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H.R. 896 and H.R. 1989

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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C O N T E N T S

	Page
Hearing held on June 7, 2001	1
Statement of Members:	
Gilchrest, Hon. Wayne, a Representative in Congress from the State of Maryland	1
Prepared statement on H.R. 896 and H.R. 1989	2
Saxton, Hon. Jim, a Representative in Congress from the State of New Jersey	37
Prepared statement on H.R. 896	43
Underwood, Hon. Robert A., a Delegate to Congress from Guam	3
Prepared statement on H.R. 896 and H.R. 1989	3
Statement of Witnesses:	
Ashe, Daniel M., Chief, National Wildlife Refuge System, Fish and Wildlife Service, U.S. Department of the Interior	58
Prepared statement on H.R. 896	59
Chasis, Sarah, Senior Attorney, Natural Resources Defense Council	23
Prepared statement on H.R. 1989	25
DeLeonard, Robert, President, New Jersey Beach Buggy Association	74
Prepared statement on H.R. 896	76
Dunnigan, John H., Executive Director, Atlantic States Marine Fisheries Commission	17
Prepared statement on H.R. 1989	19
Hogarth, Dr. William T., Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce	6
Prepared statement on H.R. 1989	9
Kelly, Hon. John P., Director, Ocean County Board of Freeholders, and Mayor of Eagleswood Township, New Jersey	64
Prepared statement on H.R. 896	65
Letter submitted for the record on H.R. 896	67
Letter submitted for the record on the Holgate Unit of Long Beach Island	54
McDowell, Robert, Director, Division of Fish and Wildlife, New Jersey Department of Environmental Protection	61
Prepared statement on H.R. 896	62
Savadove, Laurence, Beach Haven, New Jersey	70
Prepared statement on H.R. 896	72
Short, Cathleen, Assistant Director for Fisheries and Habitat Conservation, Fish and Wildlife Service, U.S. Department of the Interior	13
Prepared statement on H.R. 1989	15
West, Ambassador Mary Beth, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State	4
Prepared statement on H.R. 1989	5
Additional materials supplied:	
Koons, Joan, President, Board of Trustees, Alliance for a Living Ocean, Letter submitted for the record	56
Leatherman, Stephen P., Ph.D., Professor and Director, Laboratory for Coastal Research, Florida International University, statement on H.R. 896 submitted for the record by Hon. Robert Underwood	93
Lick, Robert E., Cheyenne, Wyoming, Letter submitted for the record	85
Mancini, James J., Ocean County Freeholder and Mayor, Long Beach Township, Statement on H.R. 896 submitted for the record by Hon. Jim Saxton	51

Page

Additional materials supplied—Continued

Semcer, Bart, Associate Washington Representative, The Sierra Club, Statement on H.R. 896 submitted for the record by Hon. Robert Underwood 46

Waltman, James R., Director, Refuges and Wildlife Program, The Wilderness Society, Statement on H.R. 896 submitted for the record by Hon. Robert Underwood 44

LEGISLATIVE HEARING ON H.R. 1989, THE FISHERIES CONSERVATION ACT OF 2001, AND H.R. 896, A BILL TO ENSURE THE SAFETY OF RECREATIONAL FISHERMEN AND OTHER PERSONS WHO USE MOTOR VEHICLES TO ACCESS BEACHES ADJACENT TO THE BRIGANTINE WILDERNESS AREA IN THE EDWIN B. FORSYTHE NATIONAL WILDLIFE REFUGE, NEW JERSEY, BY PROVIDING A NARROW TRANSITION ZONE ABOVE THE MEAN HIGH TIDE WHERE MOTOR VEHICLES CAN BE SAFELY DRIVEN AND PARKED

Thursday, June 7, 2001
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 9:36 a.m., in Room 1324, Longworth House Office Building, Hon. Wayne T. Gilchrest [Chairman of the Subcommittee] presiding.

STATEMENT OF THE HONORABLE WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GILCHREST. Good morning, everybody. The Subcommittee will come to order.

We will first discuss H.R. 1989.

It was a good year because I was not in Congress in that year. [Laughter.]

I don't think Robert was here either. Jim was here though.

Mr. SAXTON. What was that?

Mr. GILCHREST. Jim was in Congress in 1989.

We will first discuss H.R. 1989, the Fisheries Conservation Act of 2001.

This bill, which we introduced, reauthorizes the following statutes: the Interjurisdictional Fisheries Act of 1986, the Anadromous Fisheries Conservation Act of 1965, the Atlantic Striped Bass

Conservation Act of 1984, the Atlantic Coastal Fisheries Cooperative Management Act, the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act of 1983, the Atlantic Tunas Convention Act of 1975, the Northwest Atlantic Fisheries Convention Act of 1995, until September 30, 2006.

These are important fisheries laws, and I am interested in hearing whether the provisions of these statutes improved for the future.

The second part of today's hearing is on H.R. 896, a bill introduced by the former, distinguished Chairman of this Subcommittee, Congressman Jim Saxton.

It is my understanding that the goal of this legislation is to solve a local problem that involves the U.S. Fish and Wildlife Service and certain New Jersey residents, who have recreationally fished at the Holgate Peninsula for many years.

While I am not familiar with all the details of this situation, I am interested in learning what has been the impact of off-road vehicles on the Brigantine wilderness, what was the rationale of the 1990 Public Use Management Plan for the Holgate Unit, and what conditions have changed that have led the Service to conclude that Holgate should be closed to all motor vehicles on a year-round basis.

It is my hope that our invited witnesses will specifically address these key issues.

And I look forward to the testimony this morning for both parts of this hearing, how we can collaborate with the various agencies and departments on the Federal and state level to bring together sometimes diverse views together so that the nation's fisheries can be sustained and continue or be made to be in a much more healthful state.

And my good friend, Mr. Saxton, I think has agreed to take the second part of the hearing. And we look forward to those witnesses so that we resolve an issue in Mr. Saxton's district.

At this point, I would like to yield to the distinguished gentleman from Guam.

[The prepared statement of Mr. Gilchrest follows:]

Statement of The Honorable Wayne Gilchrest, Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans

Good morning, today the Subcommittee will hear testimony on two bills, H.R. 1989 and H.R. 896.

We will first discuss H.R. 1989, the Fisheries Conservation Act of 2001. This bill, which I introduced, reauthorizes the following statutes: the Interjurisdictional Fisheries Act of 1986; the Anadromous Fisheries Conservation Act of 1965; the Atlantic Striped Bass Conservation Act of 1984; the Atlantic Coastal Fisheries Cooperative Management Act; the National Oceanic and Atmospheric and Administration Marine Fisheries Program Authorization Act of 1983; the Atlantic Tunas Convention Act of 1975; and the Northwest Atlantic Fisheries Convention Act of 1995 until September 30, 2006. These are important fishery laws and I am interested in hearing whether the provisions of these statutes can be improved for the future.

The second part of today's hearing is on H.R. 896, a bill introduced by the former distinguished Chairman of this Subcommittee, Congressman Jim Saxton. It is my understanding that the goal of this legislation is to solve a local problem that involves the U. S. Fish and Wildlife Service and certain New Jersey residents who have recreationally fished at the Holgate Peninsula for many years.

While I am not familiar with all of the details of this situation, I am interested in learning what has been the impact of off-road vehicles on the Brigantine Wilderness, what was the rationale of the 1990 Public Use Management Plan for the

Holgate Unit and what conditions have changed that have led the Service to conclude that Holgate should be closed to all motor vehicles on a year-round basis. It is my hope that our invited witnesses will specifically address these key issues.

STATEMENT OF THE HONORABLE ROBERT A. UNDERWOOD, A DELEGATE IN CONGRESS FROM GUAM

Mr. UNDERWOOD. Thank you, Mr. Chairman. And thank you for holding this hearing today on a broad range of legislative issues.

Our first panel, as you have indicated, will discuss the reauthorization of a number of fisheries laws that govern both domestic and international fisheries activities. While these laws are generally without controversy, recent management debates related to some East Coast fisheries have led at least one of our witnesses to question whether the current cooperative management efforts between the states and the National Marine Fisheries Service are adequate and to suggest that changes are needed to improve this management structure.

I will be interested to learn whether other witnesses on the panel agree with these proposals and welcome what I believe is a necessary and healthy discussion that I hope will improve the overall management of our fisheries.

I will also be interested to hear from this morning's second panel regarding their views about H.R. 896, legislation which would provide motorized access across a designated coastal wilderness area in the Edwin B. Forsythe National Wildlife Refuge in New Jersey.

Certainly, I can appreciate the circumstances behind this bill and the good intentions of its sponsor, our colleague, Congressman Saxton.

However, its very nature—providing motorized access in a designated wilderness area—contradicts the Wilderness Act and the law established the Brigantine Wilderness area and sets a precedent for the entire national wilderness preservation system.

Such are the stakes. And indeed, they represent a very high hurdle. In this respect, I urge that the Committee proceed in a necessarily cautious and deliberate manner while considering this bill.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Underwood follows:]

Statement of The Honorable Robert Underwood, a Delegate in Congress from Guam

Thank you, Mr. Chairman, for holding this hearing today on a broad range of legislative issues. Our first panel, as you mentioned, will discuss the reauthorization of a number of fisheries laws that govern both domestic and international fisheries activities.

While these laws are generally without controversy, recent management debates related to some East Coast fisheries have led at least one of our witnesses to question whether the current cooperative management efforts between the states and the National Marine Fisheries Service are adequate, and to suggest that changes are needed to improve this management structure. I will be interested to learn whether other witnesses on the panel agree with these proposals and welcome what I believe is a necessary and healthy discussion that I hope will improve the overall management of our fisheries.

I also will be interested to hear from this morning's second panel regarding their views about H.R. 896, legislation which would provide motorized access across a designated coastal wilderness area in the Edwin B. Forsythe National Wildlife Refuge in New Jersey. Certainly, I can appreciate the circumstances behind this bill and the good intentions of its sponsor, Congressman Saxton.

However, its very nature—providing motorized access in a designated wilderness area—directly contradicts the Wilderness Act and the law that established the Brigantine Wilderness Area and sets a dangerous precedent for the entire National Wilderness Preservation System. Such are the stakes, and indeed, they represent a very high hurdle. In this respect, I urge that the committee proceed in a necessarily cautious and deliberate manner while considering this bill.

Mr. GILCHREST. The gentleman from New Jersey, Mr. Saxton.

Mr. SAXTON. Mr. Chairman, I have an opening statement, but it pertains to the second bill, and I think I will wait until that time to give my opening statement, if it is all right.

Mr. GILCHREST. Thank you.

Welcome to our hearing this morning. We look forward to an interesting exchange of ideas and ideals that we can all shoot for.

Ambassador Mary Beth West, you may begin.

STATEMENT OF MARY BETH WEST, DEPUTY ASSISTANT SECRETARY FOR OCEANS, FISHERIES, AND SPACE, U.S. DEPARTMENT OF STATE

Ms. WEST. Thank you, Mr. Chairman and members of the Subcommittee.

We appreciate the opportunity to share the Department of State's views on the international aspects of the legislation being considered today.

Two of the statutes that would be amended by the Act under discussion implement key international fisheries conservation and management agreements:

The Atlantic Tunas Convention Act of 1975, which implements the International Convention for the Conservation of Atlantic Tunas, and the Northwest Atlantic Fisheries Convention Act of 1995, which implements the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

Almost 10 years ago in Rio, the international community agreed on the need to address the increasingly dire condition of the world's fishery resources. From that impetus came several new global instruments, including the U.N. Food and Agriculture Organization's Compliance Agreement and Code of Conduct, the U.N. Fish Stocks Agreement, as well as a recognition that existing regional fisheries organizations had to strengthen their mandates to conserve and rebuild dwindling resources.

Several organizations took inspiration from those instruments to adopt creative and effective tools to address the problems of overfishing and illegal fishing.

In particular, ICCAT, the International Commission for the Conservation of Atlantic Tunas, and NAFO, the Northwest Atlantic Fisheries Organization, have each set precedents among other organizations by incorporating the principles of the compliance agreement and the fish stocks agreement into rules governing member compliance and nonmember fishing.

The U.S. has been a member of ICCAT since 1967 and has worked actively within the organization to protect U.S. access to the high-value stocks the commission manages and to encourage long-term sustainable management of those stocks.

Under U.S. leadership, ICCAT has adopted groundbreaking rebuilding plans for two of the most overfished and valuable stocks

in the Atlantic. And the commission is in the middle of an exercise to establish comprehensive criteria to allow access to allocations for all members in a transparent and fair way.

One of the major problems faced by ICCAT is illegal fishing. As a result, in recent years, ICCAT adopted rules providing for multilateral trade measures against those, both member and nonmembers alike, who overfish ICCAT species.

Continued U.S. involvement in the organization will be critical to ensuring its future success. And we, therefore, recommend the reauthorization of the Atlantic Tunas Convention Act to allow this.

By contrast, the U.S. has participated in NAFO for only the past 5 years. However, we have also taken an active role in guiding this organization to adopt rules and management measures consistent with international law.

Most of the stocks managed by NAFO have been under fishing moratoria for the past several years. And we have, therefore, received only limited allocations of NAFO stocks. The absence of extensive high seas fisheries has instead allowed NAFO to focus on adopting comprehensive measures to address illegal fishing in the convention area and to implement provisions to allow for greater transparency in the organization.

These measures have set important precedents for other organizations and have helped to build credibility for conservation-based fisheries management.

We are pleased, too, that in recent years the U.S. has received new allocations of NAFO-managed stocks. And we hope to work within the organization to build sufficient quota rights so that fishing these stocks will become economically feasible.

Much remains to be done to restore the fish stocks in the Northwest Atlantic. In the meantime, the U.S. has an important role to play. Therefore, we also support reauthorization of the Northwest Atlantic Fisheries Convention Act of 1995.

Mr. Chairman, reauthorization of both of these acts will enhance the role of the United States as an important voice for conservation and cooperative management of key Atlantic fish stocks.

Thank you very much. And I would be happy to take questions that the Committee may have.

[The prepared statement of Ms. West follows:]

Statement of Ambassador Mary Beth West, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to share the Department of State's views on the international aspects of the legislation being considered today. Two of the statutes that would be amended by the Act under discussion implement key international fisheries conservation and management agreements: the Atlantic Tunas Convention Act of 1975, which implements the International Convention for the Conservation of Atlantic Tunas, and the Northwest Atlantic Fisheries Convention Act of 1995, which implements the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

Almost ten years ago in Rio, the international community agreed on the need to address the increasingly dire condition of the world's fishery resources. From that impetus came several new global instruments, including the UN Food and Agriculture Organization's Compliance Agreement and Code of Conduct, and the UN Fish Stocks Agreement, as well as a recognition that existing regional fisheries organizations had to strengthen their mandates to conserve and rebuild dwindling resources. Several organizations took inspiration from those instruments to adopt

creative and effective tools to address the problems of overfishing and illegal fishing. In particular, ICCAT (the International Commission for the Conservation of Atlantic Tunas) and NAFO (the Northwest Atlantic Fisheries Organization) have each set precedents among other organizations by incorporating the principles of the Compliance Agreement and Fish Stocks Agreement into rules governing member compliance and non-member fishing.

The United States has been a member of ICCAT since 1967, and has worked actively within the organization to protect U.S. access to the high-value stocks the commission manages, and to encourage long-term sustainable management of the stocks managed by ICCAT. Under U.S. leadership, ICCAT has adopted groundbreaking rebuilding plans for two of the most overfished (and valuable) stocks in the Atlantic. And the Commission is in the middle of an exercise to establish comprehensive criteria to allow access to allocations for all members in a transparent and fair way. One of the major problems being faced by ICCAT is illegal fishing. As a result, in recent years ICCAT adopted measures providing for multilateral trade measures against those—both member and non-member alike—who overfish ICCAT species. Continued U.S. involvement in the organization will be critical to ensuring its future success, and we therefore recommend the reauthorization of the Atlantic Tunas Convention Act to allow this.

