

Amendment 922– Add accountability and transparency to National Ocean and Atmospheric Administration grants

S. 761, the America COMPETES Act directs the National Ocean and Atmospheric Administration (NOAA) to establish a research and development program to “promote United States leadership in ocean and atmospheric science and competitiveness in the applied uses of such knowledge.”¹

A 2003 report by three Stanford University researchers entitled “Taking Stock of the Regional Fishery Management Councils” found that NOAA’s regional fishery management councils² that govern the multi-billion dollar U.S. commercial and recreational fishing industry are dominated by the industry, exempted from federal conflict of interest laws, and subject to little federal oversight.³

According to the report, only federal fishery management exempts federal decision makers-- the council members-- from conflicts of interest.

Sixty percent of appointed council members have a direct financial interest in the fisheries that they manage and regulate, according to the report. The study, sponsored by The Pew Charitable Trusts, concludes that the councils have presided over the economic and biological decline of many fisheries, and that the councils are not likely to implement the kind of management necessary to prevent future declines.⁴

Another recent investigation, by the *Baltimore Sun*, found that NOAA was funding a project in Maryland that has already cost \$10 million that has been questioned by scientific experts, failed to demonstrate

¹S. 761, Title V – Ocean and Atmospheric Programs

² Eight fishery councils were established in 1976 by the passage of the Fishery Conservation and Management Act, now known as the Magnuson-Stevens Act, to take primary responsibility for the management of dozens of fisheries along U.S. coasts in Atlantic, Caribbean, Gulf of Mexico and Pacific waters.

³ “Fish Perish as Conflict of Interest Snares Management Councils,” Environment News Service, November 13, 2003; <http://www.ens-newswire.com/ens/nov2003/2003-11-13-01.asp>

⁴ Ibid.

results, riddled with conflicts of interest and had little oversight from NOAA.

Before Congress expands the authority of any government agency, it should first fix problems that have been identified to ensure tax dollars are not being wasted or misused.

This amendment would add accountability and transparency to NOAA by:

- Requires the Inspector General to conduct routine, independent reviews of the activities carried out with grants and other assistance provided by NOAA, which would include a cost-benefit analysis and determination of whether or not the goals of activities are being met;
- Requires reviews to be available to the public;
- Prohibits funds from being used to pay for banquets and conferences (other than conferences related to training or a routine meeting with NOAA officers to discuss an ongoing project); and
- Prohibits grantees from providing funding to other organizations or individuals when a conflict of interest exists.

NOAA Oversight of Federal Funding Called Into Question

A recent *Baltimore Sun* investigation found that a NOAA funded project in Maryland, the Oyster Recovery Partnership, to have little scientific merit or accountability and plagued with conflicts of interest between recipients of funding.⁵ According to the *Sun*:

"Since 2002 alone, the partnership has received \$10 million in federal funds to lead Maryland's efforts to make oysters an abundant, self-sustaining species again. ...

⁵Rona Kobell and Greg Garland. "Oystermen reap federal bounty," *Baltimore Sun*, April 1, 2007; <http://xml.baltimoresun.com/news/local/bal-te.md.oysters01apr01.0.7103354.story?coll=bal-home-utility>

"The group not only provides watermen a crop to harvest, but it also pays them to do work that many scientists say has little merit. ...

"While the partnership has planted tens of millions of hatchery-raised oysters, less than a third have been put in protected sanctuaries. Most are planted in places where they can be harvested. ...

"The head of the Watermen's Association sits on the partnership's board and is among those who benefit financially from the federal grants. ...

"The group used \$46,000 in federal funds to hold its annual meeting at the Hyatt Regency, a golf resort and spa."⁶

Project Not Meeting Goals, But Continues to Receive Funding

According to the group's website, the Oyster Recovery Partnership is a "dedicated to helping restore the health of the Chesapeake Bay by restoring the Bay's oyster population."⁷

Maryland officials set up the Oyster Recovery Partnership more than a decade ago in what was envisioned as a groundbreaking attempt to revive a species all but destroyed by overharvesting and disease.⁸

The Maryland Department of Natural Resources estimates that there are fewer oysters in the Chesapeake today than when the Oyster Recovery Partnership began its work in 1994. Its efforts have failed to overcome the devastating impact of two oyster parasites, MSX and Dermo, that have all but wiped out the oyster population.⁹

Despite its failure to meet its stated goals, NOAA has steadily increased funding for the Oyster Recovery Partnership. In 2002, the

⁶ Ibid.

⁷ <http://www.oysterrecovery.org/about/index.html>

⁸ Rona Kobell and Greg Garland. "Oystermen reap federal bounty," Baltimore Sun, April 1, 2007; <http://xml.baltimoresun.com/news/local/bal-te.md.oysters01apr01,0,7103354.story?coll=bal-home-utility>

⁹ Ibid.

group was receiving \$1 million; by 2004, \$2 million. Last year, the funding doubled again to about \$4 million.

Why hasn't this increased funding resulted in better outcomes?

The way to revive the oyster population, leading scientists say, is to leave the shellfish in the water so they can reproduce and propagate the species. But the partnership puts most of its oysters in places where watermen can take them out - and sell them for roughly \$30 a bushel.¹⁰

"If you're serious about the ecological value of oysters, then they must remain in the bay and live," said veteran oyster biologist George Krantz, former fisheries director at the Maryland Department of Natural Resources.¹¹

The partnership's spending has done more to create income for watermen than bring back the Maryland oyster, an investigation by *The Sun* has found. The group not only provides watermen a crop to harvest, but it also pays them to do work that many scientists say has little merit.¹²

Many scientists question why the partnership is spending millions of federal dollars to plant oysters, only to let watermen take them before they can reach full reproductive potential.

Of the 950 million hatchery-raised oysters that the partnership has planted since 2000, only about 265 million-- slightly more than a quarter (27.9 percent) of the total-- were put in oyster sanctuaries where harvesting is prohibited. Most have been planted in places where they can be harvested by watermen and sold.

"You can't justify doing it," said Krantz. "The agenda has virtually excluded any scientific personnel who voiced opposition to this concept. ... The decision to take them out is based on a harvester's wishes, not a conservationist's wishes."¹³

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

NOAA Depends Upon Grantee to Set Terms of Oversight

The NOAA administrator is quoted by the *Baltimore Sun* today stating that the agency provides “adequate” oversight of federal funds provided to the Oyster Recovery Partnership.¹⁴

“Adequate” is not acceptable.

Nevertheless, “adequate” oversight does not appear to be being conducted by NOAA. For example, a recent announcement of and application for a “Federal Funding Opportunity” asks the following question on the application:

“Is the proposed activity going to be conducted in partnership with NOAA or would the proposed activity require NOAA’s direct involvement, activity, or oversight? If yes, describe NOAA’s involvement, activity, or oversight[.]”¹⁵

Why is this question even necessary?

Why does NOAA not assume that oversight will be conducted?

This particular “funding opportunity” is for \$15 million in taxpayer funding.

It is absolutely appalling that NOAA must ask an *applicant* for federal funding if that federal funding will be subject to oversight and review.

Despite Receiving Millions in Federal Funds, Partnership Operates with “Virtually No Government Oversight”

¹⁴ <http://www.baltimoresun.com/news/local/bal-md.oysters25apr25.1.2945822.story>

¹⁵ http://www.csc.noaa.gov/funding/PDFs/CSC_IOOS_FFO_FY07.pdf

Though the Oyster Recovery Partnership receives millions of dollars annually in federal funds, it operates with virtually no governmental oversight.

