

**PREPARED STATEMENT OF DAVID E. FRULLA
FOR FISH EXPO WORKBOAT ATLANTIC 2002**

Thank you for the opportunity to appear before you today. My name is David Frulla, and I am an attorney with Brand & Frulla from Washington, D.C. I represent commercial fishing industry participants from Florida and Maine to Alaska, including the Trawlers Survival Fund of Southern New England, the Associated Fisheries of Maine, and the Cities of New Bedford, Massachusetts and Portland, Maine in connection with the on-going litigation and attendant regulatory proceedings regarding the New England groundfish fishery. Brand & Frulla also helped organize and continues to represent the Fisheries Survival Fund, whose participants include most full-time Atlantic scallop permit holders.

Preparing these remarks, and having a forum to present them, has forced me to think more broadly about fisheries management issues. This is five minutes out of the legal fox hole of keeping my clients operating from year to year.

First, federal fisheries management in New England appears ready to embark on a cultural upheaval in its fisheries and fishing communities. The upheaval is not just about rebuilding, but involves a drive for more production with less equipment. If you talk to a fisheries scientist, you will be told that we need fewer boats if there are fewer fish (so the fish can rebuild). And you will be told that we need fewer boats when there are more fish (because catch rates will skyrocket). Bad news, either way, for the current composition of fishermen and their communities. And, in the mid to long-run, it's not going to matter if you are a New Bedford scalloper or a Portland or Gloucester groundfisherman.

Upheaval may make some academic sense, but small businesses and the social fabric of fishing communities built since the Pilgrims are what is at stake in New England. It is hard to unravel four centuries of fishing tradition that admittedly did not develop in an integrated way. This is an issue faced most acutely in New England. Fleet rationalization was hard enough in Alaska, where major fleet development mostly happened after the Magnuson Act in 1976 – and Alaskan rationalization came with tens of millions of federal dollars to cushion its blows.

The press and you, as constituents, should be asking each and every public official, elected or appointed, if they support a cultural upheaval in New England fisheries. And, if so, then why. Because the if's and how's of fisheries rationalization involve value choices.

Second, any effort to implement a cultural revolution is, in large measure, divorced from the reality that fishermen see. Another scientist I know well talks of a "paper fishery" – and the need, someday, to make the paper fishery consistent with the actual fishery. No matter what attempts statisticians might make to claim "Trawlgate" is just a blip on 30 years of data, the failings in the survey underscore that these techniques at best provide gross approximations – like a GPS that tells you that you are in Disney World in Orlando, Florida, rather than Disneyland in Anaheim, California.

Don't get me wrong – we need to use the data, but we ought to have no illusions about its precision. Trying to count fish is important for fisheries management, and the job absolutely has to be done better. NMFS's efforts in this regard (perhaps belated) should be welcomed.

But even reformed efforts at fish counting should not – and cannot in a reliable way – be used to try to regulate economic activity to the tenth decimal point.

Nor should such approximate techniques be put to the service of reducing groundfish catches by 60 or so percent in 2003, only to increase them by 40 or so percent two or three years later. This is what Amendment 13 might do with cod catches. Moving certain groundfish rebuilding targets by two to three hundred percent overnight is yet another example of how the refinement of fisheries science and management is a work in progress.

To me, the imprecision in surveying and fisheries science more generally argues for the need for some flexibility in the Magnuson-Stevens Act rebuilding requirements and for stability in industrial management. After years of real sacrifice, New England fish stocks **are** rebuilding, thanks to reductions in days at sea and latent effort, gear restrictions designed to protect especially juvenile fish, and extensive closed areas that provide fish sanctuary in fact, if not name. If NMFS can't provide the flexibility, then Congress should. The worldwide historical experience with rigid economic planning is not good -- even when it was not based on counting the fish in the sea with a 20-year old net fished askew off a 30-year old government boat.

What does this argue for? A real, honest, thorough evaluation of the social values underlying rebuilding efforts. The same level of consideration of the mismatch between the demands we place on the "science" and what that science can reasonably be expected to offer in fact. It calls for more cooperation between the scientists and the fishermen on research projects, not philosophical opposition to and distrust of constructive industry efforts at involvement and empowerment. It is ironic that NMFS decided to scrap side-by-side NMFS/industry surveys only months before Trawlgate. That's heading in the **wrong** direction.

Finally, thanks to those within the beleaguered process who are trying to sort out New England fisheries management. Legal requirements and analytical pressures are pushing the system to the point of collapse. Fomenting an analytical break-down can be a strategy of those in the environmental community seeking radical change. Ask Western farmers who have faced an incredibly Byzantine "stakeholder process" and ended up with no water. Please stress to your elected officials that honest and hardworking fishing families need the same kinds of help as honest and hardworking farming families. After all, the fishermen were here first.

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