By contrast, the United States has participated in NAFO for only the past five years. However, we have also taken an active role in guiding this organization to adopt rules and management measures consistent with international law. Most of the stocks managed by NAFO have been under fishing moratoria for the past several years, and we have therefore received only limited allocations of NAFO stocks. The absence of extensive high-seas fisheries has instead allowed NAFO to focus on adopting comprehensive measures to address illegal fishing in the Convention Area, and to implement provisions to allow for greater transparency in the organization. These measures have set important precedents for other organizations and have helped to build credibility for conservation-based fisheries management. We are pleased, too, that in recent years the United States has received new allocations of NAFO-managed stocks and hope to work within the organization to build sufficient quota rights so that fishing these stocks will become economically feasible. Much remains to be done to restore the fish stocks in the Northwest Atlantic; in the meantime, we have an important role to play. Therefore, we also support reauthorization of the Northwest Atlantic Fisheries Convention Act of 1995.

Mr. Chairman, reauthorization of both of these Acts will enhance the role of the United States as an important voice for conservation and cooperative management of key Atlantic fish stocks.

Thank you very much. I would be happy to take any questions that you may have.

Mr. GILCHREST. Thank you, Ambassador West.

Dr. Hogarth?

STATEMENT OF WILLIAM HOGARTH, ACTING ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Dr. HOGARTH. Thank you, Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to be here today to talk about the reauthorization of several statutes important to the work of NOAA Fisheries.

The Anadromous Fish Conservation Act of 1965 authorizes Commerce and Interior to enter into cooperative agreements with states and other nonFederal interests for the conservation, development, and enhancement of anadromous fishery resources of the nation, including those in the Great Lakes.

The amount of funds that may be used to finance projects varies. For most projects, Federal funds account for 50 percent of the costs. But in some cases, a higher percentage of Federal funding is allowed.

State fishery agencies, colleges, universities, private entities, and other nonFederal interests in 31 states bordering the oceans or the

Great Lakes may participate in this Act. Funding made available to the recipients in recent years has been about $2 million a year, with the most recent authorization being $4.25 million for the fiscal years 1998, 1999, and 2000.

We see numerous benefits resulting from the reauthorization of this Act. Since the mid-1960's, the Act has served as a traditional base source of funding, providing the necessary resources for the states to conserve and manage anadromous fishery resources such as sturgeons, river herring, and striped bass.

Information collected on anadromous fish under this program is used to support management decisions at the state and interstate levels and those required under Federal statutes.

The Interjurisdictional Fishery Act of 1986 is a formula-based financial assistance program with two overall purposes. The first purpose is to promote and encourage state activities in support of the management of interjurisdictional fishery resources, and, two, to promote the management of interjurisdictional fishery resources throughout their range.

Any state, either directly or through and interstate marine fisheries commission, can submit a research proposal that supports management of fishery resources that, one, occur in waters under the jurisdiction of one or more states and the EEZ, the Exclusive Economic Zone; two, are managed under interstate fishery management plans; or, three, migrate between the waters under the jurisdiction of two or more states bordering on the Great Lakes.

The Federal share of the projects is usually 75 percent. Section 308(a) makes funds available to states to support interjurisdictional fishery management, and the most recent authorization has been about $4.4 million per year.

Section 308(c) provides support for the development of fishery management plans by interstate marine fishery commissions, and has been funded at its full authorization of $750,000 in recent years.

Section 308(b) and 308(d) support disaster provisions and, since 1986, have provided over $100 million in response to disasters, such as the New England groundfish collapse, the Gulf of Mexico commercial gear loss, and Pacific salmon decline.

Since 1986, the Act has served as a base source of funding for many marine fishery data collection programs. The information collected under this Act provides for state and Federal agency cooperative efforts to manage and protect many important species, such as American lobsters, sea herring, Alaska sablefish, and southern shrimp.

We recommend reauthorization and continued congressional support for this Act. The Atlantic Striped Bass Conservation Act, I think it goes without saying this, has been probably one of the greatest successes we have had. I think when other people look at fishery management and recovery, they look at striped bass.

This Act is highly effective in addressing Atlantic coast striped bass management. It provides a mechanism that encourage state compliance with interstate fishery management plans for striped bass and allows for implementation of complementary Federal regulations for striped bass in the Exclusive Economic Zone.

Congress has recently reauthorized the Striped Bass Act through Fiscal Year 2003 for $1 million each year to the Secretary of Commerce and $250,000 each year to the Secretary of the Interior. However, no funds have been appropriated under the Act.

Activities carried out to implement the striped bass mandate have been funded through other Federal and state programs. We recommend maintaining the authorization.

The Atlantic Coastal Fisheries Cooperative Management Act, like the Striped Bass Conservation Act, has proven to be highly effective. It provides the mechanism that encourages implementation, again, of interstate fishery management plans; allows implementation of complementary Federal regulation in EEZ; and, unlike the Striped Bass Act, it is an important funding source that supports state and Federal activities to develop and implement the interstate fishery management plan.

Joint commission-council FMPs have been implemented for a number of species. While we support these commission-council FMPs, there has been a difficulty in some cases to implement joint fishery management plan activities with the commission's requirements while the commission requirements are less stringent than those required by the Federal plans.

The council is required to abide by the Magnuson-Stevens Act in the national standards and other provisions. The Atlantic Coastal Act does not require the same type of standards.

The most recent difficulty highlighted has been the 2001 summer flounder quota. However, we are working now through a joint effort with all parties to see if we can work out our difficulties by sitting around the table. And, hopefully, we can work out these problems.

Congress has recently authorized the Act, in December 2000 through Fiscal Year 2005, for $10 million each year to the Secretary of Commerce. Congress appropriated $7 million for the Fiscal Year 2001.

The Northwest Atlantic Fisheries Convention Act of 1995 implements the convention for the future multilateral cooperation in the Northwest Atlantic Fisheries, which established the Northwest Atlantic Fisheries Organization, NAFO.

And I think Ambassador West covered this very clearly and concisely, and I will not spend any more time on this issue.

The National Oceanic and Atmospheric Administration Marine Fishery Program Authorization Act of 1983: This is an Act that authorizes a number of NOAA's marine fishery programs established under the Fish and Wildlife Act of 1956 and laws implementing international fishery agreements.

The appropriation authorized by this Act are in addition to those in the Magnuson-Stevens Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Interjurisdictional Fishery Act, and the National Fishery Conservation Act.

Specifically, this Act authorized appropriations for specific subactivities within the current NMFS appropriations budget structure. These activities are for fishery information collection and analysis, fishery conservation and management, and state and industry cooperative programs.

For example, the fisheries information collection and analysis of activity includes funding for the collection, analysis and dissemina-

tion of scientific information necessary for the management of living resources and associated marine habitat.

This Act also includes the appropriations for the NOAA Chesapeake Bay office.

The Atlantic Tunas Convention Act of 1975 again is an Act that I think Ambassador West covered very concisely. And the funds appropriated under this Act are used to support the advisory Committee, the regulatory activities of NMFS's highly migratory species management division, permitting and reporting activities of the Northeast and Southeast regional office, and research activities conducted by the science centers.

Mr. Chairman, we thank you for this opportunity to review the reauthorization of several statutes that are important both to the states and NOAA Fisheries. We are committed to working with our state and Federal partners for effective management of nation's fishery resources.

This concludes my testimony, and I am prepared to respond to any questions you may have.

[The prepared statement of Dr. Hogarth follows:]

Statement of William T. Hogarth, Ph.D., Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to this hearing on the reauthorization of the Interjurisdictional Fisheries Act of 1986, the Anadromous Fisheries Conservation Act of 1965, the Atlantic Striped Bass Conservation Act of 1984, the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act of 1983, the Atlantic Tunas Convention Act of 1975, and the Northwest Atlantic Fisheries Convention Act of 1995, all addressed in the Fisheries Conservation Act of 2001. I am William T. Hogarth, the Acting Administrator for Fisheries in the National Oceanic and Atmospheric Administration/Department of Commerce.

Anadromous Fish Conservation Act of 1965

The Anadromous Fish Conservation Act of 1965 authorizes the Secretary of Commerce and the Secretary of the Interior to enter into cooperative agreements with states and other non–Federal interests for the conservation, development, and enhancement of the anadromous fisheries resources of the nation, including those in the Great Lakes and Lake Champlain. Since the mid- 1960s, the Anadromous Fish Conservation Act (AFCA) has served as the traditional base source of funding for the states, providing the necessary resources to conserve and manage anadromous fisheries resources like salmon, striped bass, and river herring. These fisheries resources, with their complicated life histories, require special attention because of the many ocean and inland challenges to their survival. Full recovery of these resources will provide enormous economic and social benefits to the American public. Also, the AFCA provides funding for collecting information on several Great Lakes fish species and for other important species such as sturgeons and shads. Information collected by these anadromous fish programs is used to support management decisions at the state, interstate, and Federal levels required under the Atlantic Coastal Fisheries Cooperative Management Act, the Endangered Species Act, and the Magnuson–Stevens Fishery Conservation and Management Act. The data collected provide vital links among state and Federal agency cooperative efforts to manage and protect important anadromous fishes. Without the AFCA, many of these economically and ecologically valuable resources (e.g., paddlefish, sturgeons, salmonids) are likely to become or remain endangered, threatened, or depleted, further depriving Americans of food and recreational fishing opportunities, and causing a multitude of economic and social impacts associated with mandated recovery programs.

Historically, the program was administered at the Federal level by both the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service. However, for the past 8 years, Congress has provided funding only to NMFS. The amount of funds that may be used to finance projects varies. For most projects, Federal funds account for 50 percent of the cost, but Federal funds can support up to 66.66 percent of the cost when two or more states cooperate. Up to 90 percent

Federal funding can be made available only if a state has implemented an interstate fisheries management plan for an anadromous species to which the project applies. State fisheries agencies, colleges, universities, private companies, and other non–Federal interests in 31 states bordering the oceans or the Great Lakes may participate under this Act. All projects must be coordinated with, and cleared through, the state fisheries management agency of the state in which the project takes place. The total amount of funds obligated in any fiscal year to any one State may not exceed $650,000. Funding made available to recipients in recent years has been about $2.0 million a year. The most recent reauthorization for this Act was in October, 1996, through Public Law 104–297, which reauthorized the program at an annual level of $4 million for Fiscal Year 1997, and $4.25 million for each of the fiscal years 1998, 1999, and 2000. We find the current funding level appropriate.

We recommend reauthorization and continued Congressional support for the AFCA. We see the anadromous fisheries projects, funded under the AFCA, as valuable assets that help the Federal Government and state fisheries agencies work closely together to protect and restore our nation's anadromous fisheries resources.

Interjurisdictional Fisheries Act of 1986

The Interjurisdictional Fisheries Act of 1986 (IFA) is a formula-based financial assistance program with two overall purposes: (1) to promote and encourage state activities in support of the management of interjurisdictional fisheries resources and (2) to promote the management of interjurisdictional fisheries resources throughout their range. Any state may, either directly or through an interstate marine fisheries commission, submit a research proposal that supports management of fishery resources that: (1) occur in waters under the jurisdiction of one or more states and in the Exclusive Economic Zone; (2) are managed under an interstate fishery management plan; or (3) migrate between the waters under the jurisdiction of two or more states bordering on the Great Lakes.

Since 1986, the IFA has been the traditional base source of funding for many marine fisheries data collection programs. Funds provided under the IFA are spent to obtain catch and effort statistics and other fisheries information important for managing marine interjurisdictional species. This information is used to support management decisions both at the state level and those required under the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson–Stevens Fishery Conservation and Management Act. Like the Anadromous Fish Conservation Act, the information collected under the IFA provides vital links among state and Federal agency cooperative efforts to manage and protect many important marine migratory species. IFA helps states provide the research, data collection, and fisheries management infrastructure to properly manage interjurisdictional marine resources. Without the IFA, the information necessary for the proper management of many of these economically and ecologically valuable resources (e.g., American lobsters, sea herring, Alaska sablefish)would be lacking.

Pursuant to the law, funds that support interstate fishery management programs are made available to the states under section 308(a) based on a complex apportionment formula that utilizes the volume and value of fish landed in each state by domestic commercial fishermen. Federal share of project costs may amount to as much as 75 percent, or 90 percent when states have adopted fishing regulations that are consistent with an interstate or Federal fishery management plan for the species to which the study applies. Enforcement projects funded through this section must pertain to the protection of fishery resources that are managed under an interstate fishery management plan and may be 100% financed by Federal funds up to $25,000. Funds made available to states under section 308(a) have been about $3.2 million in recent years. The most recent reauthorization for section 308(a) authorized $3.4 million for Fiscal Year 1996, $3.9 million for Fiscal Year 1997, and $4.4 million for each of fiscal years 1998 through 2000.

Sections 308(b) and 308(d) provide for assistance to address fishery resource disasters. Section 308(b) authorizes the Secretary to provide grants or cooperative agreements to states determined to have been affected by a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster from natural or undetermined causes. The Federal share of the cost of assistance is limited to 75 percent.

Pursuant to section 308(b), the Secretary declared a failure of the Northeast multispecies groundfish fishery in Fiscal Year 1994. In Fiscal Year 2000, a disaster determination was made for Alaskan salmon fisheries under both IFA section 308(b) and section 312(a) of the Magnuson–Stevens Fishery Conservation and Management Act. The declaration under IFA section 308(b) was needed to make Small Business Administration loans available to eligible businesses in the area.

Section 308(d) allows the Secretary to provide assistance to commercial fishermen, either directly or indirectly through state or local government agencies and nonprofit organizations, to alleviate harm caused by a fishery resource disaster from hurricanes or any other natural disasters. Cost sharing is not required, but assistance programs require notice in the Federal Register and the opportunity for public comment.

In 1994 a fisheries disaster was declared under section 308(d) for the Pacific salmon decline in the Pacific Northwest. Declarations in 1995 included the Northeast multispecies groundfish collapse, the Gulf of Mexico commercial gear loss, and continuation of the Pacific salmon disaster. An appropriation of $65 million was made available to these three regions. In Fiscal Year 1999, an additional $1 million was appropriated under section 308(d) to continue support for the fishermen's health care program that was part of the original assistance package for the Northeast multispecies groundfish collapse.

Section 308(c), which provides support for the development of fishery management plans by interstate marine fisheries commissions, has been funded at $750,000 in recent years. The most recent reauthorization of section 308(c) authorized funding of $700,000 for Fiscal Year 1997, and $750,000 annually for fiscal years 1998 through 2000. We find the current funding levels appropriate.

We recommend reauthorization and continued congressional support for the IFA. We see the projects funded under the IFA as valuable assets that help the Federal Government and state fisheries agencies work closely together to protect and restore our nation's marine interjurisdictional fisheries resources.

Atlantic Striped Bass Conservation Act of 1984

The Atlantic Striped Bass Conservation Act (Striped Bass Act) has proven to be a highly effective statute addressing Atlantic coast striped bass management problems. It provides a forcing mechanism that encourages compliance with the successful Atlantic States Marine Fisheries Commission Interstate Fisheries Management Plan for Striped Bass and allows implementation of complementary Federal regulations for striped bass in the Exclusive Economic Zone. Congress recently reauthorized the Striped Bass Act, (in December 2000) through Fiscal Year 2003 for $1,000,000 for each year to the Secretary of Commerce, and $250,000 for each year to the Secretary of the Interior. No funds have ever been appropriated under the Act. Activities carried out to implement the Striped Bass Act's mandates have been funded through other Federal and state programs. No further authorization of funding is needed at this time.