NOAA officials claim that the group gets the money as the result of a Congressional "earmark."

According to the *Baltimore Sun*, "a top NOAA official acknowledged that his agency hasn't intervened as the partnership used the grant to run programs that he said are effectively subsidies for watermen."

"Because the money was approved specifically for the partnership through an earmark, agency officials believed they had no authority to interfere, said Lowell Bahner, a NOAA administrator who until recently oversaw the agency's Chesapeake Bay office."¹⁶

But while NOAA officials claim the funding for this program is the result of a Congressional earmark, the project is not listed in the Office of Management and Budget's earmark database.¹⁷

The Baltimore Sun reported that "NOAA officials acknowledge that they have done little to manage or oversee the money their agency gets from the earmark and passes on to the Oyster Recovery Partnership. The agency does not scrutinize the partnership's salaries, administrative expenses or the money it spends on its annual banquet, said NOAA grant manager Rich Takacs. 'It's up to the organization receiving the funds to use their internally approved business practices,' Takacs said.

"When asked for copies of the partnership's contracts with the Watermen's Association for bar cleaning and other work, Takacs said he didn't have any. The partnership wasn't asked to provide them, he said."

Takacs said the Partnership's operations have been "a lot of 'Hey, trust us.'" The partnership provides only cursory reports of one to two

¹⁶ Ibid.

¹⁷ <http://www.whitehouse.gov/omb/earmarks/preview-public-site/agencies/bureaus/accountsef34.html?source=APP&agency=006&bureau=48>

pages with a broad general description of its work, he said.

As a result, there has been no comprehensive assessment of what the \$10 million in federal funds granted to the partnership in the past five years has done to help the cause of restoring oysters to the bay, NOAA officials said.

Even in terms of helping watermen, the program almost certainly is not cost-effective, partnership and NOAA officials admit.

A government analysis of the Department of Natural Resources oyster-moving program showed that, for every dollar the state spent to create a crop for watermen to harvest, the watermen earned 13 cents in oyster sales.

Bahner, who ran NOAA's Chesapeake Bay office until last year and has taken a job at the agency's Silver Spring headquarters, said he believes the partnership is making a valuable contribution to the bay in planting millions of oysters. He also said, however, that the Congressional earmark put his agency in a difficult position.

Federal scientists and grant managers wanted to ensure that the money was used in the best way to restore oysters, he said. But partnership officials argued that the program was designed to help watermen and that NOAA's job was to hand over the checks.¹⁸

NOAA officials have pointed to the fact that the partnership has hired an auditor each year to do a standard financial review to comply with federal requirements.

But the *Baltimore Sun* reports that the partnership had its usual accounting firm, rather than an independent organization, review its own audit reports from prior years. The firm found its reports to be appropriate.¹⁹

¹⁸Rona Kobell and Greg Garland. "Oystermen reap federal bounty," *Baltimore Sun*, April 1, 2007; <http://xml.baltimoresun.com/news/local/bal-te.md.oysters01apr01.0.7103354.story?coll=bal-home-utility>

¹⁹Greg Garland. "Oyster grants to state disputed, Senator asks details on \$10 million," *Baltimore Sun* April 14, 2007; <http://www.baltimoresun.com/news/local/bal-md.oysters14apr14.0.3083746.story?coll=bal-local-headlines>

NOAA Recognizes Dangers of Conflicts of Interest, But...

NOAA recognizes that conflicts of interest undermine objectivity and create an unfair competitive advantage.

According to NOAA's website:

"It is essential that peer reviewers of NOAA influential scientific information or highly influential scientific assessments not be compromised by any significant conflict of interest. For this purpose, the term 'conflict of interest' means any financial or other interest which conflicts with the service of the individual because it (1) could significantly impair the individual's objectivity or (2) could create an unfair competitive advantage for any person or organization. ...

"The term 'conflict of interest' means something more than individual bias. There must be an *interest*, ordinarily financial, that could be directly affected by the work of the peer reviewers.

"Conflict of interest requirements are objective and preventive. They are not an assessment of one's actual behavior or character, one's ability to act objectively despite the conflicting interest, or one's relative insensitivity to particular dollar amounts of specific assets because of one's personal wealth. Conflict of interest requirements are objective standards designed to eliminate certain specific, potentially compromising situations from arising, and thereby protect the individual, other peer reviewers, NOAA, and the public interest. The individual, the other peer reviewers, and NOAA should not be placed in a situation where the findings and conclusions of a review could be reasonably questioned, and perhaps discounted or dismissed, simply because of the existence of conflicting interests."²⁰

...Oyster Recovery Partnership Plagued with Conflicts of Interest Between Grantees

²⁰ National Oceanic and Atmospheric Administration, "CONFIDENTIAL CONFLICT OF INTEREST DISCLOSURE; For General Scientific and Technical Studies and Assistance," http://www.cio.noaa.gov/itmanagement/Form2_fillable.pdf

Despite NOAA's recognition of the dangers of conflicts of interest, the Oyster Recovery Partnership, which is largely funded by NOAA, is riddled with such conflicts.

The Oyster Recovery Partnership was formally created in 1994, under a board that today numbers 18 people, including seafood executives, other businessmen and environmentalists. Its purpose, according to a written agreement with the state, was to develop projects to promote "the ecological restoration of oysters in the Chesapeake Bay." The agreement says nothing about helping watermen.

But the group's first office was in a back room of the Maryland Watermen's Association headquarters in Annapolis. The partnership has since moved into space across the hall.

The Baltimore Sun found that the Oyster Recovery Partnership "is paying the Maryland Watermen's Association nearly \$400,000 this year to remove diseased oysters from one part of the bay and dump them in another. Proponents say this practice helps other oysters survive, but it has no proven scientific value. Critics say a primary benefit is to provide work for watermen.

"The head of the Watermen's Association sits on the partnership's board and is among those who benefit financially from the federal grants. Association president Larry Simns Sr. doled out tens of thousands of dollars of the grant money to watermen last year to help plant or move oysters. Also, he collected \$40,100 for supervising their work."²¹

Despite the lack of scientific evidence that the process works, the ORP allocated almost \$400,000 of this year's \$4 million federal grant to the Maryland Watermen's Association.

Simns, a member of the ORP's executive board, hands out that money - wearing his hat as president of the Watermen's Association.

²¹ Ibid.

He says he uses a process that is above board and fair. He sends out "bid forms" to the roughly 500 watermen who have oyster licenses asking them to suggest a daily price for the work, he said. Then, Simns said, he sets a rate based on the average of the bids he receives - last year, \$450 a day. He gives work to pretty much everyone who asks, Simns said, about 50 watermen last year.

Simns acknowledges that he used ORP money to pay himself \$40,100 last year, in part to supervise this work that is done by men who are members of his association. The people who are paid include his son, Larry Jr., who gets \$100 a day as a crewman on his father's boat, partnership records show.

The Watermen's Association itself gets about \$65,000 of the money for administering the contract - money it uses for operating expenses.

Simns said the Partnership's executive director assured him that his role in the Watermen's Association was not a problem-- that he could be on the ORP board at the same time he was getting money from an ORP grant. "I don't vote on anything that has to do with the Maryland Watermen's Association," Simns said.

But his position as a member of a nonprofit's board who derives financial benefits from the relationship raises conflict-of-interest questions.

