatives**  
GLOUCESTER, MASSACHUSETTS  
MARCH 2, 2020

My name is Richard Burgess. I live in Manchester, Massachusetts and I am a lifelong fisherman. I began my career tub trawling and tending herring weirs in the Bay of Fundy in the 1960's. I then went to work on a herring seiner. I bought my first boat, a lobster boat, in 1976 and fished out of Manchester, MA. I also groundfished in the winter and spring. In 1985 I rigged my boat for Scottish seining and by 1985 I was groundfishing full time. In 1985 I purchased a small dragger, the EXPLORER II and bottom trawled out of Gloucester, MA. Since then, I have owned and operated a number of small groundfish boats, and currently own and oversee operations of four gillnet boats out of Gloucester which employ seven people. Because of the restrictions placed on the gillnet fleet, we utilize two boats for each crew, and rely on Days at Sea from 7 other permits which have been acquired through the years. I also own and operate a small charter-head boat, and take charters for bluefin tuna striped bass. My various titles are as follows:

Operations Manager, Owner:  
Heidi & Heather Fisheries, LLC  
Scotia Boat Too LLC  
Rock On Products LLC  
Operator Charter Vessel ROCK ON

Vessels:  
55' HEIDI & HEATHER      FED PERMIT #230422  
45' RYAN ZACHARY      FED PERMIT #149318  
42' SCOTIA BOAT TOO      FED PERMIT #121546  
45' JULIE ANN      FED PERMIT #149610  
Seven skiffs with permits to support the four vessels above  
ROCK ON (Charter)      0728

I am also President of RockOn Products, which produces an array of floating lures for targeting bluefin tuna for the recreational and commercial market. RockOn is a sponsor of the annual Tag-A-Tiny tuna tournament which donates 100% of its proceeds to Dr. Molly Lutcavage's bluefin tuna research.

I have been involved in the management process, having assisted in formation of the following groups dedicated to assisting in the development of sustainable fisheries, while ensuring the continued participation of small business like mine and the community in which I live.

Co-founder/Chairman, Mass Gillnetters' Assoc.  
Co-founder/Chairman, Gulf of Maine Fisherman's Alliance  
Co-founder/Director, Northeast Seafood Coalition  
Acting member, Choir Coalition  
Board of Directors, Mass Fisheries Recovery Comm.  
Board of Governors, Manchester Harbor Boat Club  
Member, East Coast Tuna Assoc,  
Member since 1972, Mass Lobsterman's Assoc.  
2009 Sector Leader – President Inshore Fixed Gear Sector

### Duties and Responsibilities

Attended all NFMC meetings for the Gulf of Maine Fisherman's Alliance and Mass Gillnetters Assoc, as Chairman, Northeast Seafood Coalition during its conception. Reported back to Assoc. with all information from council meetings. Met personally with Andy Rosenberg, acting Director prior to Pat Kurkul for all Assoc. related business.

Every year, I receive NMFS permit holders letters for my four active boats and seven permits. Often, I receive duplicates for a number of boats and the quantity from the one region is thousands of pages per year, which I have to sort through and read. The complexity of the regulations has become unmanageable, particularly where the cost of an innocent mistake can cost me my business. In addition to the mailings from this region, I also receive regulatory letters from the Highly Migratory Division of NMFS, and the Commonwealth of Massachusetts Division of Marine Fisheries. I also get mailings from the New England Fishery Management Council and the mid-Atlantic Council. These often contain complex and conflicting interpretations of present and upcoming rules. The paperwork burden is huge.

We are frequently boarded by Coast Guard members carrying automatic weapons and questioned by NOAA agents who carry weapons and identify themselves as criminal investigators.

Over the years, I have had a number of incidents which have raised significant concern as to the commitment of personnel at the National Marine Fisheries Service's claimed commitment to ensuring the viability of the region's fisheries, which are generally conducted by small businesses.

## II. Statement from Pat Kurkul

At the first NFMC meeting Pat Kurkul attended as Acting Director, I approached Pat and told her that I was representing the Gulf of Maine Fisherman's Alliance and had been through out Andy Rosenberg's stay as Director and I would like to know what she envisioned of the small vessel fleet and her intentions going forward. Pat then told me her intention was to eliminate the inshore small boat fleet as soon as possible.