The Striped Bass Act also requires the Secretaries of Commerce (DOC) and the Interior to work in consultation with the Atlantic States Marine Fisheries Commission (Commission) to conduct a study on the Atlantic striped bass population (population study). The results of this study are to be reported to Congress within 180 days of enactment of the last reauthorization. While the DOC fully supports continuation of striped bass stock assessments, it notes that the new study required is a subset of ongoing research conducted by DOC researchers in cooperation with the Department of the Interior and the Commission, and that the information required in the population study is already reported to Congress, on a biennial basis, as required by the 1996 reauthorization of this Act. Results of other peer-reviewed research funded under this Act are also reported in the biennial reports. DOC has already provided informal draft findings of the population study to Congressional staff, and believes that the requirement of the additional report is redundant.

Atlantic Coastal Fisheries Cooperative Management Act

Like the Atlantic Striped Bass Conservation Act, (Striped Bass Act) the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) has proven to be a highly effective statute in addressing Atlantic coast fisheries management problems. It provides a forcing mechanism that encourages implementation of Atlantic States Marine Fisheries Commission (Commission) interstate fisheries management plans (ISFMPs), allows implementation of complementary Federal regulations to ISFMPs in the Exclusive Economic Zone (EEZ), and is an important funding source that supports state and Federal activities required for the development and implementation of the ISFMPs. Currently, 19 ISFMPs covering 24 Atlantic coastal species have been implemented. For those species that are found primarily in state waters, regulations in Federal waters may be implemented by a regional fishery management council, or by Federal regulation. Joint Commission/Council FMPs have been implemented for: sea herring; northern shrimp; winter flounder; summer flounder/scup/black sea bass; bluefish; Spanish mackerel; and red drum. The Secretary has implemented complementary EEZ regulations for American lobster, Atlantic sturgeon, weakfish, and horseshoe crab.

While we support joint Commission/Council FMPs, it has been difficult in some cases to implement joint fisheries management actions when the Commission's management plan's requirements are less stringent than those required for Federal plans. This has most recently been highlighted by the difficulty in determining the 2001 summer flounder quota. We would recommend having some mechanism to more closely align the standards of the Commission's fishery management plans with the national standards required for Council fishery management plans under the Magnuson–Stevens Act and complementary Secretarial EEZ regulations.

Congress recently reauthorized the Atlantic Coastal Act, (in December 2000) through Fiscal Year 2005 for $10,000,000 each year to the Secretary of Commerce. Recent appropriations have been $6,000,000 for Fiscal Year 2000 and $7,000,000 for Fiscal Year 2001. We find the current funding levels appropriate.

Northwest Atlantic Fisheries Convention Act of 1995

The Northwest Atlantic Fisheries Convention Act implements the Convention for the Future Multilateral Cooperation in the Northwest Atlantic Fisheries, which established the Northwest Atlantic Fisheries Organization (NAFO). The United States has attended five meetings of NAFO as a member, and hosted the most recent annual meeting of the organization in Boston, Massachusetts. Through our participation in NAFO, we are making important strides in securing fishing opportunities for U.S. fishermen and carrying forward the principles of U.S. fisheries management.

At its first meeting as a member in 1996, the United States requested and obtained modest allocations from some of the few fish stocks managed by NAFO that can sustain fishing. These initial gains included small allocations of redfish, squid, and an effort allocation for shrimp. Since this time the United States has received an additional small allocation of shrimp (expressed in metric tonnage).

Due to the economic and physical risks associated with fishing operations in the NAFO Regulatory Area, the United States has thus far been unable to harvest its NAFO allocations. However, in 2000, the United States engaged in a successful chartering operation using an Estonian vessel to fish for NAFO Division 3M shrimp. This operation provided a number of benefits to the United States, including: economic benefits to the U.S. fishing interest involved; harvesting, market, and processing information that may be of benefit in the future to U.S. harvesters; and the beginnings of a fishing history that may be of benefit in future allocation discussions.

Although our current allocations from NAFO remain small, the United States continues to strive for more equitable sharing of fishing opportunities for the future. In order to achieve this, we have initiated and taken a leadership role in discussions designed to create a predictable, transparent process that recognizes the conservation and management contributions of coastal states to straddling fish stocks, builds upon historical fishing patterns, is fair and equitable, and enhances the conservation and management of NAFO-managed stocks. Thus, as a coastal state and as a member of the organization, we anticipate an increased share of fishing opportunities once stocks rebuild to levels that can support fishing operations.

Additionally, the United States has taken a strong leadership role in seeking more effective conservation and management of fisheries resources under NAFO jurisdiction. The United States will assume chairmanship of the Fisheries Commission later this year. We have also provided leadership in the NAFO Scientific Council and have consistently supported the management recommendations of the Council. Additionally, we have assumed leadership roles in a number of Standing Committees, including chairmanship of the standing committee that designed the current NAFO scheme for addressing the fishing activities of non-members. The United States has also pressed for timely stock assessments and gathering of data relating to both regulated and unregulated species occurring in the NAFO Regulatory Area, and actively participated in discussions on bycatch, vessel monitoring, and enforcement. Effective NAFO conservation and management is particularly important to the United States, given that NAFO has competence to manage the high seas portions of important domestic fish stocks that straddle the U.S. EEZ.

Furthermore, it should be noted that NAFO provides an excellent opportunity for the United States to pursue real-world implementation of recent international fisheries management agreements, particularly the United Nations Agreement on Straddling and Highly Migratory Fish Stocks. The United States has pressed (with some success) for adoption of key elements of the UN Agreement, such as: implementation of the precautionary approach; science-based management; strong monitoring and enforcement; effective dispute settlement; and greater transparency in the decision-making processes of the organization. It is our hope that continued

progress on these fronts will help to make NAFO an effective model for regional fisheries management bodies worldwide.

National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act of 1983

The NOAA Marine Fisheries Program Authorization Act (NMFPAA) was last reauthorized in 1996 for Fiscal Year 1996 through Fiscal Year 2000 as part of the Sustainable Fisheries Act (P.L. 104–297). The NMFPAA authorizes a number of NOAA's marine fisheries programs under the Fish and Wildlife Act of 1956 and laws implementing international fishery agreements. Specifically, the NMFPAA authorizes appropriations for specific subactivity line items within the current NMFS appropriations budget structure. The fisheries information collection and analysis subactivity includes funding for the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitats. The fisheries conservation and management subactivity includes funding for the development, implementation, and enforcement of conservation and management measures to promote the continued use of living marine resources, hatchery operations, habitat conservation, and protected species management. Finally, the state and industry cooperative programs subactivity includes funding to ensure the quality and safety of seafood products and to provide grants to states for improving the management of fisheries. The NMFPAA also includes an authorization for appropriations for the NOAA Chesapeake Bay Office.

The Administration recommends that the NMFPAA be reauthorized consistent with the President's Fiscal Year 2002 budget request of $207.7 million for these three subactivities and $3.4 million for the Chesapeake Bay Office, and such sums as required by the President's future requests. The appropriations authorized by the NMFPAA are in addition to those of the Magnuson–Stevens Act, Endangered Species Act, Marine Mammal Protection Act, Interjurisdictional Fisheries Act, and Anadromous Fish Conservation Act.

Atlantic Tunas Convention Act of 1975

The Atlantic Tunas Convention Act (ATCA) governs U.S. participation on the International Commission for the Conservation of Atlantic Tunas (ICCAT) and stipulates how the Secretary of Commerce shall administer the conservation and management programs of ICCAT through research programs and domestic fishery regulations. Funds appropriated for implementation of ATCA are used in part to support the Advisory Committee, the regulatory activities of NMFS" Highly Migratory Species Management Division, permitting and reporting activities of the Northeast and Southeast Regional Offices, and research activities conducted in the Southeast and Northeast Science Centers and several external laboratories and academic institutions.

Mr. Chairman, this concludes my testimony. I am pleased to respond to any questions at this time.

Mr. GILCHREST. Thank you, Dr. Hogarth.

Ms. Short?

STATEMENT OF CATHY SHORT, ASSISTANT DIRECTOR FOR FISHERIES AND HABITAT CONSERVATION, U.S. FISH AND WILDLIFE SERVICE

Ms. SHORT. Mr. Chairman, members of the Subcommittee, I appreciate this opportunity to appear before you today to present the testimony of the Department of Interior regarding H.R. 1989, Fisheries Conservation Act of 2001.

My name is Cathy Short, and I am the assistant direction for fishery and habitat conservation with the U.S. Fish and Wildlife Service. I will provide the Department's view on the legislation before the Subcommittee.

The Department supports reauthorizing the Atlantic Striped Bass Conservation Act, the Anadromous Fish Conservation Act, the Atlantic Coastal Fisheries Cooperative Management Act, and continuing that authorization for appropriations through Fiscal Year 2006.

We consider these Acts important assets in our efforts to conserve and restore the nation's anadromous fisheries resources. I will comment on these three provisions of 1989 specifically, and defer to my colleagues from the Department of Commerce and the Department of State for comments on the other provisions contained in the bill.

Mr. Chairman, the Atlantic Striped Bass Conservation Act is one of our keystone authorities, which continues to be supported by the states and the marine fishery commissions for the benefits to both recreational and commercial fishing.

The goals of the Striped Bass Act have been largely realized. The Striped Bass Act is consistently perceived by the public as the model for the successful interjurisdictional fishery restoration efforts. It has empowered state and Federal agencies to take the necessary steps to restore and effectively manage striped bass populations.

Effectiveness and value of the Striped Bass Act is evident in that Atlantic States Marine Fishery Commission has declared the Chesapeake Bay population of striped bass to be restored. And the Act sanctions have only been implemented once.

Under the authority of the Striped Bass Act, the Service maintains a coastwide migratory striped bass tagging database. We implement the only annual Federal tagging program for striped bass. This program tags bass from the Hudson River, Chesapeake Bay, and the Albemarle-Roanoake River stocks on their wintering grounds in the Atlantic Ocean off North Carolina and Virginia.

The Striped Bass Act authorized a maximum amount of $250,000 for the Fish and Wildlife Service. While the Service does not specifically identify funding authorized by the Striped Bass Act in the President's budget, the fisheries program does utilize general program funds to restore and manage striped bass.

In Fiscal Year 2000, the Service reported accomplishing 23 anadromous striped bass projects in seven states along the Atlantic coast, under additional authorities, including the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act, and the Atlantic Coastal Fisheries Cooperative Management Act.

Much of this work, which costs a total of almost $950,000, was used to further the goals of the Striped Bass Act. Three of these projects focused on habitat restoration at a cost of over $40,000. We feel that this habitat work is an extremely important activity that will help maintain recovered Atlantic striped bass populations as well as helping to restore the remaining populations.

The Anadromous Fish Conservation Act provides authority for the Secretaries of Commerce and Interior to enter to cooperative agreements with states and other nonFederal interests for the conservation, development, and enhancement of the anadromous fish. The Act allows the Service to promote effective partnerships and restoration efforts to reverse the decline of anadromous fishery resources.

State fishery agencies, colleges, universities, private companies, and other nonFederal interests in 31 states bordering the ocean or the Great Lakes may participate in these partnerships.

Enactment of the Anadromous Fish Conservation Act in 1965 teamed the Service with the states and with others to rebuild the

nation's anadromous fish resources, which were then at extremely low levels.

Historically, river development activities, such as power, irrigation, and flood control, did not account for the migratory needs of our anadromous fish. Under the Act, the Service has funded projects that generally provide benefits to anadromous fish resources in inland situations, while the National Marine Fisheries Service has funded projects that benefit anadromous fish generally in coastal and oceanic areas. However, our two agencies coordinate efforts to maximize the potential benefits.

The Service remains a committed partner to states, tribes, and the fishery commissions. We continue to use this authority conduct projects to restore anadromous fish in cooperation with states, tribes, and other Federal agencies, although we have not requested appropriations specific for the grants to the state program.

I will now briefly discuss the Atlantic Coastal Fisheries Cooperative Management Act. This statute was modeled after the Striped Bass Act, but the Service does not have the same authority to determine state noncompliance. This authority resides solely with the Secretary of Commerce.

The Atlantic Coastal Act authorizes the Service to work with the National Marine Fisheries Service to support interstate fishery management efforts of the commission and states. This includes collection, management and analysis of fishery data, law enforcement, habitat conservation, fishery research, and fishery management planning.

Fish and Wildlife Service participates on 17 of the 20 fishery management boards established by the Atlantic States Marine Fishery Commission, implements species management plans where they are enhancing the goals and the intent of the Atlantic Coastal Act.

The Service is authorized to provide funds to the commission and states. And like the Striped Bass Act, the Service does not have a specific authorization level.

Mr. Chairman, this concludes my prepared testimony. I would like to extend the Service's and the Department's appreciation to you and the rest of the Subcommittee for your leadership and interest in fisheries management, conservation, and restoration of coastal fisheries. And I would be happy to respond to any questions you may have.

[The prepared statement of Ms. Short follows:]

Statement of Cathleen Short, Assistant Director for Fisheries and Habitat Conservation, Fish and Wildlife Service, U.S. Department of the Interior

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to appear before you today to present testimony for the Department of the Interior (Department) regarding H.R. 1989, the Fisheries Conservation Act of 2001. I will provide the Department's view on the Atlantic Striped Bass Conservation Act of 1984 first, followed by comments on the Anadromous Fish Conservation Act of 1965 and the Atlantic Coastal Fisheries Cooperative Management Act. I will defer to my colleagues from the Department of Commerce and State Department for any comments on the other Acts contained in the Fisheries Conservation Act.

The Department supports reauthorizing the Atlantic Striped Bass Conservation Act, the Anadromous Fish Conservation Act, and the Atlantic Coastal Fisheries Cooperative Management Act and continuing the authorization for appropriations through Fiscal Year 2006. The Department considers these Acts important assets in our efforts to conserve and restore the Nation's anadromous fishery resources.

Atlantic Striped Bass Conservation Act of 1984

Mr. Chairman, the Atlantic Striped Bass Conservation Act (Striped Bass Act) is one of our "keystone" authorities which continues to be supported by the States and the Commissions for the benefits to both recreational and commercial fishing. The goals of the Striped Bass Act have been largely, although not entirely, realized. The Atlantic States Marine Fisheries Commission (Commission) considers Atlantic coastal migratory stocks of striped bass (i.e. the Chesapeake Bay population) to be restored. The Striped Bass Act contributed significantly to halting the decline of these stocks and enhancing the cooperative efforts that led to their restoration. The Striped Bass Act is consistently perceived by the public as the model for successful interjurisdictional fishery restoration efforts. It has empowered State and Federal agencies to take necessary steps to restore and effectively manage striped bass populations. The effectiveness and value of the Striped Bass Act is evident in that its sanctions have only been implemented once.

Much of the Striped Bass Act's success can be attributed to its requirement that management jurisdictions fully implement the Striped Bass Fishery Management Plan (FMP) or face a Federal moratorium, jointly imposed by the Secretaries of the Interior and Commerce, on striped bass fishing in State waters. The coordinated efforts of the States, the Commission, the U.S. Fish and Wildlife Service (Service), and the National Marine Fisheries Service (NMFS) to implement effective management measures, monitor striped bass stocks, and assess biological and environmental factors that affect the stocks, ensured the success to date of the restoration program. Specifically, the Service maintains a coast-wide migratory striped bass tagging database and implements the only annual tagging program, the Cooperative Winter Tagging Cruise, which tags striped bass from the Hudson River, Chesapeake Bay, and Albemarle–Roanoke River stocks on the wintering grounds in the Atlantic Ocean off North Carolina and Virginia. Coordinated efforts are supported by research and technical assistance from the Biological Resources Division of the U.S. Geological Survey (USGS) and the National Oceanic and Atmospheric Administration's research vessels.