Daniel Borochoff, president of the American Institute of Philanthropy, a watchdog group that monitors nonprofits, said it generally is not good practice for an organization to pay one of its governing board members for services. "A board member receiving money to perform services, that is frowned upon," he said.

According to Simns, the other watermen net from \$100 to \$125 from their \$450 bar-cleaning checks after paying for gas and the expense of keeping up a boat. Nevertheless, it can be an important source of income, said Floyd "Bunky" Chance, an Eastern Shore waterman.

"Everyone who participates likes it, for the income if nothing else," he said.²²

...Stanford University Report Found that NOAA Fishery Management Council Compromised by Conflicts of Interest

The Stanford University report concluded that NOAA's fishery management councils are unlikely to solve the current problems facing the nation's fisheries for several reasons.

First, council members face a conflict of interest because they must limit the number of fish that can be caught to ensure their conservation while also allocating the allowable catch among members of the industry, who may apply pressure to increase the size of their quotas.

Second, because 80 to 90 percent of appointed council members are from the fishing industry, diverse viewpoints are not fairly represented in council discussions and decisionmaking, the report states.

Congress requires federal advisory commissions to be "fairly balanced in terms of points of view represented and the functions to be performed by the advisory commission," but the fisheries management councils are not subject to the Federal Advisory Committee Act.

Roughly a third of the council members polled for the report said they had felt it unfair in one or more past instances for a fellow council member to participate in a decision in which he or she had a financial interest. A similar percentage expressed concern about decisions in which the relatives or friends of voting council members had a financial interest in the outcome.

Finally, the split in responsibilities between the councils and the National Marine Fisheries Service removes effective accountability for the status of the nation's fisheries, the report's authors conclude.

²² Ibid.

An example from the Western Pacific Fishery Management Council based in Honolulu, reported by the *Cascadia Times*, shows how the process works in practice.

In June the Secretary of Commerce appointed longline fisherman Sean Martin to a seat on the Western Pacific Fishery Management Council. Martin is also co-owner, with Jim Cook, of Pacific Ocean Producers, a fishing equipment supply company.

Longlining kills endangered sea turtles when they become entangled in the 60 mile long fishing lines baited for swordfish and other commercial fish species.

On September 23, the Western Pacific Fishery Management Council decided whether or not to reopen swordfishing in Hawaiian waters through which endangered leatherback turtles migrate. Biologists told the council the rule would harm 144 sea turtles per year, but on a motion by Martin, the council voted 8-5 to reopen the fishery.²³

Regardless of the merits of this decision, the obvious conflict of interest by the member offering the motion compromises the decision.

NOAA Funds Intended for Scientific Discovery Misspent on Banquets and Meetings

The Baltimore Sun found that the Oyster Recovery Partnership “used \$46,000 in federal funds to hold its annual meeting at the Hyatt Regency, a golf resort and spa. The money went not just for the fancy dinner but also for hotel rooms for 50 of the guests. Private funds were used only for the alcohol.”

According to the *Sun*, “at the Hyatt Regency resort in Cambridge, several dozen scientists, watermen and government regulators gathered to sip martinis and mingle over hors d'oeuvres. Later, there

²³ “Fish Perish as Conflict of Interest Snares Management Councils,” Environment News Service, November 13, 2003; <http://www.ens-newswire.com/ens/nov2003/2003-11-13-01.asp>

were cheers and tributes as they dined on crab and filet mignon. The mood was celebratory at January's annual meeting of the Oyster Recovery Partnership. Yet the government-financed nonprofit has made little progress toward its stated mission of restoring oysters to the Chesapeake Bay."²⁴

A recent "Three Day Environmental Exposition and Conference" held April 17-19, 2007 sponsored by NOAA featured a "Red Carpet Champagne Reception" and a cocktail reception.²⁵ (It is not known how much, if any, federal funding supported these events although NOAA was listed as a sponsor.)

In November 2001, NOAA's Marine Fisheries Advisory Committee held a conference at the Wyndham Sugar Bay Resort, in St. Thomas, U.S. Virgin Islands.²⁶

Coincidentally, an upcoming NOAA Fishery Management Council conference is scheduled for August 14-15, 2007 at the Carambola Beach Resort & Golf Club in St. Croix, U.S. Virgin Islands.²⁷

Other recent locations of NOAA Fisheries Advisory Committee conferences include Dania Beach, Florida in February 2006 and Honolulu, Hawaii in January 2005.²⁸

These types of social events should not be federal priorities when serious environmental challenges and scientific initiatives lack necessary resources.

Without Transparency and Accountability, NOAA's Goals and Mission and Taxpayer Dollars Will Continue to Be Compromised

²⁴Rona Kobell and Greg Garland. "Oystermen reap federal bounty," Baltimore Sun, April 1, 2007; <http://xml.baltimoresun.com/news/local/bal-te.md.oysters01apr01.0.7103354.story?coll=bal-home-utility>

²⁵<http://www.eco-vision.us/index.php?submenu=agenda&src=gendocs&link=Agenda%20Page&category=Quickstart&PHPS ESSID=77b7d17ef3c0df47d8d6d285bc49cf95>

²⁶http://www.nmfs.noaa.gov/ocs/mafac/meetings/2001_11/summary.htm

²⁷<http://www.caribbeanfmc.com/meetings.htm>

²⁸<http://www.nmfs.noaa.gov/ocs/mafac/>

According to NOAA's Web site, "to achieve its mission, NOAA's focus through 2010 will be on four MISSION GOALS and a MISSION SUPPORT GOAL:

1. Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management
2. Understand Climate Variability and Change to Enhance Society's Ability to Plan and Respond
3. Serve Society's Needs for Weather and Water Information
4. Support the Nation's Commerce with Information for Safe, Efficient, and Environmentally Sound Transportation
5. Provide Critical Support for NOAA's Mission²⁹

To achieve these goals, NOAA must be compelled by Congress to:

- Address the conflict of interest problems that have been identified within agency councils and grants;
- Ensure that tax dollars are being spent in a cost effective manner that meets the stated goals of the agency and of the projects being funded; and
- Direct funds towards advancing the mission and goals of the agency and away from unnecessary conferences and banquets.

While it is difficult to conclude how prevalent these problems are within NOAA, the conclusion that can be reached, however, is that millions of dollars in federal funds are not being spent in a cost-efficient manner and with little, if any, oversight to prevent misuse of resources that could clearly be better spent.

This amendment would ensure that tax payer dollars are better spent by requiring routine, independent reviews of NOAA grants, including a cost-benefit analysis and determination of whether or not the goals of activities are being met, prohibiting funds from being used to pay for banquets, and banning federal funds from being provided to individuals and organizations who may possess a financial or other conflict of interest.

²⁹ <http://www.spo.noaa.gov/goalspr.htm>

These are common sense reforms that should apply to all federal funds and applied to NOAA before its responsibilities are expanded, as proposed by S. 761.

NOAA Federal Assistance Application

C. Federal Involvement

C1. Is the proposed activity going to be conducted in partnership with NOAA or would the proposed activity require NOAA's direct involvement, activity, or oversight? If yes, describe NOAA's involvement, activity, or oversight, including the name of the office or program that is involved.

Responses to Claims that NOAA's Conflict of Interest Problems Have Been Solved

Based on numerous news articles, studies, and investigations, it's simply not credible to assert that there are no problems with conflicts-of-interest at NOAA. The conflicts-of-interest and oversight problems range all the way from fisheries management councils to grants and subgrants.