I then returned to my seat and told Paul Cohan, President of the Assoc. Then I informed Attorney Ouellette as to what Ms. Kurkul had told me.

### My Reaction

I was absolutely appalled at what Pat had said and from that day until the present I believe she has made every attempt to follow through with her statement.

### Subsequent Discussions

Since that first council meeting Pat has refused to give me any time for discussion on this issue!!

Every time I tried to bring this in front of the NFMC I have been told it can not be discussed because of the Paperwork Reduction Act and/or it is not on their agenda.

### III. Statement by Cathy Rodriguez

At one of the next couple of Council meetings, when I raised the issue of how my crew and I were expected to support ourselves, service our vessels and keep current with hundreds of thousands of dollars in loans on my vessels, I was told by Cathy Rodriguez that Burger King was hiring. Cathy at that time was working beside Pat Kurkul as an assistant administrator. I did not say much to her, I was very polite, just once again told Paul Cohan. Stephen Ouellette was sitting with me at that Council meeting.

### IV. Tom Hill Statement

Nov. 16. The Tavern in Gloucester. I was trying to get the Council to discuss the issue of the small boat fleet not being allowed to fish in the western Gulf of Maine closed area after 3 years of being closed. The council Chairman Tom Hill at the start of the lunch break came to me as everyone was leaving and told me to stop trying to bring something up that was not on the agenda. Standing next to me was David Ellington (the herring guy) and Federal Cop Dick Livingston. I said it was not right to close the area forever. Tom then took his index finger in his right hand and started pushing it into my chest and saying, "You and your inshore fleet are all done." I asked him to stop pushing me and he was getting all red I the face and said, "You heard me, you little guys are all done," still pushing his finger in my chest. Once again I asked him to stop, he did not and I make a move toward him. The Cop came over, told Tom to leave and asked me not to touch him!! Ann Margaret Ferrante came in at the next moment to find out what was happening and I told her what had happened.

## V. Frank Italia Statement

1997 or 1998. Special Agent Frank Italia said he did not like Captain Don's attitude and wanted to know how much I paid him and how much I and my wife had and how much money we had in the bank. I told him it was none of his business and he said he's a federal agent, it is his business, and he will find out one way or another.

## VI. Violations

November of 2007. I was asked by my Captain Don Smith to call the NMFS Days at Sea monitoring person Carol Blezinsky to see how many days were left on the SCOTIA BOAT TOO. We had been trying to get this information for some time, but NMFS advised me that the system was having problems. Because DAS were calculated at different rates in different areas, it is impossible for a vessel owner to know how long he is called into an area and what NMFS will assess for DAS on any trip. I called Carol, she told me there were 2.5 days left and not to worry because I had a leasing application on her desk and as soon as it was signed by an enforcement agent she would post the days on the computer and she would then subtract days from the total if the boat went over at that time. The boat went fishing 5 days past and I got a call from agent Dan DeAmbrusio to bring the boat to port, it had been red flagged and was being seized along with the catch. After trying to discuss this with him I called Carol Blezinski. She said, "Richard, I am so sorry," and agent came and took the lease application and told her not to say anything. They did not sign the application and let the boat go over on days by  $2.5 \times 2 = 5$  days.

### 1. Days at Sea

I was told that because the boat was now over on Days at Sea, that even though I had over 200 DAS available on other boats, I could not fish the SCOTIA BOAT TOO until I settled with NOAA. Unless I agreed to pay over the entire proceeds of the trips in question – about \$25,000 – the boat would have to remain tied to the dock until either I was issued fines of \$10,000 per day for each day the boat fished beyond its allocation – despite the pending DAS lease. I was also advised that NOAA takes the position that if I challenged a fine, it could be increased to \$140,000 for each violation. Although I had already paid the crew and the expenses for the trip in question, I agreed to pay over the proceeds of the trip to get the boat back fishing so the crew could support their families. I was also charged for the DAS, so NMFS got the DAS and the money.