In addition to declaring Atlantic striped bass population recovered in the Chesapeake Bay, stocks in the Delaware and Albemarle–Roanoke Rivers were declared recovered by the Commission. However, much work remains for the North Carolina striped bass stocks. The Neuse, Tar, Pamlico and Cape Fear populations have received minimal attention so far, and their status is not well known. It is important to note that the Service is committed to supporting appropriate management measures to address any declines in these recognized stocks.

The Striped Bass Act authorizes a maximum amount of $250,000 for the Service. While the Service does not specifically identify funding authorized by the Striped Bass Act in the President's Budget, the Fisheries Program utilizes general program funds to restore and manage striped bass. Due to the large number of authorizations (more than 20) for the Service's Fisheries Program, we combine authorizations for appropriations into two program elements for Fish and Wildlife Management Assistance and two program elements for the National Fish Hatchery System. This makes it difficult to specifically identify funds authorized by the Striped Bass Act. However, in Fiscal Year 2000, the Service reported accomplishing 23 anadromous striped bass projects in 7 States totaling $948,000 along the Atlantic Coast, under additional authorities including the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act, and the Atlantic Coastal Fisheries Cooperative Management Act. Much of this work was used to further the goals of the Striped Bass Act. This includes 3 projects totaling $42,000 for habitat work. We feel that this is an extremely important activity that will help maintain recovered Atlantic striped bass populations and help restore the remaining populations.

Our work with Atlantic striped bass is not done. All agencies involved with restoring this great fishery must remain diligent in maintaining the health of restored populations while continuing a coordinated effort to restore those populations yet to be recovered. Fishing pressure is increasing again, and the Service considers continued coordinated management of this fishery through the Commission, under a reauthorized Striped Bass Act, to be essential.

Anadromous Fish Conservation Act of 1965

The Anadromous Fish Conservation Act provides authority for the Secretaries of Commerce and the Interior to enter into cooperative agreements with States and other non-Federal interests for the conservation, development, and enhancement of anadromous fish, including those in the Great Lakes and Lake Champlain, and gives the Service certain authorities to raise fish for restoration purposes. These authorities allow the Service to promote effective partnerships and restoration efforts to reverse the decline of anadromous fishery resources. State fishery agencies,

colleges, universities, private companies, and other non–Federal interests in 31 States bordering the ocean or the Great Lakes may participate.

Enactment of the Anadromous Fish Conservation Act in 1965 teamed the U.S. Fish and Wildlife Service with the States and others to rebuild the Nation's anadromous fish resources, which were then at extremely low levels. Historically, river development activities, such as power, irrigation, and flood control, did not account for the migratory needs of anadromous fish. Federal, State and private water-development projects blocked fish passage both upstream and downstream; pollution made many streams uninhabitable; and logging and road building degraded or blocked once productive spawning and rearing areas.

Under the Act, the Fish and Wildlife Service has funded projects that generally provide benefits to anadromous fish resources inland while the National Marine Fisheries Service has funded projects that benefit anadromous fisheries generally in the coastal and oceanic areas. However, our two agencies coordinate efforts to maximize potential benefits. For example, both agencies provided funds for the Grants to States Program and Emergency Striped Bass studies which were instrumental in recovering striped bass populations along the Atlantic coast. The funds were used to build hatcheries, stock striped bass, conduct research, and coordinate among states, which led to rebuilding several stocks of striped bass to self-sustaining levels.

The Service remains a committed partner to States, Tribes and the Fisheries Commissions. We continue to use this authority to conduct projects to restore anadromous fish in cooperation with States, Tribes, and other Federal agencies, although we have not requested appropriations for the Grants to States Program.

Atlantic Coastal Fisheries Cooperative Management Act

The Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) was modeled after the Striped Bass Act, but the Service does not have the same authority to determine State noncompliance. This authority remains with the Secretary of Commerce.

The Atlantic Coastal Act authorizes the Service to work with the National Marine Fisheries Service to support interstate fishery management efforts of the Commission and States. This includes collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research; and fishery management planning. The Service participates on 17 of the 20 fishery management boards.

The Service is authorized to provide funds to the Commission and States. Unlike the Striped Bass Act, the Service does not have a specific authorization level. The Service is authorized to provide funds to the Commission and States. Unlike the Striped Bass Act, the Service does not have a specific authorization level.

Mr. Chairman, this concludes my prepared testimony. I would like to extend the Service's and the Department's appreciation to you and the rest of the Subcommittee for your leadership and interest in fisheries management, conservation and restoration of these coastal fisheries issues, and would be happy to respond to any questions you may have.

Mr. GILCHREST. Thank you very much, Ms. Short.

Mr. Dunnigan?

STATEMENT OF JOHN H. DUNNIGAN, EXECUTIVE DIRECTOR, ATLANTIC STATES MARINE FISHERIES COMMISSION

Mr. DUNNIGAN. Thank you very much, Mr. Chairman, members of the Committee. Good morning.

Thank you for the opportunity to appear before you today to discuss H.R. 1989, the Fisheries Conservation Act of 2001. The bill would reauthorize or extend authorizations for the Interjurisdictional Fisheries Act, the Anadromous Fish Conservation Act, the Atlantic Coastal Fisheries Conservation and Management Act, NOAA's marine fish information and analysis activities, the Atlantic Tunas Convention Act of 1975, and the Northwest Atlantic Fisheries Convention Act of 1995. These are important pieces of legislation that are worthy of continuing appropriations.

The Atlantic States Marine Fisheries Commission would be pleased to support H.R. 1989. In fact, with respect to the Interjurisdictional Fisheries Act of 1986, we suggest that the Committee

should take this opportunity to extensively revise and revitalize the critical state-Federal partnership for marine and coastal fisheries.

You will notice in my written testimony there are two obvious points that I didn't talk about in there. I didn't mention the Atlantic Coastal Fisheries Conservation and Management Act nor the Atlantic Striped Bass Conservation Act. So please don't get the impression that these are not continuing to be extremely important matters for the Atlantic coastal states and the Atlantic States Marine Fisheries Commission.

The bill would essentially extend authorizations that are already good through 2003, and our commission very strongly would support extending those authorizations through 2006 as this bill would.

What I would like to do this morning, though—and you will see in my written testimony—just very briefly, I would like to highlight the Interjurisdictional Fisheries Act aspects that are contained in Title I of H.R. 1989.

The Interjurisdictional Fisheries Act and its predecessor, the Commercial Fisheries Research and Development Act, have been around now for almost 40 years.

And Mr. Saxton will remember our good friend, Captain Dave Hart, from New Jersey, who 40 years ago walked these halls for about 3 years to get the original Public Law 882D309 passed. And it really formed, for a long time, the basis for substantial cooperation on areas of mutual interests in fisheries between the states and the Federal Government.

In 1986, there was a substantial revision that was made to this program, and the Commercial Fisheries Research and Development Act was replaced by the Interjurisdictional Fisheries Act of 1986. The focus of the law was changed from commercial fisheries really to be more oriented toward those interjurisdictional fisheries that are shared either among the states or between one or more states and the Federal Government.

And the law has continued to follow in the tradition of its predecessor as really being the foundation for state-Federal cooperation.

The problem that we see is that this law is now 15 years old. It has not been substantially looked at or revised in that period of time. And we are not sure that it continues to address the current, modern needs that we have for cooperation in fisheries conservation and management between the states and the Federal Government.

A lot of things have changed since 1986. We know a lot more today, how dependent we are good information, good statistics, and good research, and that the only way to get this is to have the states and the Federal Government working together in cooperation. We know we need to do a lot more today, working with the commercial and the recreational fishing communities to help us to get this kind of information that we need.

We know that fisheries management is a lot more complicated than it was in 1986. Remember, just last month, Mr. Chairman, we were here talking about fishing capacity. Fifteen years ago, we were talking about ways of getting more vessels into the fishing industry so that we could go after underutilized species.

Look at habitat. I know it is a subject dear to the Chairman's heart. We know much more today about the critical nexus between fisheries habitat and productive and healthy fish stocks; 95 percent of our valuable EEZ fish stocks reside at one or more important life stages within state waters in coastal areas. This is another area where the states and the Federal Government have a mutual interest. They have to work together.

And just last year, Congress supplied another $15 million, and we hope that will be able to continue, for cooperative state law enforcement programs.

So what were learning more and more is that this program that got started 40 years ago and is continuing today is really at the heart of what is going to make good sense for the states and good sense for the Federal Government as we continue to address the important issues that we both legitimately have in marine fisheries and in coastal fisheries.

I am going to close, Mr. Chairman, with a commercial for CARA. The House or Representatives last year took the lead and overwhelmingly passed the Conservation and Reinvestment Act. And as I say in my written testimony, a fully funded CARA would address the kinds of problems that I raised in my testimony for cooperation between the states and the Federal Government.

I know the Resources Committee is continuing to work on this matter, and I encourage you to continue to do so.

Mr. Chairman, thank you for the opportunity, and I would be glad to try to answer any questions.

[The prepared statement of Mr. Dunnigan follows:]

Statement of John H. Dunnigan, Executive Director, Atlantic States Marine Fisheries Commission

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss H.R. 1989, the Fisheries Conservation Act of 2001. The bill would reauthorize or extend authorizations for the Interjurisdictional Fisheries Act, the Anadromous Fish Conservation Act, the Atlantic Coastal Fisheries Conservation and Management Act, NOAA's marine fish information and analysis activities, the Atlantic Tunas Convention Act of 1975, and the Northwest Atlantic Fisheries Convention Act of 1995. These are important pieces of legislation that are worthy of continuing appropriations. The Atlantic States Marine Fisheries Commission would be pleased to support H.R. 1989. In fact, with respect to the Interjurisdictional Fisheries Act of 1986, we suggest that the Committee should take this opportunity to extensively revise and revitalize the critical state-Federal partnership for marine and coastal fisheries.

INTERJURISDICTIONAL FISHERIES ACT OF 1986

The Interjurisdictional Fisheries Act of 1986, and its predecessor, the Commercial Fisheries Research and Development Act, have served as the traditional cornerstone of the state-Federal partnership for almost 40 years. This legislation has enabled the states to undertake a vast array of programs to support state and Federal concerns in marine fisheries. Under this program, funds appropriated by Congress are apportioned to the states according to a statutory formula. The Interjurisdictional Fisheries Act of 1986 was a thorough revision of this program, focusing attention on recreational as well as commercial fisheries, and emphasizing those areas where state-Federal and interstate cooperation is essential.

Mr. Chairman, we do not have the time today to recount all of the wonderful work that the states are doing under this program. Every two years, the National Marine Fisheries Service reports to the Congress on state activities under this program. State agencies across the country are carrying out the full range of fisheries conservation activities for the most important species we have, including many that are managed by the National Marine Fisheries Service and the Regional Fishery Management Councils under the Magnuson–Stevens Fishery Conservation and Management Act. The activities address fishery information, research and stock assessment,

conservation planning, stock enhancement, habitat conservation, aquatic nuisance control, and law enforcement. Many important Federal fishery conservation programs rely on the state activities that are funded under the interjurisdictional fisheries program.

The Interjurisdictional Fisheries Act of 1986 was well-designed to meet the challenges of the mid–1980s. But much has changed in the world of fisheries conservation and management in the past fifteen years. We are now more aware than ever of the critical need for good fishery and fishery resource information to support regulatory decisions. The critical nexus between productive fisheries and their habitat is better and more broadly understood. The marine fisheries constituency has broadened, with greater participation from recreational fishing and environmental interests, in addition to the traditional commercial fisheries community. We now hear as much, if not more, about controlling fishing capacity as providing for fishery development. New technologies, such as advances in analytical and communications capabilities, are dramatically increasing our capability to understand and share information. And the roles and capabilities of the state and Federal institutions have continued to evolve, each with their relative strengths. With all of these changes, we believe it is time to consider updating our approach to interjurisdictional fisheries cooperation.

Mr. Chairman, we at the Atlantic States Marine Fisheries Commission have given serious consideration to the Interjurisdictional Fisheries Act of 1986. We have talked with our sister interstate marine fisheries commissions, and many other state and Federal officials. For the moment, these ideas are our own, although we expect that they could receive wide support. Our suggestion to the Committee is that you not simply reauthorize the Interjurisdictional Fisheries Act, but rather expand upon it. What is needed today is nothing short of a revitalization of and a recommitment to the state-Federal partnership in marine fisheries.

The House of Representatives started down this road last year when it overwhelmingly passed H.R. 701, the Conservation and Reinvestment Act. The House Resources Committee, including you Mr. Chairman along with virtually all of the leaders of this subcommittee, recognized the need to reinvest in state programs for fisheries, wildlife, and conservation. The failure of CARA to be enacted in the closing days of the 106th Congress does not mean that the important needs that it would have addressed are any less pressing now than they were a year ago.

We believe that the Interjurisdictional Fisheries Act of 1986 should be strengthened and expanded to meet the recognized needs for a strong state-Federal partnership in marine fisheries today. The Act is now fifteen years old, and has not been significantly revised during that time, despite the major changes that have occurred in coastal and marine fisheries. A recharged Interjurisdictional Fisheries Act should contain a clear and concise recognition of and commitment to the special relationship that exists between the states and the Federal Government in marine fisheries. A good place to start, for example, is with fisheries statistics. In the Sustainable Fisheries Act, the Congress directed the Secretary to develop recommendations for the implementation of a national fishery information system on a regional basis (16 U.S.C. 1881). The report was prepared and delivered, and relied strongly on the cooperative efforts of the states and their three interstate marine fisheries commissions. The states and the National Marine Fisheries Service have been moving toward a set of fully integrated, cooperative fishery statistics programs. It is important for the National Marine Fisheries Service to play a national coordinating, policy, and standard setting role. The states bring strengths to the table in the operational sense of data collection and management. We need a national commitment to a series of regional statistics programs that takes advantage of the strengths that each of the partners can bring to the table.

This is also true for cooperative fisheries regulatory planning. In addition to the responsibilities of the National Marine Fisheries Service and the Regional Fishery Management Councils under the Magnuson–Stevens Fishery Conservation and Management Act, the Federal Government has a significant concern over the stewardship of coastal fishery resources that do not come under the regulatory purview of the MSFCMA. The need for the states to step forward and address these resources of national interest has never been greater.

The same could be said for responsibilities for habitat and for fisheries research. As a result of the Sustainable Fisheries Act, there is a new emphasis on essential fish habitat. And more attention is being paid to interspecies fishery dynamics, including ecosystems analysis and management with its tremendous data and analytical demands. We have to remember that 95% of Federally managed fisheries spend critical parts of their lives in fishery habitat that is included within state waters. Only by working closely with the states and investing in state capabilities can the Federal Government reach its fishery habitat protection and restoration objectives.

With regard to fisheries research, states have long been a source of cooperative assistance for the Federal Government. Today, a new emphasis is being placed upon cooperative efforts with fishermen and other non-traditional sources of data and information. States, being closer to individual fishing areas and constituencies, are uniquely positioned to help craft cooperative research that uses fisherman capabilities to meet the scientific needs of fishery managers. States are also in a position to help in addressing serious concerns about aquatic nuisance species, invasive species, and toxic blooms—issues that demand a response from both the habitat and research perspective.