Sen. Stevens, who is extremely knowledgeable on fisheries issues, recognized the conflicts-of-interest plaguing the regional fisheries management councils, and he worked to address those problems in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, which was signed into law earlier this year. That law required training on identification and disclosure of conflicts-of-interest, broadened the conflict-of-interest definition, and applied federal conflict-of-interest rules to members of fisheries advisory commissions and councils. Sen. Stevens should be applauded for recognizing and addressing those issues.

However, conflicts-of-interest need to be eliminated in more than just fisheries councils. As we've seen in numerous news articles, federal grants and subgrants are also plagued by conflicts-of-interest. It is not unreasonable to extend the same requirements from the recent Magnuson-Stevens reauthorization to all aspects of NOAA. It's not enough to just reduce the conflict-of-interest problem or fix it a little bit – conflicts-of-interest need to be eliminated, and anything less is unacceptable.

Sen. Mikulski was quoted in the *Baltimore Sun* this morning saying the same thing. She said, "NOAA should be accountable for expenditure of taxpayer dollars used to restore the Chesapeake Bay." That statement is inarguable. This amendment, by requiring regular audits and investigations of federal expenditures, will dramatically increase accountability within NOAA. Waste, fraud, and abuse cannot be eliminated until identified, and this amendment will only increase our ability to identify the wasteful or inappropriate expenditure of taxpayer dollars.

The Baltimore Sun

April 1, 2007

<http://xml.baltimoresun.com/news/local/baltimore.md.oysters01apr01,0,7103354.story?coll=bal-home-utility>

Sun special report

Oystermen reap federal bounty

Bid to revive bivalve benefits watermen more

By Rona Kobell and Greg Garland
Sun reporters

At the Hyatt Regency resort in Cambridge, several dozen scientists, watermen and government regulators gathered to sip martinis and mingle over hors d'oeuvres. Later, there were cheers and tributes as they dined on crab and filet mignon.

The mood was celebratory at January's annual meeting of the Oyster Recovery Partnership. Yet the government-financed nonprofit has made little progress toward its stated mission of restoring oysters to the Chesapeake Bay.

Maryland officials set up the group more than a decade ago in what was envisioned as a groundbreaking attempt to revive a species all but destroyed by overharvesting and disease. Since 2002 alone, the partnership has received \$10 million in federal funds to lead Maryland's efforts to make oysters an abundant, self-sustaining species again.

The way to do that, leading scientists say, is to leave the shellfish in the water so they can reproduce and propagate the species. But the partnership puts most of its oysters in places where watermen can take them out - and sell them for roughly \$30 a bushel.

"If you're serious about the ecological value of oysters, then they must remain in the bay and live," said veteran oyster biologist George Krantz, former fisheries director at the Maryland Department of Natural Resources.

The partnership's spending has done more to create income for watermen than bring back the Maryland oyster, an investigation by The Sun has found. The group not only provides watermen a crop to harvest, but it also pays them to do work that many scientists say has little merit.

The Sun found:

- While the partnership has planted tens of millions of hatchery-raised oysters, less than a third have been put in protected sanctuaries. Most are planted in places where they can be

harvested.

- The group is paying the Maryland Watermen's Association nearly \$400,000 this year to remove diseased oysters from one part of the bay and dump them in another. Proponents say this practice helps other oysters survive, but it has no proven scientific value. Critics say a primary benefit is to provide work for watermen.
- The head of the Watermen's Association sits on the partnership's board and is among those who benefit financially from the federal grants. Association president Larry Simms Sr. doled out tens of thousands of dollars of the grant money to watermen last year to help plant or move oysters. Also, he collected \$40,100 for supervising their work.
- The group used \$46,000 in federal funds to hold its annual meeting at the Hyatt Regency, a golf resort and spa. The money went not just for the fancy dinner but also for hotel rooms for 50 of the guests. Private funds were used only for the alcohol.

While solid figures are not available, the Department of Natural Resources estimates that there are fewer oysters in the Chesapeake today than when the Oyster Recovery Partnership began its work in 1994. Its efforts have failed to overcome the devastating impact of two oyster parasites, MSX and Dermo, that have all but wiped out the oyster population.

Partnership officials nonetheless consider their work a huge success.

"We're certainly doing infinitely better than what has been done in the past," said Torrey C. Brown, a former state natural resources secretary who now serves as the partnership's unpaid chairman. He is proud of the group's extensive oyster-planting program.

Partnership officials say it makes sense to let watermen harvest many of those oysters because the shellfish would die eventually of disease. They point out that in the several years before the oysters are harvested, they help the bay by filtering away pollution.

"The idea that it is a watermen's welfare program is nonsense," Brown said. "I don't think that they're getting any untoward benefit."

Though the partnership gets millions in federal funds, it operates with virtually no governmental oversight. The group gets the money as the result of a budget "earmark" arranged by [Sen. Barbara Mikulski](#), a Maryland Democrat, and the grant is distributed by the National Oceanic and Atmospheric Administration.

A top NOAA official acknowledged that his agency hasn't intervened as the partnership used the grant to run programs that he said are effectively subsidies for watermen.

Because the money was approved specifically for the partnership through an earmark, agency officials believed they had no authority to interfere, said Lowell Bahner, a NOAA administrator who until recently oversaw the agency's [Chesapeake Bay](#) office.

"Senator Mikulski said, 'I want oysters in the water for harvest by watermen,'" Bahner said. "Is that a subsidy? That's what it looks like. And I think she would be proud of that."

Mikulski declined to be interviewed for this article. But in a written response to questions from The Sun, she said she expected NOAA "to have strong oversight" of how the grant was being spent. In addition, she said the money "was never intended to be a subsidy for industry or watermen."

"Unlike farm subsidies, this does not guarantee revenue for watermen or industry," Mikulski said. "This was intended ... to help jumpstart restoration for the economic and environmental health of the Bay."

Many scientists question why the partnership is spending millions of federal dollars to plant oysters, only to let watermen take them before they can reach full reproductive potential.

"You can't justify doing it," said Krantz. "The agenda has virtually excluded any scientific personnel who voiced opposition to this concept. ... The decision to take them out is based on a harvester's wishes, not a conservationist's wishes."

Rock bottom

The Oyster Recovery Partnership traces its roots to the winter of 1993, when Maryland's oyster industry hit rock bottom. Watermen harvested fewer than 80,000 bushels of oysters that season, taking home about \$1 million. Just a decade earlier, they were bringing in more than a million bushels, which fetched \$16 million at the dock. In the years before that, the harvests were even better, providing a stable income for thousands of people who earned their living on the water.

The fast decline of the oyster was alarming not just because it was putting watermen out of a job. Oystering was part of Maryland's identity, the old-fashioned simplicity of the work immortalized in sepia-toned photographs of watermen plying their wooden tongs from sail-powered skipjacks.

The collapse of the species was of tremendous concern to scientists. Oysters are the backbone of many aquatic communities, providing reefs that are crucial habitat for crabs and small fish. They are also critical to the health of the Chesapeake because, as they suck in water to filter out food, they literally filter away pollution.

Among those most concerned was Brown, then Maryland's secretary of natural resources. He gathered everyone he could think of with a stake in keeping oysters healthy, assembling in one room a motley coalition of 40 - watermen, regulators, legislators, university professors.