### 2. Yellowtail Exemption Letter

Every year, I visit the National Marine Fisheries Service Permit office in Gloucester, MA to review the renewals of my permits to make sure I have all of the necessary permits, letters of authorization, etc. On my vessels RYAN ZACHARY, HEIDI & HEATHER, and BELINDA B I had the

Yellowtail Exemption Letter. I was going to send the SCOTIA BOAT TOO fishing in the area of Stellwagen Bank where the yellowtails are. Being very concerned I went to the NOAA Building and asked to get the Yellowtail Letter for the vessel SCOTIA BOAT TOO. At that time I was told by a person in Permits I did not need this letter because they were doing away with it. I said I have it on my other 3 boats and would like to get one just in case for the SCOTIA BOAT TOO. The person ensured me that it was not necessary. After the Gloucester Seafood Display Auction was raided my captain was called in by enforcement. He was told that if he told the agents what was going on at the GSDA they would drop the charges! After Don spoke to them, I was also called in and Attorney Ouellette and I went in to see Agent Mike Henry and Gino Moro. I explained to them what had taken place with the person in Permits and they told me I did not need the letter. They then told me if I tell them what the GSDA was doing illegally I would not be fined. I told them I was not aware of any illegal activity at the Auction, and they told me that wasn't good enough. Months later the boat and Captain were fined \$58,700. We have since agreed to five up 18 days at sea to resolve the case.

After paying \$25,000, I tried to explain to my wife what was in the FedEx box, \$58,700 for not having a piece of paper on the boat. She said you can't win with these bastards, what are we going to do? Then my daughter Heather came in from the other room and said, "Does this mean I can not go to college?"

During the years we possessed the LOA's we were routinely boarded by Coast Guard, NOAA and Massachusetts officials, and never asked for the LOA. I have since located the original Yellowtail LOAs for all of my vessels. Some of these have end dates before the start date. Although we could not locate the 2005 LOA for the SCOTIA BOAT TOO, I located two 2004 LOAs for the boat, the original and a "Duplicate". My belief is that when we renewed in March of 2004, they may have issued me a Duplicate 2004 letter, and I may not have noticed the difference.

May 2009

April 1<sup>st</sup>, 2009 I sent the SCOTIA BOAT TOO to New Bedford to fish 100 miles offshore, the closest area that the small boats can fish in April and May. May 9<sup>th</sup> I got a call from agent Mike Henry telling me that the SCOTIA BOAT TOO had been fishing since May 1 without a valid permit, the catch was to be seized and the boat would have to be tied up until we resolved a problem. He said they had been tracking the boat and it was in Block Canyon 100 miles out of New Bedford and in 10 hours, the time it takes for the boat to steam in, he would have agents waiting to seize it. Being on my way back from New Bedford I called Attorney David Smith and asked him immediately to go to the NOAA Building and see what was wrong. After several calls to Mike Henry he told me that because my captain had made a mistake on Vessel Trip Report for Nov. 2008 on which he had put the wrong month, they had not processed the renewal of the vessels

permit. David Smith, after going to NOAA called back and said there was an error on the VTRs, the captain make a mistake and wrote in (x) DID NOT FISH for 10/08 instead of 11/08 DID NOT FISH. The vessel was tied to the dock Nov. Dec. Jan. Once again NMFS Law Enforcement agents let the SB TOO continue to fish for several trips before notifying myself or the captain.

As a small businessman, I try my best to comply with all regulations, and respect the laws of this great nation. But I think the National Marine Fisheries Service continues to show a lack of respect of understanding of what it takes to operate vessels in harsh environment, and the costs and expense, and impossibility of remaining in compliance. Violations are issued for Days at Sea, where NMFS is unable to give us current data, and then looking back is able to assess us fines, after they issued sailing numbers for a vessel's trips.

I am committed to this industry, my crews and their families and my community. With hundreds of thousands of dollars invested, a significant amount owed to my community bank, I can not afford repeated violations for bookkeeping errors, particularly when NOAA can't provide me the data I need, such as DAS usage, and then issues my boats sailing permission, despite permit issues for DAS issues, where they can't provide the information to me on a timely basis.

This is not the way I, or other members of the American fishing industry expect our government to treat us. We work hard to bring wholesome fish products to the American people and to support our coastal communities. We have sacrificed for the last fifteen years to rebuild fisheries, with great success, see the attached NEFMC diagram. We ask for no hand outs, just the right to work hard every day and help feed America, with dignity, to be treated reasonably and perhaps with a little respect from our government for the sacrifices we have made and make every day. Is that too much to ask?

I strongly urge this Committee to see that all victims of NOAA law enforcement, like me, are compensated and monies we were wrongly forced to pay is refunded to us. Thank you for the opportunity to speak with you today.

Richard E. Burgess  
2/26/28