The states are also in a position to contribute significantly to the effectiveness of marine fisheries law enforcement. The three interstate marine fisheries commissions are the focus for bringing state and Federal law enforcement personnel together to address their mutual needs and objectives. States have had cooperative law enforcement agreements with the National Marine Fisheries Service for more than 25 years. Last year, Congress appropriated $15 million for cooperative state law enforcement agreements. We are finding that state and Federal law enforcement personnel each have different areas where they can operate most effectively, in a mutual and cooperative effort.

A newly revitalized "Interjurisdictional Fisheries Act for the 21st Century" ought to address the critical state-Federal areas of mutual interest. It should unequivocally articulate the commitment of the Federal Government to work closely with the states wherever possible to get the job done. It should also devote the fiscal resources necessary to carry out this essential partnership program. Let me be clear: what I am suggesting is a major commitment and investment in state-Federal partnership programs. The need is there, and the opportunity is there. For example, we all eagerly anticipate that shortly the House Resources Committee will once again demonstrate its leadership in fisheries and wildlife conservation by moving H.R. 701, the Conservation and Reinvestment Act. CARA will set aside $500 million for the states for coastal conservation and impact assistance. The language of H.R. 701 indicates that coastal and marine fisheries issues are a primary use for this funding. It is not hard to imagine that under these provisions $150 million or $200 million will be devoted to state fisheries programs. This is, frankly, the type of commitment that the state-Federal partnership in marine fisheries deserves.

I am not suggesting that the Interjurisdictional Fisheries Act should compete with CARA. Quite the opposite. The earliest enactment of the Conservation and Reinvestment Act is the highest legislative priority for the Atlantic States Marine Fisheries Commission and all of our coastal state members; and much of what I am suggesting would be addressed by a properly funded CARA. The substantive ideas that a revitalized commitment to interjurisdictional fisheries would provide would provide a blueprint for the Congress and the states in the development and implementation of coastal fisheries conservation programs under CARA.

Mr. Chairman, I do not have a draft bill to lay before you today that will do all of this. I am sure that many others will have particular perspectives that should be considered and worked into new legislation. But the principles are simple. The states are not just another constituency for Federal policy makers. The states and the Federal Government share, in a unique way, the public trust responsibilities to safeguard the people's interests in marine fisheries resources. We must continually work together in the important areas of statistics, fisheries management, habitat, research and law enforcement. We must each strive wherever possible to achieve mutual success. We can succeed together, or we can fail separately. The choice belongs to all of us.

ANADROMOUS FISH CONSERVATION ACT

Mr. Chairman, I would also like particularly to recommend that the Committee approve legislation extending the Anadromous Fish Conservation Act. This legislation has, for almost as long as the Interjurisdictional Fisheries Act and its predecessor, been a foundation for state-Federal cooperation in the conservation and management of this country's valuable anadromous fishery resources. This Act is the only national expression of the Federal commitment regarding the importance of anadromous fish species. We need to remember that this is a truly national program; for even though we are all aware of the critical problems in trying to conserve salmon on the Pacific coast, anadromous fisheries are critical to the Atlantic coast and the Gulf of Mexico as well.

In addition to providing continuing support for salmon conservation along the Pacific coast, on the Atlantic coast funds appropriated under this Act have been applied by the states to critical problems for shad, river herring and sturgeon. In the Gulf of Mexico, the conservation needs of species such as shad, Gulf of Mexico sturgeon (listed as threatened under the Endangered Species Act), and Gulf striped

bass, were recognized by the Gulf States Marine Fisheries Commission many years ago. The single most important factor impeding actions to address the conservation needs for many of these species in the Atlantic and Gulf has been the lack of sufficient funding to implement management and restoration actions.

Anadromous fish species represent important components of the biota of river and nearshore estuarine habitats along this country's coasts. Because anadromous species use virtually all habitats in rivers and estuaries during some portion of their life cycles, they can serve as significant indicators of the overall health of the ecosystem. There have been declines in the size and distribution of anadromous fish populations nation-wide, and it is evident because of their life histories that any positive actions to restore the health of anadromous fish populations will provide positive benefits to the entire watershed in which these populations occur. They are clearly deserving of the Federal commitment evidenced by the Anadromous Fish Conservation Act.

An interesting thing has happened to the appropriations authorization under this Act. In the 1980s, the authorization reached as high at $25 million annually; although the actual appropriated levels were much lower. But these authorized levels have actually been on a steady decline for the past fifteen years. The authorized level for appropriations last year was only $4.25 million; and recent appropriations levels have been on the order of only $2.1 million. So what has happened over the past fifteen years? Are striped bass, shad, sturgeon, and salmon any less important to the nation today that they used to be? I don't believe so Mr. Chairman, and I am sure that the Committee will not either. I strongly urge that the appropriations authorization for the Anadromous Fish Conservation Act be increased to $6 million for Fiscal Year 2001 and Fiscal Year 2001, $8 million for Fiscal Year 2003 and 2004, and $10 million for Fiscal Year 2005 and Fiscal Year 2006. This would still be less than half of the authorized level from the mid–1980s. And then we will look forward to working hard with the members of the Committee to see those authorizations realized in the appropriations process.

CONCLUSION

Mr. Chairman, all of the programs covered by H.R. 1989 are critical, each in its own way, to the success of our cooperative and mutual efforts in marine fisheries. We believe that appropriations should continue to be authorized for each of them. In the case of the Interjurisdictional Fisheries Act, we believe that Congress should significantly expand and strengthen the statutory basis for the mutual cooperation between the Federal Government and the states. We also believe that the appropriations for the Anadromous Fish Conservation Act should be increased over the next few years, commensurate with the critical importance of these resources to the Nation. We look forward to working with your staff to continue to expand on these ideas.

Thank you, Mr. Chairman. I would be pleased to try to answer any questions.

SUGGESTED OUTLINE FOR A REVITALIZED
INTERJURISDICTIONAL FISHERIES ACT

H.R. 1989—Title I: Interjurisdictional Fisheries

Section 101. Short Title
Interjurisdictional Fisheries Act for the 21st Century

Section 102. Findings, Purposes and Policy (Definitions if Necessary)

Section 103. Authority of the Secretary
The Secretary is authorized broadly to work cooperatively with the States on matters of mutual interest.

Section 104. National State–Federal Fisheries Information Program

Section 104. Cooperative Fisheries Management Planning

Section 105. Cooperative Fisheries Research and Assessment

Section 106. Cooperative Fisheries Habitat Conservation

Section 107. Cooperative Fisheries Law Enforcement

Section 108. Allocations of Funding

Section 109. Authorization of Appropriations

Section 110. Repeals

Mr. GILCHREST. Thank you, Mr. Dunnigan.

Ms. Chasis?

STATEMENT OF SARAH CHASIS, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Ms. CHASIS. Thank you, Mr. Chairman and members of the Committee for this opportunity to testify.

I am a Senior Attorney with the Natural Resources Defense Council, and I would like to address two of the laws that this legislation, H.R. 1989, seeks to reauthorize: the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Tunas Convention Act.

Recent action has illustrated the potential for serious conflict between the Federal Government and state management of many Atlantic marine fish populations that—

Mr. GILCHREST. I am sorry, Ms. Chasis, I didn't catch one word.

Ms. CHASIS. Sure.

Mr. GILCHREST. Serious what?

Ms. CHASIS. Conflicts.

Mr. GILCHREST. Conflicts.

Ms. CHASIS. Between Federal and state management of many Atlantic marine fish populations that migrate between Federal and state waters.

Such conflicts could seriously compromise, indeed, severely threaten, the achievement of important conservation goals.

Unfortunately, there is nothing explicit in the Atlantic Coastal Fisheries Act to prevent such conflicts from arising. And we would like the Committee to consider addressing that issue.

For example, the Act simply says that in preparing a plan for a fishery located in both state waters and the EEZ, the commission shall consult with appropriate councils to determine areas where such coastal fishery management plan may complement council fishery management plans.

However, the Act does not explicitly require that the commission plan actually be complementary or consistent with the council/NMFS plans or that implementing regulations and quotas be complementary or consistent.

Short of the Secretary of Commerce's preemption of state regulation under the Magnuson Act—and there is a provision for that in Section 306(b)—there appears to be no clear mechanism in current law to ensure consistency between conservation and management measures imposed by the commission and those of the council and NMFS.

The resulting potential conflict was illustrated recently when the commission adopted a different and higher summer flounder quota for 2001 than the quota adopted by the Mid-Atlantic Fishery Management Council and NMFS.

The commission quota was initially set at 20.5 million pounds, approximately 2.6 million pounds higher than the council and NMFS's quota of 17.9 million pounds. From late last year until

May of this year, it appeared there would be conflicting management regimes for this valuable fish population and that the important effort to get the rebuilding of this stock back on track, as required by Federal law and the appellate court decision in NRDC v. Daley, would be undermined.

Only after NRDC, Environmental Defense, Center for Marine Conservation, and National Audubon, represented by the Ocean Law Project of Earthjustice, went to court to enforce the settlement agreement implementing the court decision, and only after NMFS had threatened to close the Federal EEZ to summer flounder fishing for a period of time, did the commission adopt the same quota as the council and NMFS.

The crisis was averted, but there is no clear provision of the Act to prevent a similar event from occurring in the future in this or other fisheries.

Similar problems, in fact, have already arisen with respect to spiny dogfish, a slow-growing species of shark for which stock recovery from overfishing will already require close to two decades, and also with respect to scup, a severely depleted stock.

While currently the commission has in place emergency measures aimed at closing state waters once the Federal dogfish quota is reached, the commission has yet to adopt permanent measures that would align the state and Federal management program.

At their last meeting, the commission considered and narrowly rejected a state waters dogfish quota more than double that for Federal waters. Such an increase is intended to allow for continued directed fishing on depleted mature female dogfish sharks, a strategy clearly discouraged under the Federal plan.

Likely to be reconsidered in July by the commission, such inconsistent controls stand to derail the entire East Coast spiny dogfish Federal rebuilding program and put an exceptionally vulnerable species at increased risk.

To prevent this kind of inconsistency, we would like to recommend that the Committee consider amending the Act to require that where this a Federally approved fishery management plan, the commission's plan be consistent with that plan, and additionally, that actions taken by the commission pursuant to its plan be consistent with quota and other conservation and management decisions of the council and NMFS.

Mr. Chairman, members of the Committee, we also would like to endorse the recommendations of the Marine Fish Conservation Network with respect to the Atlantic Tunas Convention Act, another law that is sought to be reauthorized in this legislation.

We support the position of the network that the Act should be amended to repeal the language that prevents or hinders the U.S. from implementing management measures that are more conservation-oriented than those recommended under international agreement.

In addition, we would like Congress to encourage NMFS to provide for increased involvement of conservation groups in the formulation of U.S. positions at ICCAT, the international body responsible for Atlantic-wide conservation of Atlantic tunas and billfishes.

With that, I would like to conclude and would be happy to answer any questions. Thank you.

[The prepared statement of Ms. Chasis follows:]

Statement of Sarah Chasis, Senior Attorney, Natural Resources Defense Council

Thank you for inviting me to testify today on behalf of the Natural Resources Defense Council concerning H.R. 1989, a bill to reauthorize various fishery conservation management programs. The Natural Resources Defense Council (NRDC) is a national environmental organization with over 450,000 members nationwide that is committed to protecting natural resources and public health. We have an oceans program that works to protect valuable ocean resources and, to promote healthy and sustainable marine fish populations by preventing overfishing, minimizing bycatch and protecting fish habitat.

I will focus my testimony today on two of the laws that this legislation seeks to reauthorize: the Atlantic Coastal Fisheries Cooperative Management Act (the Atlantic Coastal Fisheries Act); and, the Atlantic Tunas Convention Act. In both cases, I will discuss concerns that we have with these laws and the solutions we propose to address these problems.

Recent action has illustrated the potential for serious conflict between the Federal and state management of the many Atlantic marine fish populations that migrate between Federal and state waters. The conflicting quotas that were initially set for summer flounder for this year are an example of this problem. Such conflicts could seriously compromise, indeed severely threaten, the achievement of important conservation goals. Unfortunately, there is nothing explicit in the Atlantic Coastal Fisheries Act to prevent such conflicts from arising.

The Atlantic Tunas Convention Act precludes the United States from adopting more stringent controls on fishing than are set by international bodies such as the International Commission for the Conservation of Atlantic Tunas (ICCAT). We believe that this provision inappropriately ties the United States' hands and should be amended to allow our nation to adopt more stringent measures where it is in the interest of the resource to do so. We also believe that the environmental community needs a stronger role in the formulation of U.S. positions at ICCAT.

The Atlantic Coastal Fisheries Act

Recently, conflicts have emerged between the quotas and management regime established by the Atlantic States Marine Fisheries Commission (the Commission or ASMFC), on the one hand, and the Mid–Atlantic Fishery Management Council (the Council) and the National Marine Fisheries Service (NMFS), on the other. Such conflicts threaten to seriously undermine important conservation goals of the Magnuson–Stevens Fishery Conservation and Management Act (FCMA) related to preventing overfishing and rebuilding overfished populations.

Currently, there is no explicit requirement in the Atlantic Coastal Fisheries Act for consistency of coastal fishery management plans and quotas developed under that Act with Federally approved fishery management plans, regulations and quotas adopted under the FCMA. The Act simply says is that in preparing a plan for a fishery located in both state waters and the Exclusive Economic Zone (EEZ), "the Commission shall consult with appropriate Councils to determine areas where such coastal fishery management plan may complement Council fishery management plans." 16 U.S.C. Section 5104(a)(1)(emphasis added). However, the Act does not explicitly require that the Commission plan actually be complementary or consistent with the Council/NMFS" plans, or that implementing regulations and quotas be complementary or consistent. Short of the Secretary of Commerce's preemption of state regulation under Section 306(b) of the FCMA, 16 U.S.C. Section 1856(b), there appears to be no clear mechanism in current law to ensure consistency between the conservation and management measures imposed by the Commission and those of the Council and NMFS.

The potential for serious conflict as a result was dramatically illustrated recently when the Commission adopted a different and higher summer flounder quota for 2001 than the quota adopted by the Council and NMFS. The Commission quota was initially set at 20.5 million pounds, approximately 2.6 million pounds higher than the Council and NMFS" quota of 17.9 million pounds. From late last year until May of this year, it appeared that there would be conflicting management regimes for this valuable fish population and that the important effort to get the rebuilding of this stock back on track, as required by Federal law and the appellate court decision in NRDC v. Daley, 209 F.3rd 74 (D.C.Cir. 2000), would be undermined.

Only after environmental plaintiffs, including NRDC, Environmental Defense, Center for Marine Conservation and National Audubon, represented by the Ocean Law Project of Earthjustice, went to court to enforce the settlement agreement

implementing the court's decision and only after NMFS had threatened to close the Federal Exclusive Economic Zone to summer flounder fishing for a period of time did the Commission back down and adopt the same quota as the Council and NMFS. A crisis was averted, but there is no clear provision of the Atlantic Coastal Fisheries Act to prevent a similar event from occurring in the future in this or other migratory fisheries.

Similar problems in fact have already arisen with respect to spiny dogfish - a slow growing species of shark for which stock recovery from overfishing will already require close to two decades and with respect to scup, a severely depleted stock. While currently the ASMFC has in place emergency measures aimed at closing state waters once the Federal dogfish quota is reached, the Commission has yet to adopt permanent measures that would align the state and Federal management programs. At their last meeting, the ASMFC considered and narrowly rejected a state waters dogfish quota more than double that for Federal waters. Such an increase, promoted by Massachusetts, is intended to allow for continued directed fishing on depleted mature dogfish sharks—a strategy that is clearly discouraged under the Federal plan. Likely to be reconsidered in July by the ASMFC, such inconsistent controls stand to derail the entire east coast Federal spiny dogfish rebuilding program and put an exceptionally vulnerable species an increased risk of further, long standing population damage.