He hired a facilitator to calm tensions at what became known as the Oyster Roundtable. No one was allowed to leave the table until everyone agreed on what to do next.

But as further meetings were held, Brown said, it was clear the warring parties didn't trust each other. So he suggested creating a nonprofit agency that would get the various groups involved in an effort to bring back oysters.

It would not be a research organization - plenty of those already existed. Rather, it would work with scientists and watermen to plant oysters in the water and monitor their progress. Ideally, the group would receive a small amount of government money, but it would also raise private funds.

The Oyster Recovery Partnership was formally created in 1994, under a board that today numbers 18 people, including seafood executives, other businessmen and environmentalists. Its purpose, according to a written agreement with the state, was to develop projects to promote "the ecological restoration of oysters in the [Chesapeake Bay](#)." The agreement says nothing about helping watermen.

But the group's first office was in a back room of the Maryland Watermen's Association headquarters in Annapolis. The partnership has since moved into space across the hall.

The organization got off to a rocky start. It never raised the private money its founders had hoped for, and its small staff often seemed overwhelmed. By 2000, the group had gone through two executive directors and was in poor financial shape. It advertised for a new executive director and interviewed dozens of candidates. Charles Frentz was one of the last.

"I told them, 'I am either going to put you out of business or straighten you out,'" Frentz recalls.

'A lack of focus'

Frentz conceded that he knew little about the biology of the bay - he had spent much of his career running several horse racing businesses in Florida, including one that put on the prestigious Breeders' Cup. He said he hadn't been looking for a job; he was retired and had moved to Maryland largely to marry his high-school sweetheart, an executive at the [Social Security Administration](#).

But he brought with him a passion for the bay that came from growing up near Sparrows Point and spending summers at a family home in Tolchester Beach, trawling for soft-shell crabs. More importantly, he said, he could apply sound management practices to a foundering organization.

"It was almost a feel-good situation where you had good intentions, but there was a lack of business focus," Frentz said. "There was no question that I challenged how they did business, why they did business and how they would do business in the future."

When Frentz came on board, the partnership was getting about \$450,000 from NOAA and had little other income. It was using volunteers to plant small clusters of oysters on

tiny plots throughout the bay.

If the partnership had any prayer of significantly increasing the number of oysters in the Chesapeake, Frentz reasoned, it would need to plant many more baby oysters. To do that, it would need more money.

Frentz persuaded Donald Meritt, the manager of the University of Maryland's Horn Point hatchery, to produce more oysters, promising to get money to upgrade the facility.

Frentz also cultivated Mikulski, who had been earmarking money for the partnership. In his first year in the job, Frentz nearly doubled the ORP's federal funding, to \$850,000. By 2002, the group was getting \$1 million; by 2004, \$2 million. Last year, the funding doubled again to about \$4 million.

As the money increased, so did Frentz's pay. He was hired for \$58,000 in 2000, according to the partnership. By the time he retired three months ago, he was earning \$151,000, most of it from federal funds. He still gets \$10,000 a month as a consultant.

Frentz frequently praised Mikulski, even presenting a video tribute to the woman he called "Our Bay Lady." She returned the compliments. In a 2004 letter to Frentz, she called him "just about the best thing that has happened to the [Chesapeake Bay](#) since the skipjack."

Helping watermen

The idea of using government money to help watermen isn't new. The [Maryland Department of Natural Resources](#) has for years run oyster programs that are essentially subsidies.

The state agency moves baby oysters from the lower Chesapeake, where they are abundant naturally, and spreads them around the bay. A committee of oystermen tells the department where they want this "seed," as the babies are called, and the department delivers. The idea is to help watermen from upper bay counties earn a living, state officials say. The agency has been doing this for decades.

But when parasites began to attack the bay's oysters in the 1970s and 1980s, this practice turned out to have a down side. The parasites that attack oysters thrive in the same salty waters where oysters reproduce. So when the state moved oyster seed to lower-salt waters, the parasites hitched a ride - spreading disease.

Initially, state officials thought that wouldn't happen because they believed the parasites wouldn't survive in the fresh water of the upper bay. Once it was clear the parasites would survive, the department continued to move the seed around anyway, arguing that since the bay's oyster population was so far gone, stopping the program wouldn't lessen disease and would only hurt watermen.

"History is what it is," said Chris Judy, the department's longtime shellfish director,

explaining why the practice has continued. "The time to [say] 'Let's not move diseased seed' was at the beginning."

'Managed reserves'

Charlie Frentz didn't want to spend millions of dollars to plant disease-resistant oysters only to have the state turn around and deposit diseased seed nearby.

So he asked the watermen to turn down the state's seed. He said the partnership would instead provide hatchery-raised oysters that would eventually be available for harvest. The oysters would be planted on special bars that he called "managed reserves."

Normally, watermen can take oysters from the bay when they are 3 inches long. In the managed reserves, they had to wait until the oysters were 4 inches. The larger size meant the oysters would have an extra year or so to live in the bay.

But after the first year, when one waterman was so mad about the restrictions that he threw an oyster hammer at Larry Simms, the partnership changed the rules. Today, when half a bar's oysters reach 4 inches, watermen also can remove the 3-inch oysters.

Meritt, the hatchery manager, calls the managed reserve "a really nice compromise" because it gives many oysters an extra year in the bay to provide ecological benefits. But other scientists say the program is nothing more than an expensive put-and-take fishery falsely billed as restoration.

An oyster's ability to reproduce increases exponentially with each year it survives. So harvesting the animal after just four years - about the time it takes to reach 4 inches - cuts off its life span at a critical time, according to Krantz, the former fisheries chief.

He estimates that if an oyster reaches 5 or 6 inches, it will have a 3,000 percent increase in reproductive capability. Krantz and other scientists say it's crucial to leave the oysters in the water; even if many will die of disease, the ones that live will help propagate a species that can withstand disease.

Of the 950 million hatchery-raised oysters that the partnership has planted since 2000, more than half have gone into managed reserves. About 100 million were planted for harvesting without any special restrictions. Only about 265 million were put in oyster sanctuaries where harvesting is prohibited.

The sanctuary oysters have done better than many expected.

About 20 percent of them are still alive, according to Kennedy T. Paynter Jr., a University of Maryland scientist who is paid by the partnership to monitor its bars. That survival rate is good, Paynter said, given that half of the oysters planted anywhere in the bay are expected to die in the first year.

The numbers appear to contradict the watermen's assertions that if oysters are not

harvested, they will just die of disease.

"To use that as an excuse to harvest is a logical absurdity," said University of Maryland oyster biologist Roger Newell. "If an oyster is harvested, there is a 100 percent chance of it dying." If you leave it at the bottom, he said, there is a chance it will live.

Bar-cleaning

More lucrative for Simns and some other watermen has been the "bar-cleaning" work - removing diseased adult oysters from some of the partnership's bars and dumping them in another spot.

Watermen will return to the spot later to harvest the oysters for private sale; while disease eventually kills the shellfish, infected oysters are safe for people to eat. So the watermen earn money twice in this process. They are paid by the partnership to move the diseased oysters, and then they get to harvest them.

The bar-cleaning work is done in the spring, between the end of oyster season and the start of crabbing season - a period when many watermen have time on their hands. But removing the bad oysters is also good for the bay, according to Paynter.

When oysters die, they gape open and spread disease. So it's important, Paynter said, to get them out while they're alive.

Paynter said, however, there is no scientific benefit to putting the diseased oysters back in the bay for watermen to harvest later.

"Really," he said, "we'd like to take the diseased oysters out and put them into the driveway."

Other scientists and state officials say bar cleaning has little merit even in terms of removing disease. A state study in 2005 showed that bar cleaning leaves behind infected oysters.

"Bar cleaning may buy you a little bit of time to produce more market-size oysters, but eventually disease is going to take hold," said DNR assistant fisheries director Tom O'Connell. He argues the partnership shouldn't be spending so much money on bar cleaning until it is studied more.

Despite the lack of scientific evidence that the process works, the ORP allocated almost \$400,000 of this year's \$4 million federal grant to the Maryland Watermen's Association for bar cleaning.

Simns, a member of the ORP's executive board, hands out that money - wearing his hat as president of the Watermen's Association. He says he uses a process that is above board and fair.

He sends out "bid forms" to the roughly 500 watermen who have oyster licenses asking them to suggest a daily price for the work, he said. Then, Simns said, he sets a rate based on the average of the bids he receives - last year, \$450 a day. He gives work to pretty much everyone who asks, Simns said, about 50 watermen last year.

Simns acknowledges that he used ORP money to pay himself \$40,100 last year, in part to supervise this work that is done by men who are members of his association. The people who are paid include his son, Larry Jr., who gets \$100 a day as a crewman on his father's boat, partnership records show.

The Watermen's Association itself gets about \$65,000 of the money for administering the contract - money it uses for operating expenses.

As for his own pay, Simns argues that the partnership needs him to oversee the work - he has been working the water since he was a boy, and he knows all the watermen. "It's better for ORP to have someone like the Watermen's Association manage the watermen," said Simns, 70. "They can't blow smoke at me, because I know. I've done all that stuff."

He said Frenz assured him that his role in the Watermen's Association was not a problem - that he could be on the ORP board at the same time he was getting money from an ORP grant. "I don't vote on anything that has to do with the Maryland Watermen's Association," Simns said.

But his position as a member of a nonprofit's board who derives financial benefits from the relationship raises conflict-of-interest questions. Daniel Borochoff, president of the American Institute of Philanthropy, a watchdog group that monitors nonprofits, said it generally is not good practice for an organization to pay one of its governing board members for services. "A board member receiving money to perform services, that is frowned upon," he said.

According to Simns, the other watermen net from \$100 to \$125 from their \$450 bar-cleaning checks after paying for gas and the expense of keeping up a boat. Nevertheless, it can be an important source of income, said Floyd "Bunky" Chance, an Eastern Shore waterman.

"Everyone who participates likes it, for the income if nothing else. ... Most watermen are just trying to keep the wolf from the door," he said.

'Hey, trust us'

NOAA officials acknowledge that they have done little to manage or oversee the money their agency gets from the earmark and passes on to the Oyster Recovery Partnership. The agency does not scrutinize the partnership's salaries, administrative expenses or the money it spends on its annual banquet, said NOAA grant manager Rich Takacs. "It's up to the organization receiving the funds to use their internally approved business practices," Takacs said.

When asked for copies of the partnership's contracts with the Watermen's Association for bar cleaning and other work, Takacs said he didn't have any. The partnership wasn't asked to provide them, he said.

Takacs said the partnership's approach to its bar cleaning and oyster planting operations has been "a lot of 'Hey, trust us.'" Unlike many other NOAA grantees, which provide detailed reports on their scientific work, the partnership provides only cursory reports of one to two pages with a broad general description of its work, he said.

As a result, there has been no comprehensive assessment of what the \$10 million in federal funds granted to the partnership in the past five years has done to help the cause of restoring oysters to the bay, NOAA officials said.

Even in terms of helping watermen, the program almost certainly is not cost-effective, partnership and NOAA officials admit. A government analysis of the Department of Natural Resources seed-moving program showed that, for every dollar the state spent to create a crop for watermen to harvest, the watermen earned 13 cents in oyster sales.

Bahner, who ran NOAA's [Chesapeake Bay](#) office until last year and has taken a job at the agency's Silver Spring headquarters, said he believes the partnership is making a valuable contribution to the bay in planting millions of oysters. He also said, however, that Mikulski's earmark put his agency in a difficult position.

Federal scientists and grant managers wanted to ensure that the money was used in the best way to restore oysters, he said. But partnership officials argued that the program was designed to help watermen and that NOAA's job was to hand over the checks.

"When the program started, it was primarily, 'Put the oysters in the water for the watermen,'" Bahner said. "You've got this whole watermen's community. It's a subsidy program."

Baltimore Sun

April 14, 2007

<http://www.baltimoresun.com/news/local/baltimore.oysters14apr14,0,3083746.story?coll=bal-local-headlines>

Oyster grants to state disputed *Senator asks details on \$10 million*

By Greg Garland
sun reporter

A conservative Oklahoma senator who wants to eliminate congressional earmarks has asked a federal agency for a detailed explanation of how \$10 million in government grants for oyster recovery has been spent in Maryland.

In a letter to the head of the National Oceanic and Atmospheric Administration, U.S. Sen. Tom Coburn said he was "very concerned" about questionable spending practices detailed in an article in The Sun about the Maryland's Oyster Recovery Partnership.

"It sounds like a dubious use of federal dollars and raises a lot of questions," Roland R. Foster, an aide to the Oklahoma Republican, said yesterday.

The partnership, a nonprofit group charged with trying to restore oysters to the [Chesapeake Bay](#), receives its annual funding through a federal budget "earmark" arranged by U.S. Sen. Barbara A. Mikulski, a Maryland Democrat.

The Sun reported this month that while the group has planted nearly a billion hatchery-raised oysters since 2000, less than a third have been put in protected sanctuaries. Most have been planted in places where they can be harvested by watermen and sold.

The newspaper also found that the partnership is paying the Maryland Watermen's Association nearly \$400,000 this year to remove diseased oysters from one part of the bay and dump them in another. Proponents say this practice helps other oysters survive, but it has no proven scientific value. Critics say its primary purpose is to provide income for watermen.

The partnership also used \$46,000 in federal funds to hold its annual dinner at the Hyatt Regency golf resort and spa in Cambridge, The Sun reported. Meanwhile, the bay's oyster population remains at historic lows.

In the letter to NOAA chief Conrad C. Lautenbacher Jr., Coburn questioned how the earmarked funds were being used. "What oversight has NOAA conducted of this specific

grant?" Coburn asked. "[P]articularly was NOAA aware that funds were being used for banquets or of the financial conflicts of interest between staff and organizations receiving funding?"

Coburn also asked for reports on how the partnership is doing in meeting its stated goals and whether its federally funded efforts have been cost effective.

Monica Allen, a spokeswoman for NOAA, declined to comment on Coburn's letter but said the agency would provide a copy of its response when it is completed and sent to Coburn.

Stephan Abel, executive director of the Oyster Recovery Partnership, said, "It would be inappropriate to comment until NOAA has had the opportunity to respond."

Foster said Coburn has attempted to focus attention on earmarks as part of a campaign to end what he regards as wasteful government spending.

A year ago, Coburn and Arizona Sen. [John McCain](#) sent a letter to all 100 U.S. senators announcing they would challenge every earmark, or "pork project," on the Senate floor.

The problem with earmarks, Foster said, is they are made based on political connections and aren't subject to competition or stringent oversight.