In the case of scup, the Council and NMFS are increasingly acceding their legal responsibilities to the Commission, despite the severely-overfished status of the stock. For 2001, NMFS approved a quota that was nearly twice the scientific recommendation, largely on the basis that this was the quota set by the Commission.

To prevent this kind of inconsistency, NRDC recommends that the Atlantic Coastal Fisheries Act be amended to require that, where there is a Federally approved Fishery Management Plan, the Commission's coastal fishery plan be consistent with that Federal plan and, additionally, that actions taken by the Commission pursuant to its plan be consistent with quota and other conservation and management decisions of the Council and NMFS.

The Atlantic Tunas Convention Act

One of the other acts before this Subcommittee for reauthorization is the Atlantic Tunas Convention Act (ATCA). NRDC supports the position of the Marine Fish Conservation Network that this Act should be amended to repeal the language that prevents or hinders the U.S. from implementing management measures that are more conservative than those recommended under international agreement. In addition, we would like Congress to encourage NMFS to provide for increased involvement of conservation groups in the formulation of the U.S. position at ICCAT, the international body responsible for Atlantic-wide conservation of tunas and billfishes.

In 1990, the Magnuson Fishery Conservation and Management Act and Atlantic Tunas Convention Act were amended in a manner which precludes U.S. fishery managers from promulgating any regulation which has the effect of "decreasing a quota, allocation or fishing mortality level" recommended by ICCAT. Since the enactment of this provision, the achievement of domestic and international management objectives for highly migratory species (again, with the exception of large coastal sharks) has been greatly diminished in that NMFS will not make any rules which may be construed as denying American fishermen a "reasonable opportunity" to fully harvest (i.e., land) an ICCAT-assigned quota. The unfortunate effect of this provision has been that NMFS has functionally exempted some highly migratory species from conservation measures applied to all other marine fish species.

Industry has used this provision to effectively defer needed conservation and management actions to the international arena. As a result, NMFS has done little more than implement ICCAT quotas and allocate them among domestic user groups. Where no ICCAT recommendations exist, but the stocks are fully-utilized or approaching an overfished condition, no precautionary measures have been taken. Virtually all significant management actions are deferred to ICCAT.

ICCAT routinely responds slowly to problems in the fisheries and when it does act, all too frequently sets quotas (total landings levels) too high and minimum size limits (to protect pre-spawning age fish) too low. The U.S. is unable to do its part for rebuilding, even when such measures, rather than disadvantaging U.S. fishermen, could significantly enhance the status of stocks residing primarily in and around our EEZ.

The ATCA provision is also cited by NMFS as a reason not to take measures to minimize bycatch mortality, through area closures and gear modifications. NMFS argues that doing so might prevent U.S. fishermen from landing their entire ICCAT allowance, in contravention of ATCA.

NRDC believes that the decision of whether or not a more conservative U.S. management regime would benefit U.S. fishermen and the stocks they fish should be made on a fishery-by-fishery basis, on its own merits, based on the best science available. To do otherwise is to deny the differences in fish stocks and the fisheries directed at them and to severely impair the ability of U.S. managers to meet their responsibilities to conserve and manage these resources for the benefit of the American public.

We urge Congress to amend the Atlantic Tunas Convention Act to remove language limiting U.S. authority to conserve and manage Atlantic highly migratory species when necessary to achieve domestic conservation and management goals.

Finally, the environmental community does not have adequate representation in the deliberations of the U.S. delegation to ICCAT. Currently, only 3 of 25 members of the advisory committee to the U.S. section are non-industry aligned conservationists or scientists. In addition, there is no dedicated ICCAT conservation commissioner, where there are currently government, industry and recreational commissioners. We request that the Committee consider taking action to ensure a better balance in the formulation by the U.S. of its decisions leading up to and at ICCAT.

Thank you for this opportunity to testify.

Mr. GILCHREST. Thank you very much, Ms. Chasis.

On that note, the conflict that Ms. Chasis was discussing with the Interjurisdictional Fisheries Act and the examples of summer flounder and dogfish, Mr. Dunnigan, you mentioned in your testimony that you had some suggested reforms to the Act. Would your suggested reforms resolve some of the issues that arose during the summer flounder situation and perhaps the reference to the management plan for dogfish that Ms. Chasis suggested?

Mr. DUNNIGAN. Thank you very much, Mr. Chairman.

I think it is possible that the Interjurisdictional Fisheries Act should, I think, address cooperative fishery management between the states and the Federal Government. I think if you want to look specifically at the issues of summer flounder or scup or dogfish, however, you have to the Atlantic Coastal Fisheries Cooperative Management Act, which is more important and more directly applicable.

To address those, I think it is important to note, first of all, I am not sure how much of a problem we have here. I don't think that we have yet fully exhausted all of the opportunities that exist between the states and the Federal Government, between our various management institutions, including the councils, to sit down and try to work out our problems under the existing law.

In the cases that Ms. Chasis raised, you know, with summer flounder, the states agreed to go the way of the Federal Government—even though it was inconsistent with our fishery management plan. With spiny dogfish, we have agreed to require the states by emergency action to close their waters.

Mr. GILCHREST. Well, I guess—

Mr. DUNNIGAN. Ms. Chasis is correct. It is controversial, but so far—

Mr. GILCHREST. I think I am getting—

Mr. DUNNIGAN. —we are working together.

Mr. GILCHREST. What I am getting from Ms. Chasis is that perhaps that would not have happened—Ms. Chasis, you can jump in here if you want to—if there wasn't the threat of or the actual court challenge.

Mr. DUNNIGAN. Well, it is very complicated. The whole issue derived from a court challenge. I mean, in this instance, the National

Marine Fisheries Service was put in the position of having to depart from the fishery management plan that we had agreed to because of the litigation. And then the question was, well, how do we get over the hump of resolving the divergence between state and Federal management?

Dr. Hogarth has worked very hard to try to bring us beyond these problems, and I think we have made a lot of progress. You are aware that 2 weeks ago the Heinz Center facilitated a roundtable discussion that I think really opened a lot of doors of communication between the states and the councils and NMFS and the commercial and recreational constituencies and the environmental community.

And I think that there is a lot that we are going to accomplish by continuing to work together. I am not sure we are at the point yet were we need to change the law to make it work better.

Mr. GILCHREST. Dr. Hogarth, do you want to comment on that?

Dr. HOGARTH. Thank you, Mr. Chairman.

We are in the midst of sort of a negotiated roundtable with the Heinz Center. We will have another 2- to 3-day session probably in the next 2 to 4 weeks. We are putting together white papers now on some of the issues that came up.

I am hoping that that will lead us toward a mechanism that will not only address summer flounder but other issues that may come up.

I think, as I said briefly, the real difficulty right now is the fact that we do have different standards, but I am not sure that we need to change the Atlantic—

Mr. GILCHREST. Dr. Hogarth, when you say, "We have different standards," is that NMFS has different standards from the commission?

Dr. HOGARTH. Under the Magnuson-Stevens Act that the council operates under, we have the 10 national standards that we have to look at, whereas under the Atlantic Coastal Fisheries Act, they do not have the same, you know, standards that they have to look at. They have more leeway in the way they manage.

Saying that, I think that managing in state waters needs some more leniency in how they manage than overall when you are talking about the EEZ and boats that move—

Mr. GILCHREST. Who needs more leniency?

Dr. HOGARTH. Sir?

Mr. GILCHREST. You said—

Dr. HOGARTH. I think that the states need some leeway in managing state waters differently from the way we manage the EEZ, because of the fact that you are talking about fish within 3 miles. They manage what has landed. We manage the fisheries that move in the EEZ further and differently.

And I just think that the states probably need a little bit different mechanism.

Mr. GILCHREST. Could you comment on that, Ms. Chasis?

Ms. CHASIS. Yes. I think we feel that it would be useful to have a clear articulation in the Atlantic Coastal Fisheries Act of substantive standards that apply to the development of plans and that those standards, from a conservation standpoint, be more consistent with the Magnuson-Stevens Act.

Mr. GILCHREST. So are you disagreeing with Dr. Hogarth about more leeway for the states?

Ms. CHASIS. Yes, I am, because it seems to me that there should be some basic, minimum conservation standards that would apply, whether it is in state waters or Federal.

Mr. GILCHREST. Are there are no minimum conservation standards now?

Ms. CHASIS. That is correct. There is nothing—the Atlantic Coastal Fisheries Act talks about the need to conserve the stock, but it doesn't then go into any specificity, whereas in the Magnuson Act, as Dr. Hogarth indicated, you have the national standards, you have the rebuilding requirements that exist.

So what this has meant is that you have the potential—and we saw in the instance of summer flounder and the potential exists now with dogfish—to have a different, more lenient management regime for state waters than for Federal waters, yet you are talking about the same fish population.

Mr. GILCHREST. Mr. Dunnigan?

Mr. DUNNIGAN. Thank you, Mr. Chairman.

It is not always that simple. The Atlantic Coastal Fisheries Act also requires the commission to adopt our own set of standards. And we have done that.

Mr. GILCHREST. So you are saying that the states along the Atlantic coast have standards?

Mr. DUNNIGAN. Yes, we do. And they are very similar to what you will find in Section 301 of the Magnuson-Stevens Act.

Frankly, in some ways, I think they are better. And I think Congress ought to consider looking at our standards and consider applying some of them to the Federal management program. But that is a separate issue.

Those standards to do exist. And we are required to follow them, and our state members are required to follow them as well.

So a lot of things might not be completely spelled out in the Atlantic Coastal Fisheries Management Act, but I think that arose from a recognition by Congress that things are different sometimes in the states than they are in the EEZ.

Remember that we have 22 fishery management plans, and we have all of this maelstrom revolving around, essentially, three species: summer flounder, scup, and black sea bass. There is a lot more that we do.

And remember also that in many instances right now, it is the states under these management plans that have the ability to manage these fisheries while the Federal regulatory processes are catching up to us.

Right now, the states are implementing restrictions in their recreational fisheries, very dire restrictions from summer flounder and for scup. And so far, we don't have rules from the Federal Government to manage that fishery, because of all the processes they have to go through.

So we are very reluctant to go down the path of trying to commit the states to standards and procedures that are not always working the way we would all want them to, even in the Federal process.

Mr. GILCHREST. You are saying you can do it a lot faster than the Federal Government?

Mr. DUNNIGAN. I don't think there is any question about that. I think everybody agrees to that.

Mr. GILCHREST. Thank you very much.

We may have a second round of questions, but at this time I will yield to Mr. Underwood.

Mr. UNDERWOOD. Thank you, Mr. Chairman.

And I want to add a couple of questions to the line of thinking that the Chairman has outlined here, just so that I can understand exactly what is the source of contention here.

Dr. Hogarth, in your testimony, you mentioned that it has been difficult to implement joint fisheries management plans between the councils and the Atlantic States Marine Fisheries Commission (ASMFC) when the commission's plans are less stringent than the council plans that have been pursuant to the requirements of the Magnuson Act.

This is going to be an ongoing problem, and you recommend that there be a mechanism to more closely align the standards of the commission's plans with the national standards required for the council fishery management plans under the Magnuson Act.

Do you have a specific suggestion as to what this mechanism should be? And should the Congress legislate this mechanism?

Dr. HOGARTH. At this point in time, I would rather wait until we get through the process we are undergoing right now with the Heinz Center. I think part of that is looking at if there needs to be legislative fixes. And at the present time, I would rather not second guess that process.

Mr. UNDERWOOD. Well, would you recommend, then, that we hold off on reauthorization until the process is completed?

Dr. HOGARTH. I would hope not because I think we can work the process. We have worked through it on summer flounder.

I think summer flounder, as Jack Dunnigan explained, was somewhat of a unique case, because we did have a lawsuit that required us to do something to be in compliance with the Federal court, that the ASMFC was not required. They were not sued, they were not part of the lawsuit. And so, we had to act independent.

And while we had to meet standards and certain restrictions from the court, the ASMFC did not have to. And they were in compliance with their plan at that time. It is just that we did have two separate standards and two separate quotas, and had to reach a quota that would be in compliance with the Federal court.

You know, there is some question as to whether the ASMFC can be sued. You would have to sue each individual state, whereas you can sue National Marine Fisheries Service and get at the council process.

But the ASMFC seems to be—which is probably a good mechanism—free from lawsuits.

I think there is some potential problems there due to the fact that they have their standards, as Jack said, which some of them are good, but we have other standards right now we are not sure will enable us to use what they call conservation equivalences. That means the state can set certain size limits in seasons and regulations that can account for conservation equivalency. It is not clear that we can do that under the council process and how we would do that, which gives them a little more—

Mr. UNDERWOOD. So how do we bring resolution to this? Is there some defect in the process of resolving these differences? Or is there inadequate attention to—

Dr. HOGARTH. That is why we went to the Heinz Center. We felt like we would bring in the environmental groups, the plaintiffs, the recreational leaders, the commercial leaders, the council and ASMFC, we brought the states in. And we spent two-and-a-half days.

And out of that, we have come up with several issues that we are now trying to write white papers on to sort of go back out for discussion with this same group and to make recommendations at the next meeting on what needs to be done.

I would rather wait for that process to be completed, hopefully by mid to the end of July, rather than to take some action that may not be the correct action.

Mr. UNDERWOOD. Okay, Ms. Chasis—

Sure, go ahead.

Mr. GILCHREST. I am just going to interrupt just for a second, Mr. Underwood, if you don't mind.

Dr. Hogarth has to leave at 10:30, and Mr. Saxton had just one question for Dr. Hogarth.

Mr. UNDERWOOD. Sure.

Mr. GILCHREST. If we can get that in, just before he leaves. Thank you.

Mr. SAXTON. Thank you very much, Mr. Chairman.

Dr. Hogarth, in the last Striped Bass Reauthorization Act, we inserted language to require a study of striped bass population in terms of year class or size class as a result of observations that members of the Committee have had relative to the striped bass population, namely that fishermen report anecdotally that there is a large population of relatively small striped bass and seemingly not very many larger striped bass, say over the length of, say, 32 inches or so.

There is language in your written testimony which indicates that we didn't need to do that because we already have the information. I don't have the information, and I want to know when we are going to get the report from NMFS that is required by the law created by the last reauthorization.

Dr. HOGARTH. I am not sure at this point, but I will get back to you—it is on its way right now, I was just told.

Mr. SAXTON. Well, thank you very much.

[Laughter.]

Have a happy day.

[Laughter.]

Mr. UNDERWOOD. Okay, thank you.

Dr. Hogarth, since you are leaving soon, let me get in my other question for you.

[Laughter.]

In her testimony, Ms. Chasis stated that the provision in the Act the precludes U.S. fishery managers from promulgating any regulation, which has the effect of decreasing a quota allocation or fishing mortality level recommended by ICCAT, has been cited by NMFS as a reason not to adopt measures to minimize bycatch mortality in our highly migratory fisheries.

How can this be if you are required to adopt such measures under the Magnuson Act?

Dr. HOGARTH. I am not sure I have the answer for you.

[Laughter.]

I will look into that, but I don't know that I can answer that right now. I will—

Mr. UNDERWOOD. Well, is that true? I mean, is that the basic position taken by—

Dr. HOGARTH. I wasn't aware that it was. That is why I say I want to check into it.

I wasn't aware that that had been the reason, but I will check.

Mr. UNDERWOOD. Okay, all right. Thank you.