Coburn said The Sun's article about the Oyster Recovery Partnership's spending raises larger concerns about how NOAA handles its federal grants. "Is this one example the exception, or is this a widespread problem at NOAA?" Foster asked.

Lautenbacher has taken issue with The Sun's findings, saying in a recent letter to the newspaper that his agency provides adequate oversight of the federal funds provided to the partnership.

NOAA officials have pointed to the fact that the partnership has hired an auditor each year to do a standard financial review to comply with federal requirements.

In 2006, Senator Mikulski asked NOAA for "an independent audit" of the partnership. In response, records show, the partnership had its usual accounting firm review its own audit reports from prior years. The firm found its reports to be appropriate.



The Baltimore Sun

April 25, 2007

<http://www.baltimoresun.com/news/local/bal-md.oysters25apr25,0,4132326.story>

Senate to vote on requiring audit of NOAA

Bill comes in response to Sun report about spending in program to restore bay oysters

By Matthew Hay Brown
sun reporter

WASHINGTON -- The Senate is expected to vote today on a measure that would require independent auditing of programs funded by the National Oceanic and Atmospheric Administration.

Sen. Tom Coburn, an Oklahoma Republican, filed the measure in response to a report in The Sun this month about spending practices in a NOAA-funded program to restore oysters in the [Chesapeake Bay](#), aides said.

The Sun reported that fewer than a third of the nearly 1 billion hatchery-raised oysters planted by the Oyster Recovery Partnership since 2000 have been put in protected sanctuaries. Most have been placed where they can be harvested by watermen and sold.

Also, the nonprofit group is giving the Maryland Watermen's Association nearly \$400,000 this year to move diseased oysters from one part of the bay to another, The Sun reported. Proponents say the practice helps other oysters survive, but critics say its main purpose is to provide income for watermen.

The Sun also found that the partnership spent \$46,000 in federal funds on an annual dinner at the Hyatt Regency [Chesapeake Bay](#) Golf Resort, Spa and Marina in Cambridge.

The Oyster Recovery Partnership has been funded by an earmark placed in the federal budget each year by Sen. Barbara A. Mikulski. The Maryland Democrat said yesterday that she agreed with the goals of the Coburn measure.

"NOAA should be accountable for expenditure of taxpayer dollars used to restore the [Chesapeake Bay](#)," she said through a spokeswoman.

The measure, filed in the form of an amendment to a science, technology and education investment bill, would require the inspector general of the Department of Commerce to conduct routine, independent reviews of activities funded by NOAA that would include cost-benefit analyses and a determination of whether goals are being met.

It would also prohibit funds from being used to pay for banquets and conferences, other than conferences related to training or routine meetings with NOAA officers.

Coburn, an earmark hawk, earlier had asked NOAA for a detailed explanation of how \$10 million in government grants has been spent in the oyster program.

In a letter to NOAA chief Conrad C. Lautenbacher Jr., Coburn said he was "very concerned" about questionable spending in the program.

In a letter to The Sun, Lautenbacher said that NOAA provides adequate oversight of the federal funds provided to the partnership.

NOAA officials said an auditor is hired each year by the partnership to perform a standard financial review in order to comply with federal requirements.

matthew.brown@baltsun.com

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Environment News Service

November 13, 2003

<http://www.ens-newswire.com/ens/nov2003/2003-11-13-01.asp>

Fish Perish as Conflict of Interest Snares Management Councils

WASHINGTON, DC, November 13, 2003 (ENS) - The regional fishery management councils that govern the multi-billion dollar U.S. commercial and recreational fishing industry are dominated by the industry, exempted from federal conflict of interest laws, and subject to little federal oversight, says a new report released Wednesday by three Stanford University researchers.

Sixty percent of appointed council members have a direct financial interest in the fisheries that they manage and regulate, say the authors of the report, "Taking Stock of the Regional Fishery Management Councils."

Stanford's Josh Eagle, Barton Thompson Jr., and Sarah Newkirk conducted a review of the mandates, constitution, rules, and procedures of the United States' Regional Fishery Management Councils, and surveyed members of four of the eight councils.

Fishermen empty a trawl net on deck for sorting (Photo by Allen Shimada courtesy [NOAA](#))

Their study, sponsored by The Pew Charitable Trusts, concludes that the councils have presided over the economic and biological decline of many fisheries, and that the councils are not likely to implement the kind of management necessary to prevent future declines.

"The oceans are among the nation's greatest natural resources, yet few Americans know who manages the nation's fisheries or how decisions affecting the sustainability of fisheries are made," said co-author Josh Eagle, director of the Stanford Fisheries Policy

Project and lecturer in law at Stanford Law School.

The eight fishery councils were established in 1976 by the passage of the Fishery Conservation and Management Act, now known as the Magnuson-Stevens Act, to take primary responsibility for the management of dozens of fisheries along U.S. coasts in Atlantic, Caribbean, Gulf of Mexico and Pacific waters.

The recent collapses of once abundant species, such as cod in New England and rockfish off the Pacific coast, have caused hardship for fishing communities across the country. In addition salmon, tuna, red snapper, lobster, and blue crab, among many other species, are overfished, and many scientists, including the report's authors, say an essential step in helping these species recover is to put an end to overfishing.

Eagle said, "With more than a third of the nation's studied fish stocks overfished and the status of many more uncertain, it is clear that we must apply standards of good government to the management of America's fisheries and place the public's interest first."

The councils opened a three day conference today in Washington, DC to educate the public, policy makers, and media on the marine fishery management process. They are presenting successful management examples by region, and current management and research initiatives.

The councils say they wish to "help bridge the gap between perception and reality regarding fisheries management" and to provide a forum for information exchange and to solicit a wide range of perspectives on future management and marine research directions.

Josh Eagle works with the Stanford Fisheries Policy Project, a joint venture between Stanford Law School and Stanford's Hopkins Marine Station. (Photo courtesy [Stanford University](#))

But Eagle, Thompson, and Newkirk say in their report that the councils are unlikely to solve the current problems facing the nation's fisheries for at least three reasons.

First, council members face a conflict of interest because they must limit the number of fish that can be caught to ensure their conservation while also allocating the allowable catch among members of the industry, who may apply pressure to increase the size of their quotas.

Second, because 80 to 90 percent of appointed council members are from the fishing industry, diverse viewpoints are not fairly represented in council discussions and decisionmaking, the report states. Each council has only one environmental representative, one state official and one federal official in addition to the fishing industry members.

Congress requires federal advisory commissions to be "fairly balanced in terms of points of view represented and the functions to be performed by the advisory commission," but the fisheries management councils are not subject to the Federal Advisory Committee Act.

Finally, the split in responsibilities between the councils and the National Marine Fisheries Service removes effective accountability for the status of the nation's fisheries, the report's authors conclude.

An example from the Western Pacific Fishery Management Council based in Honolulu, reported by the "Cascadia Times," shows how the process works in practice.

In June the Secretary of Commerce appointed longline fisherman Sean Martin to a seat on the Western Pacific Fishery Management Council. Martin is also co-owner, with Jim Cook, of Pacific Ocean Producers, a fishing equipment supply company.

Endangered leatherback turtle in Hawaiian waters

(Photo by Skip Naftel courtesy NOAA)

Longlining kills endangered sea turtles when they become entangled in the 60 mile long fishing lines baited for swordfish and other commercial fish species.

On September 23, the Western Pacific Fishery Management Council decided whether or not to reopen swordfishing in Hawaiian waters through which endangered leatherback turtles migrate. Biologists told the council the rule would harm 144 sea turtles per year, but on a motion by Martin, the council voted 8-5 to reopen the fishery.

The September 23 vote may also lead to violations of the Endangered Species Act. "It would authorize a far higher number of sea turtle takes than the scientific record supports," says William Hogarth, assistant administrator of the the National Marine Fisheries Service, now known as NOAA Fisheries.

Some fisheries management councils do take action to protect fish species. On November 21, following action taken by the federal Pacific Fishery Management Council and conforming action taken by the state of California, recreational and most commercial fisheries for nearshore rockfishes, shelf rockfishes, California scorpionfish (sculpin), and lingcod will close in all Pacific waters.

"In past years, anglers had more opportunities to fish for rockfish in deeper waters. This year, fishing for rockfish was limited to waters shallower than 120 feet which put greater pressure on nearshore species," explained Fred Wendell, California Department of Fish and Game nearshore fishery manager.

And some fish populations are doing well. The Mid-Atlantic Fishery Management Council released survey data in June showing summer flounder numbers had reached the highest levels ever recorded since the survey began in 1968.

The Mid-Atlantic Fishery Management Council conducts a stock assessment workshop on flounder and lobster in Wilmington, Delaware, 1996. (Photo by William Folsom courtesy NOAA)

"The robust recovery of the summer flounder stock is a direct reflection of the positive impacts that the management measures have had on the resource," said Dr. Christopher Moore, council deputy director. "The Council and Commission should be extremely proud of the management decisions they have made over the years to rebuild summer flounder."

Still, many members of the four fisheries management councils polled by the authors of "Taking Stock" agreed that there are problems with the current system and that these problems should be addressed.

Eagle, Thompson, and Newkirk report that more than half of the council members polled said environmental interests are underrepresented on the councils.

Roughly a third of the respondents said they had felt it unfair in one or more past instances for a fellow council member to participate in a decision in which he or she had a financial interest. A similar percentage expressed concern about decisions in which the relatives or friends of voting council members had a financial interest in the outcome.

Eagle, Thompson, and Newkirk call for changes in federal policy on fisheries management councils that would institute the same standards of "good government" that apply to other federal and state agencies charged with managing U.S. natural resources.

First, they say Congress should separate the institutional decisionmaking responsibilities for conservation and quota allocation.

To broaden council representation, Congress could require governors to submit a more diverse list of candidates, or require that nominations be made by an independent body such as the National Academy of Sciences, they recommend.

And finally, only federal fishery management exempts federal decisionmakers, the council members, from conflicts of interest. Remedies suggested by the authors include lowering the recusal threshold and prohibiting those holding financial interests in regulated fisheries from council appointment.

Barton H. Thompson Jr. is vice dean and Robert E. Paradise Professor of Natural Resources Law at Stanford Law School. Sarah Newkirk is an independent water law and policy consultant and most recently was a research fellow with the Stanford Fisheries Policy Project.

The Fishery Management Councils are online at: <http://www.nmfs.noaa.gov/councils/>

"Taking Stock of the Regional Fishery Management Councils" can be found at:
http://www.pewtrusts.com/pdf/pew_science_taking_stock.pdf

The "Cascadia Times" article, "Plundering the Pacific" is at: <http://www.times.org/>

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From: EcoVision [mailto:info@eco-vision.us]
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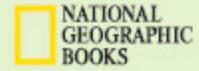
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EcoVision2007

Building Solutions for Tomorrow's Environment Today

EcoVision 2007 Panel & Events Schedule

Panelists and Moderators To Be Announced Soon

Day One - April 17, 2007

- 9:00am Continental breakfast and refreshments available in the Atrium and EcoVision Hospitality Suite.
- 10:00 a.m. **Opening Keynote by Thomas Homer-Dixon - 21st Century Global Challenges** -
- 11:30 a.m. Unique 21st Century stresses, interconnectedness, ingenuity solution - space; past successes of overcoming challenges, what is different today from the past?
- 11:45 a.m. **Luncheon reception and refreshments with Kim McKay, Author of "True Green"**
- 12:45 p.m. Location: Atrium
- 1:00 p.m. **Panel 1 - Recognizing Agents and Trends of Change** - Policies for
- 2:30 p.m. Environmental and Economic Resiliency: Anticipating signals and factors of global change; integrating cross-sector capabilities; timing and tailored deployment of policy implementation solutions.
- 3:15 p.m. **Panel 2 - 21st Century Technology Landscape** - The Global
- 4:45 p.m. Information Infrastructure. Technology, science and diagnostic tools that underpin decision-making and policy making. Assuring we continue to make the national investments to have the information and decision tools on the ground. Advancing "system of system" capability necessary for future environmental management and policy.
- Evening - Discovery Channel Premier of "Planet Earth" with Senior Producers and Host Philippe Cousteau**
- 6:30 p.m. **Red Carpet Champagne Reception**
- 7:15 p.m. **"Planet Earth" Premier**

Day Two - April 18, 2007

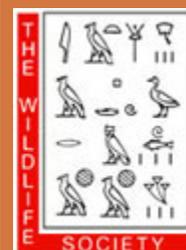
- 9:00am Continental breakfast and refreshments available in the Atrium and EcoVision Hospitality Suite.
- 9:30am Industry Keynote by Wes Bush, President and Chief Operating Officer, Northrop Grumman Corporation

Agenda

EcoVision 2007 Agenda
Keynote Speakers

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10:00 a.m. - 11:30 a.m. **Panel 3 - The Global Information Infrastructure and Energy, Climate and Air Quality Challenges** - Technologies and programs promoting energy efficiency and improved air quality.

11:45 a.m. - 12:45 p.m. **Luncheon reception and refreshments with world reknown landscape photographer Robert Glenn Ketchum**
Location: Atrium

1:00 p.m. - 2:30 p.m. **Panel 4 - The Global Information Infrastructure and Water Quality, Supply and Conservation** - Technologies and programs promoting efficient water resource usage, conservation and sustainability.

3:15 p.m. - 4:45 p.m. **Panel 5 - The Global Information Infrastructure and Chemicals Management and Waste Reduction and Remediation** - Technologies and programs supporting raw and finished materials supply chain management, product and packaging approaches that maximize efficiency/cost-savings and reduce waste.

6:30 p.m. **Evening - EcoVision Dinner Gala Business Attire, with Co-Keynote Speakers Newt Gingrich and Mark Udall**
Cocktail Reception

7:15 p.m. **EcoVision Dinner Gala**

Day Three - April 19, 2007

9:00am Continental breakfast and refreshments available in the Atrium and EcoVision Hospitality Suite.

10:00 a.m. - 11:30 a.m. **Panel 6 - Next Steps in Creating a Global Information Infrastructure** - requirements and policy implementation for emerging technologies: Patents, trade secrets and licensing , green finance, information infrastructure, more...

1:00 p.m. **Luncheon - Keynote speaker Vice Admiral Conrad Lautenbacher** - NOAA Administrator

3:00 p.m. - 4:30 p.m. **Panel 7 - Final Panel - EcoVision Outcomes and Implementation** - Building and enhancing institutional and societal capacity; EcoVision Recommendations; answering questions raised by EcoVision 2007; incorporating and using solutions and tools identified; enabling development of new tools and solutions.