[Mr. Hogarth submitted the following information for the record in response to the above question:]

NMFS disagrees with Ms. Chasis' testimony that current requirements of ATCA and MagnusonStevens have "functionally exempted" some Atlantic HMS from conservation measures that would otherwise apply. In amending both ATCA and Magnuson–Stevens in 1990, Congress recognized that most Atlantic HMS (e.g. swordfish, tuna and billfish) can be effectively managed only through international cooperation. Clearly the U.S. contribution to the total level of fishing mortality, whether for target species or attributable to bycatch, is in most cases a minor component of the ocean-wide level. Although the international management process is not as rapid as many would like, multilateral cooperation is critical to successful rebuilding of species taken in fisheries prosecuted on the high seas and in the Exclusive Economic Zones of so many countries.

Recognizing the conservation requirements of domestic laws, the U.S. negotiators at ICCAT have advanced positions on stock rebuilding and bycatch reduction that are expected to be more effective than unilateral action could likely accomplish. In recent years, rebuilding programs for bluefin tuna, swordfish and billfish have been adopted by ICCAT. Additionally, the multilateral approach has lent support to trade restrictive measures that can be applied against fishing nations that are not contracting parties to ICCAT. Although much work is required at ICCAT, the international management actions achieved are not only consistent with U.S. law but also have served to support the domestic commercial and recreational fishing industries relative to foreign competition.

Mr. UNDERWOOD. Going back to the general problem, Ms. Chasis, which you have outlined, as well as others have outlined, as well as the Chairman has outlined, do you think we need to legislate a solution to the problem of inconsistent Federal and commission plans?

And was this idea discussed when the stakeholders recently got together to discuss this problem? And if so, was there any consensus on it?

Ms. CHASIS. We do believe there is a need for a legislative solution, and it is the one we propose, which is to require consistency between the plans and the conservation measures. The issue of the lack of coordination between Federal and state management was raised but not resolved at the last stakeholder meeting.

And actually, it is news to me that we have a meeting coming up in the next 3 or 4 weeks, but I am sure it will be the subject of further discussion. And we can certainly report back to the Committee at that time.

But it seems clear, from what happened in this instance, and what has been raised as an issue with respect to dogfish, that there is this real issue that the commission is bound by a different set of conservation standards, and there is not assurance that there is

going to be consistency in the management of these very important species that migrate between Federal and state waters.

So we think that the case is made already for legislative action.

Mr. UNDERWOOD. Okay, thank you.

Ambassador West, in her testimony, Ms. Chasis indicated that—she asserts that the environmental community is under-represented in the U.S. delegation to ICCAT.

How is that delegation crafted? How is that delegation put together?

Ms. WEST. We have tried very hard to involve the NGO community in the development of U.S. positions. And I believe that various members of the community have in fact been involved in that process.

We have not had members of the NGO community on the delegation every year, although there have been members of the NGO community on the delegation in some years.

As a general matter, I would say we support and highly value transparency, both in the development of U.S. positions and in the operations of the commissions.

Mr. UNDERWOOD. Okay, thank you.

I have no other questions at this time.

Mr. GILCHREST. Thank you, Mr. Underwood.

Mr. Jones?

Mr. JONES. Mr. Chairman, thank you very much.

I would like to ask Mr. Dunnigan, obviously politics is local, and there a couple of issues that are of great importance to the fishermen of eastern North Carolina.

And I want to start with the issue of the menhaden fisheries representation on your commission. It is my understanding that the representative that has been serving now is more of, instead of being on the board to make management decisions, that they now have been reduced to an advisory capacity. Is that true?

Mr. DUNNIGAN. Thank you, Mr. Jones.

The commission in April adopted a new fishery management plan for Atlantic menhaden, and that plan revised the structure of our management board for menhaden.

Menhaden was a unique circumstance until then, where we had a board that was equally made up of representatives and state representatives, and there was a lot of feeling and a lot of discussion about the fact that we needed to change that and make our menhaden management structure to be equal to all of the others. And that is what the amendment to the menhaden plan did.

It was the most obvious and controversial issue that was contained in the amendment, and the public sentiment from up and down the coast was overwhelmingly in favor of making the change to the new management structure.

Mr. JONES. Mr. Dunnigan, is it true that, as it relates to the management of this fishery, that the menhaden is one of the most successful stories, as far as the management program deals with the stocks?

Mr. DUNNIGAN. I think that menhaden management has been a very sound program for a long time. It has reached out and involved a wide variety of the constituency. We were criticized,

though, frankly, by a lot of people who felt that they were left out of the process.

Menhaden is a species that is very highly dependent on annual recruitment. It is very highly dependent upon favorable environmental factors. And I think we have been able to try to match the management program to the particular importance of this resource.

And the other reason it is so important is because it provides such a tremendous forage base for so much of the rest of our valuable coastal fishery resources.

Mr. JONES. I guess the industry, again, just what information has gotten to me, they just don't really understand why they would lose this position that they had, particularly when they have had such success story, working within the commission.

Are you just saying that it is politics, resentment, by other members of the commission as to why this change was made?

Mr. DUNNIGAN. I don't think so.

I think what has happened in menhaden over the last 10 years is that there has been a broadening of the constituency that has come into the government and said, "We care about this resource." For a long, long time, in both the Gulf of Mexico and the Atlantic, the constituency who came to the states and to the National Marine Fisheries Service, because they have always done the research out of Beaufort, was largely the commercial constituency, largely the purse seine fleet that was fishing for reduction purposes.

Over the last 10 years, we have seen a greater involvement by other parts of the commercial fishing industry. The bait fisheries, which are more predominant all along the coast, going north from North Carolina, and the recreational community and the environmental community have now stepped forward and said, "We have some concerns about this resource, too."

So our traditional program, which dealt basically just with the states and with the National Marine Fisheries Service on one side, and the commercial fishing industry on the other, was becoming less and less relevant to current circumstances, because the people who care about the resource in a broader sense have gotten more actively involved in the program.

But I don't think it is really a question of just trying to be political. I think it was a question of trying to respond to the broadening constituency that has an interest in this fishery.

And I think even within the commercial fishing industry of the companies that are involved, there who saw that that was something that was going to have to happen.

And then there are others who—you know, very few us all think monolithically. And within the commercial industry, there was a range of views as to how that should go.

Mr. JONES. Mr. Dunnigan, let me ask you another question before my time ends. I have to read this one to you:

It is legal for North Carolina to harvest 12-inch weakfish, grey trout. Size limit caught in pound nets and long-haul nets is 10 inches. Other states have different limits since the Atlantic States Marine Fisheries Commission has adopted conservation equivalency tables whereby states can combine size bag limits, close areas

and/or seasons, and other restrictions that enable them to be compliant with the provision of the plan.

New York and Pennsylvania both have higher size limits than North Carolina. In fact, a majority of the fresh fish from North Carolina is sent to markets in New York City, Baltimore, and Philadelphia. Without those markets, North Carolina commercial fishing would be doomed.

However, these states will not allow North Carolina's legal fish to enter their states.

What will your commission do to facilitate allowing North Carolina's legal-harvested fish to these major markets in Philadelphia and New York?

Mr. DUNNIGAN. Thank you, Mr. Jones.

It is a good question, and it gets to one of the hearts of what we are trying to do in interstate fishery management, because, especially for some of these species that are predominantly coastal, they change during the year.

The summer flounder fishery in southern New England is a lot different from what you see in North Carolina. And we allow, in our weakfish plan, the opportunity for the states to craft a program that makes sense so that everybody has to take a reduction, but you don't require a one-size-fits-all rule, so that everybody has to take the same reduction, and then it has vastly differential impacts.

The States of North Carolina and New York, specifically on weakfish, have been working together for the last couple of years to put together a program so that New York can effectively enforce the rules that it has to have in its area and at the same time allow for valid interstate commerce for legally harvest species from other areas.

In species like striped bass, for example, we have tagging programs that are predominant along the coasts.

I know that on weakfish, the two states have been working together. I have not recently gotten an update on where they are.

What our commission does is it creates the opportunity for the states to sit down together and work out these problems. And I would be glad to get together with the directors of North Carolina's and New York's agencies and talk to them about where this is and get you an answer.

Mr. JONES. I would appreciate that very much. Thank you.

Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Jones.

In regard to the menhaden situation, I think Mr. Dunnigan gave about as a good answer as anybody could have given, based on new understandings of environmental issues.

Picture a spider web, if you will. You touch the outer strand of a spider web, the whole thing ripples.

And if you catch too many menhaden, that has a fairly dramatic effect on the whole marine ecosystem, one of which is striped bass don't have enough to eat, so they forage for other species.

And in our case, the other species targeted is blue crab. And then the blue crab population is beginning to crash, not just because of the striped bass; there are many other factors involved.

But there were other people that became involved in the menhaden issue other than the commercial menhaden fishermen, so it had a broad ripple. And I think that if the Atlantic States Marine Fisheries Commission did anything that was sensitive and sophisticated and well-done, it was to deal with that issue with all the various groups.

Having been a little bit involved in that, I can say that there was very little if any political clout used in that issue, other than the basic scientific effort to try to deal with it.

But we can follow up on that, Walter, and make sure that North Carolina gets its fair share.

Ms. Short, just very briefly, because I think we just got buzzed for a vote, you mentioned a number of projects. I think 10, 12, 17 projects or whatever, along the East Coast, dealing with, to some extent, fishery habitat and restoration. And you did say you had a particular habitat restoration project.

Could you tell me what that restoration project is or what some of them are, and exactly what you do in a fisheries restoration project?

Ms. SHORT. We have a number of fisheries types of activities that contribute to restoration of anadromous fish, both in terms of opening up passage through rivers, through the removal of small obstructions, as well as water quality issues—

Mr. GILCHREST. So you are removing small dams or levies or things of this nature?

Ms. SHORT. They can be. I don't have information with me on those specific projects, but I would be glad to respond in writing with more specifics.

Mr. GILCHREST. Could you? I would like to see the specifics on each of those projects, especially along the East Coast, and who else you work with, because, most likely, if you are going into tidal estuaries or streams or rivers, then you must have some cooperation with not only the state agencies, but local communities.

I would be interested in seeing how that process works.

We have a number of places in my district where there are impoundments or dams or things like that that are no large areas of striped bass spawning, certainly with shad, white perch. There is a whole range of species that could swim upstream a lot further to expand their spawning areas. So that would be very helpful.

The other question I had, and I guess anybody can answer this, I suppose, the Striped Bass Act we all know has been a resounding success. And we continue to reauthorize it and work with it. And we are talking about reforming some of these acts. Is it time to consider that or these other acts that deal specifically with a particular fishery, and take a look at it from an ecosystem approach, a multispecies approach? Because we are talking about menhaden and striped bass and crabs, phytoplankton, zooplankton, subaquatic vegetation, and many other things, and it all deals with the same habitat for all of these different species.

So if anybody would want to respond—Ms. Chasis?

Ms. CHASIS. I think that is an excellent suggestion. That is something that the National Research Council, in recent reports that it has issued, has emphasized the need for, ecosystem management plans for fisheries.

And I think the points you make are illustrative of why it is important. The way fisheries are managed, to a large extent now, are on a single-species basis. And stepping back and looking at the broader ecosystem and the interactions and making sure the management measures are consistent with maintaining or restoring ecosystem health is extremely important.

Mr. GILCHREST. Is there some language or is it necessary to put some language into, let's say the Striped Bass Act?

Ms. CHASIS. I haven't reviewed that Act, so I would want to go back and look at it. But it seems to me that is something that would be important to do. And I am not aware that there is language, for example, in the Atlantic Cooperative Fisheries Act to do that. I would turn that over to Jack.

But I think it is certainly a very, very worthwhile suggestion, Mr. Chairman.

Mr. GILCHREST. Mr. Dunnigan?

Mr. DUNNIGAN. Thank you, Mr. Chairman.

There is a lot that is going on in this area right now. And one of the things that we are finding is that there is a tremendous gap between what we know and what we would need to know, if we are seriously going to try to manage species, even on a multispecies basis, much less moving toward ecosystem management.

This Committee—Mr. Saxton—has supported some important funding for a number of years now that has been looking at interspecies dynamics, and that is important work that needs to continue.

Last year, there was a major scientific conference on data that was held. It is specifically looking at what are the data needs for ecosystem management.

Our commission has now received a grant from the Chesapeake Bay program of NOAA to do some more coordinating scientific research. And we are about ready to issue the contract for that.

So there are a lot of things that are going on. But one of the things that we are going to have to do, if we are going to be serious about ecosystem management, is to make a major investment in the research that is going to be required to support the management program that will look at these things. It will be expensive.

Mr. GILCHREST. Thank you. And we will attempt to do that up here.

Mr. Underwood, follow-up questions?

We have a vote. We will be back, hopefully in 15 to 20 minutes. So we will take a recess at this time.

Oh, you know something? Thanks for your testimony.

[Laughter.]

And this panel is dismissed, also.

[Laughter.]

[Recess.]

STATEMENT OF THE HONORABLE JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. [Presiding.] We are going to reconvene the Subcommittee at this point to conduct the second part of the hearing on an issue I think most people will agree is of great importance

specifically to New Jersey but also of some importance in the national picture of management of our refuge system and wilderness area generally.

Let me begin by introducing the panel, a panel of people who I have come to know well from my years of work in this area.

First, Mr. Daniel Ashe, Assistant Director of Refuge and Wildlife at the U.S. Fish and Wildlife Service.

Second, Mr. Bob McDowell, who does a great job for us back in New Jersey as Director of the Division of Fish and Wildlife. He will be here shortly.

Third, a great friend of mine, someone who has dedicated himself to quality-of-life issues and environmental issues in Ocean County, the Director of our Ocean County Freeholder Board, Mr. John P. Kelly.

Thank you for coming all the way from New Jersey today, Freeholder.

And Mr. Larry Savadove from Beach Haven.

We are very pleased that you are able to be with us this morning, Larry.

Larry and I have had many experiences together, not the least of which was to be in the middle of a demonstration when somebody didn't like what I was trying to do with fish a year or so ago. And we weathered that storm together.

And we are very pleased to have you here today. And we know that there was some discomfort in you getting here, and we are sorry about that. But you can be sure that we are pleased to have you here and to hear what you have to offer today.

And also, Mr. Bob DeLeonard, the President of the New Jersey Beach Buggy Association, a group of folks who are also dedicated to conservation and the environment, and who have done a great job over the years with a whole variety of issues, including the stewardship of the area of land that we are here to discuss today and the activities that take place on it.

I have a written statement that I would like to ask unanimous consent be included in the record. And I would like to just try and outline this issue, as I see it at least.

It involves an area which was designated as wilderness area in the early 1970's. The are is known as the Holgate Unit and is part of the former Brigantine National Wildlife Refuge, which is now known under the name of the Forsythe National Wildlife Refuge, having been renamed after my predecessor, Congressman Ed Forsythe, who served as the ranking member of the Merchant Marine and Fisheries Committee.

This issue is about access for fishermen, who have carried on a historic use adjacent to and sometimes slightly within the borders of the wilderness area known as Holgate.

I have placed a small map on the desk in front of each member, which shows in pictorial form and map form the Holgate, which is at the southern end of Long Beach Island, a strip of land several hundred yards wide and 3 miles long.

The area is 250-some-odd acres. Its eastern border is the area that is in question. The eastern border of the wilderness area is known as the mean high-water line, mean high-tide line. And the area to the east of that is owned by the State of New Jersey.

The problem here is that over the last 30 years, the township of Long Beach in Ocean County has issued an average of 500 to 600 permits, beginning in the year 1965.

Actually, in 1965, there were 480 permits issued. The average, I am told, during the last 36 years, has been between 500 and 600 permits, which are issued to individuals who have over-the-sand vehicles. And, in fact, last year, there were 716 issued.

Now, I say that because there was a question raised about how historic this use is, and I just wanted to establish for the record that the historic level of usage has been between 500 and 600 vehicles that have been permitted a year.

I think it is also important to point out that while that is the specific issue, the effort of the Fish and Wildlife Service to eliminate this historic use—pursuant to a CCP, which has been developed, and we are awaiting its implementation or an attempt to implement it.

I think it is very important to point out that the wildlife refuge system in states like New Jersey is a very useful tool, and it is very useful for the management of the wildlife refuge and the people who live around it to be good neighbors. And that neighborly relationship obviously has to work both ways.

It is important that the communities in which the refuge is located are good, hospitable folks, who help the management through volunteerism, through cooperation of various kinds, sometimes even through donation of assets to help the refuge out.

And it is important to the relationship that the refuge management be good, neighborly folks as well, and make the members of the community that surround it feel comfortable.

Now, this is especially important in the case of the Forsythe refuge. Unlike most other refuges, the Forsythe refuge is not a single piece of land. The Forsythe refuge begins, at its southern most point, surrounding an area known as the Mullica River estuary and south of the Mullica River estuary for a few miles, some 20 miles north, with various little pieces of land, which we wanted to make part of the refuge over the years.

And for my part, I have advocated doing that. I thought it was a great idea to add to the refuge.

As a matter of fact, I have a list of appropriations that I advocated for, and in some cases got added, and in other cases just supported the Fish and Wildlife Service for requests for the money: beginning in 1990 and 1991, between those 2 years, about $4 million; $4 million in 1992; 1993, almost $4.5 million; $4.5 million in 1994; and on up through 2002, when we have requested an additional $3 million for the acquisition of an area known as the Forked River wildlife farm.

Forked River game farm, right, Bob?

Mr. MCDOWELL. Yes.

Mr. SAXTON. That is the one.

And that is several hundred acres. We want to add that to the refuge.

So this is a refuge which has developed from its core, which used to be the Brigantine area, all the way up the mainland and, in some cases, on Cedar Bonnet Island, on another part of Long Beach Island.

So the point is that the refuge touches the lives of people all up and down the mainland and, in some cases, on Long Beach Island in Ocean County. It touches all of our lives. And, therefore, it is especially important that we recognize that this relationship of neighborliness has to take place.

And I am concerned that I hear quite often that that relationship is beginning to fail. And, as a matter of fact, it has a history of having problems over the last 17 years since I have been a member of the House.

And I have worked diligently, in an understanding way, I believe, trying to help both sides understand the other side and be good neighbors. But recently, some things have started to occur, one of which we are hear to discuss today, but I just want to mention the other couple, because I think they illustrate part of the problem here.

There have been a number of historic uses involving hunting, involving crabbing, involving various interactions with the refuge's neighbors with wildlife. One happens to be duck hunting. And the attitude of the refuge management, in my opinion, leaves something to be desired.

I know there are rules and laws that have to be followed, and I know there are decisions that have to be made.

In one case, a duck hunter, who had a floating blind, which was anchored in a legal position near the refuge, was told by the refuge management that it was unwise for them to hunt there because, if they shot a duck and it landed on the refuge, it was illegal for them to walk on refuge to get the duck. And likewise, it was illegal for them not to get the duck because of another law.

And, therefore, if a duck landed on the refuge, after having been killed by the hunter, he would be arrested one way or the other.

I thought that was going a bit far, in terms of stretching the attitude of good neighborliness.

More recently, just this week, I got a call in my district office from a family whose kids over the last 4 or 5 years have applied for a Federal permit to walk across the Forsythe marsh to get to the water where they put minnow traps to get minnows to take back to sell out of a tank in their garage.

Now, mom and dad, obviously, applied for the permits, because the kids were too young. But this is 12-year-old boy and an 8-year-old girl, who over the past 4 or 5 years have carried out this activity and, during the course of the summer, raise about $400. They don't really raise $400, because mom and dad buy the traps and subsidize the operation.

But they thought it was a good activity for their kids to be involved in. And so the kids, every morning or every afternoon, whenever they go check the traps, go over, collect the minnows, bring them back, put them in the tank in the garage, and the neighbors come and buy the minnows to fish with.

This year, for the first year, the management refused to issue those permits, while others, who carry on the same type of activity but don't sell the minnows, are able to walk across the marsh.

I thought that was stretching the neighborliness concept that we have tried so hard to develop.

But there is a bigger problem, and this is the one that we are here to discuss today.

In 1965, when the Wilderness Act was passed, there was a lot of discuss about a historic use—or there were many assurances given, I should say, about a historic use that takes place on this Holgate section of piece that we started to talk about, which is just a small portion of the total 44,000 acres in Forsythe, 250-some-odd acres.

There was a lot of support for having this area delineated as wilderness area. Incidentally, it wasn't in the Department's original proposal, but there were some 4,000 or 4,400 acres that were part of the proposal to be delineated in Forsythe wilderness area. This wasn't part of it.

But the community wanted it. They wanted it, because if you look at this map, on the mainland, there is a road that comes down to a point near the Holgate part of the refuge. And there was talk about building a bridge, a causeway bridge, from that road on the mainland to the tip of Long Beach Island, and nobody wanted that to happen.

And so the Sierra Club, other environmental groups, and the Beach Buggy Association advocated for this property to be designated as wilderness area, with the understanding and assurance that historic uses—i.e., beach buggy access or over-the-sand vehicle access—would continue as a historic use.

And each year, when the fishermen went to purchase their permits from the Long Beach Township office of permit issuance, they were told, "Here's your permit. Pay your fee."

I don't know what the fee is. Maybe somebody knows.

Jack, do you know what the fee is? Whatever the fee is. $50 or whatever it is.

Mr. KELLY. Right.

Mr. MCDOWELL. Correct.

Mr. DELEONARD. It is $50.

Mr. SAXTON. "Here is your permit. Have a happy season fishing."

And so, over and over again, our fishermen were told that this would continue to be a permitted use.

Specifically, the regulations developed, pursuant to the Wilderness Act, which I understand the most recent administration no longer adheres to, but there is a regulation, which I will read, which says:

The director may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorized equipment at places within the wilderness where such uses were established prior to the date the wilderness was designated by the Act of Congress as a unit of the national wilderness preservation system.

So, there is a regulation in place which tells the fishermen that it is Federal policy that we will, in the case of preexisting uses or historic uses, that they may continue.

And more specifically, when a previous refuge manager decided that it would be in the best interest of some wildlife in this unit to eliminate beach buggies or over-the-sand vehicles in 1991, specifically, we sat down to try to solve the problem, which involved

piping plovers, which nest and fledge from April 15 until about Labor Day.

We sat down with the Fish and Wildlife Service and worked out an arrangement where over-the-sand vehicles would not be permitted during that fledging season but would be permitted during the rest of the year. And that agreement, which is signed by David Beall, who was then the refuge manager; Donald Fricke, who was then the associate manager of refuges north; Donald Young, assistant regional director, refuges and wildlife; and the regional director; all signed this agreement in July and on August 2, 1990.

It says, during the September 1 through the March 31 period, over-the-sand vehicles may utilize the tidelands, which are hard-packed sands below the mean high-water line. Refuge special unit permit obtained from the refuge manager will be required for over-the-sand vehicle use. Over-the-sand vehicles may enter and travel the tidelands only when the tide is out and the tidelands are exposed. To minimize the distance of travel on the loose sand or dry sand above the mean high-water line, which is the refuge boundary, over-the-sand vehicles shall be parked within 30 feet of the water edge at high tide and generally parked perpendicular to the water edge.

So in 1990, I thought the problem was solved, and the fishermen were told again that it is our Federal policy that you be permitted to fish in this area.

Most recently, I have worked with Dan Ashe. And I want to thank him for his cooperation through this process. We met in my office on two or three occasions with the previous director, Jamie Clark.

And on each occasion, Ms. Clark and Mr. Ashe came to my office, listened to this story, probably a different version of it than I just told, and left my office saying, "This is a problem, but we will go back and see if we can figure out a way to help you," which I always took, and I think they will agree, meant permit this historic use to continue.

I will just conclude by saying that no one, to my knowledge, has indicated that under the use agreement that was developed and signed in 1990, that any significant environmental degradation has occurred. Markers are put up. The fishermen, by and large, stay where they are supposed to be on the beaches. The only time they get up on the wilderness area is when the tide comes in and they have a choice between getting up on the wilderness area or having their vehicle underwater.

And so, that was a good, neighborly effort that occurred through negotiations involving my office, permit holders, and the division of fish and wildlife.

So now I understand that the division of fish and wildlife has taken the position that there is no latitude, there is no flexibility in the Federal law—with which I vehemently disagree. And I think there is case law currently, which has been pointed out to me, currently on the books, which substantiates the point that the Department does have the necessary flexibility.

And so I guess I am here—and I promised myself that I wouldn't act frustrated this morning. I promised myself that I would sit here and have this conversation with you all in a gentleman-like way,

and I am going to do that. But I am frustrated, I must say, after all these years—the fishermen were told beginning in 1960, 1973, that there would not be the problem that we are here to discuss today.

They were told every year along the way. They were told in 1990. They were told since 1990. There is a written agreement spelling out the permission for this historic use. And I am frustrated.

But that having been said, let me stop now. I have taken much longer than my time, but I hope my colleague will understand.

[The prepared statement of Mr. Saxton follows:]

Statement of The Honorable Jim Saxton, Vice Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans

I would like to thank those who have come today to discuss very important issues concerning the Holgate Peninsula in the Brigantine Wilderness Area located in the Edwin B. Forsythe National Wildlife Refuge (formerly known as the Brigantine National Wildlife Refuge).

Of particular concern to me today is the U.S. Fish and Wildlife's proposal in their Revised Draft Comprehensive Conservation Plan and Environmental Assessment to eliminate access of motor vehicles and surf fishermen to the Holgate Peninsula and State Riparian lands located below the mean high tide.

As many of you know, The Wilderness Act of 1964 directed the Secretary of Interior to review roadless areas of 5,000 acres or more and report to the President as to the suitability of public lands for wilderness designation. The Department of Interior recommended 4,250 acres of the Brigantine National Wildlife Refuge be preserved as wilderness. However, Holgate Peninsula was not included in this recommendation. Legislation originally introduced by Congressman Edwin B. Forsythe and Senator Clifford Case of New Jersey designated 4,250 acres as recommended by the Department of Interior. In hearings held on the legislation, Mr. E. U. Curtis Bohlen, Deputy Assistant Secretary of the Department of the Interior for Fish, Wildlife and Parks testified that:

> "The Administration did not consider Holgate Peninsula suitable to be recommended as wilderness. On the Holgate Peninsula, Federal ownership includes only 256 acres and extends only to mean high tide with the State of New Jersey owning riparian rights. Thousands of people use the riparian lands for boating, fishing and beach buggy use, which eliminates any opportunity for solitude or wilderness type recreation on this part of the refuge."

Senator Case later modified his bill to include 16,800 acres which was the entire wildlife refuge at that time. The compromise bill which eventually passed both the House and Senate (P.L. 93–632), designated 6,603 acres as wilderness which did include the Holgate Peninsula. The Holgate Peninsula became part of the final legislation despite that it was not the subject of a local hearing, part of an Environmental Impact Statement or recommended by the Administration.

And when Holgate was included by Senator Case, the Senator as well as surf fishermen were assured there would be no loss in public access. And in fact, surf fishermen continued to drive their beach buggies on state riparian lands and above the mean high tide after the wilderness designation to this present day.

In addition, a representative of the New Jersey Sierra Club, the New York and New Jersey Chapters of the Appalachian Mountain Club and Friends of the Earth testified at the hearing in 1974 that:

> "It is our belief that wilderness is a resource which can be enjoyed by large numbers of people so long as it is not overused. The excellent management policies of the wildlife refuge, combined with those of Long Beach Township have successfully protected this extremely fragile area from excessive damage. They require a seasonal permit for all beach buggies which go on the refuge. Recent reports actually show that tracking of heavy vehicles such as beach buggies can be beneficial during the winter months. They break the heavy salt crust which seem to form during the winter, and this permits the sand to blow freely once more, and to reform the sand dunes."

The representative also stated "beach buggies keep primarily to the wet sand area, going no further than approximately 25 feet above high tide." Clearly, the statement emphasizes the compatibility of the beach buggy use with the wilderness designation in terms of the local environmental concerns.

It is also my belief that the surf fishermen themselves and the surrounding community have worked diligently to protect the Holgate Peninsula as you will hear

from the President of the Beach Buggy Association. Holgate has been accessed by beach buggies and surf fishermen since before the wildlife refuge or wilderness area existed there. They have built at least 4,000 feet of snow fence to protect the sand dunes and started a grass planting program. They have been good at keeping vehicle violations to a minimum and supporting the refuge staff when penalizing violators.

In 1990, I personally helped to negotiate a written agreement called "Public Use Management for Holgate Unit" between the surf fishermen and FWS to keep open access to Holgate from September to April of each year to protect the nesting piping plovers. In the written agreement, FWS committed to allowing surf fishermen to use the site, driving out on state riparian lands, then at high tide, they could back up their vehicles and park above the mean high tide in a 30 foot area. The written agreement states:

> "During the September 1 through March 31 period, over-the-sand vehicles (OSVs) may utilize the tidelands which are the hard packed sands below the mean high water line. To minimize the distance of travel on the loose or dry sand above mean high water line the over-the-sand vehicle shall be parked within 30 feet of the water edge at high tide and generally park perpendicular to the water edge."

This written agreement is signed by the Refuge Manager, Associate Manager- Refuges North, Assistant Regional Director–Refuges and Wildlife, and the Regional Director. This written agreement established clear public use management practices for balancing the wilderness needs and prior historical use by fishermen.

Fishermen accepted partial closure of Holgate to protect endangered piping plovers by agreeing not to take vehicles onto the beach during the fledgling season. Fishermen gave up fishing during nearly all the spring and summer months. Clearly, fishermen have demonstrated willingness to protect the piping plover, and now they are being forced out.

I work with the U.S. Fish and Wildlife Service in many areas for the betterment of our natural resources. In this instance, however, I am concerned that the rights of citizens to enjoy natural resources are being trampled. FWS has taken a position in direct contradiction to what they have agreed to in the past and what they have practiced in the past. They have acted unilaterally to restrict access to New Jersey state owned lands and deny historical compatible uses that were assured to be maintained. A deal is a deal.

I am left with little choice but to offer legislation (H.R. 896) that would provide a transition zone, as described in the 1990 written agreement, to allow beach buggies to continue to access Holgate Peninsula as they have for the last 80 years.

Thank you.

Mr. SAXTON. Mr. Underwood, would like to make a statement?

Mr. UNDERWOOD. Thank you, Mr. Chairman.

I have already indicated my own statement on this particular piece of legislation. But I wanted to ask unanimous consent to enter into the record a statement by the Wilderness Society and the Sierra Club.

Mr. SAXTON. Without objection.

[The prepared statement of Mr. Waltman follows:]

Statement of James R. Waltman, Director, Refuges and Wildlife Program, The Wilderness Society

The Wilderness Society appreciates this opportunity to provide written testimony for the Subcommittee's hearing on H.R. 896. The Wilderness Society is a non-profit organization with 200,000 members and is devoted to preserving wilderness and wildlife and protecting a nationwide network of wildlands. Founded in 1935, the Society has a long-standing commitment to the sound management and well being of the National Wildlife Refuge System and has been instrumental in the establishment and protection of the National Wilderness Preservation System.

The Wilderness Society opposes H.R. 896, a bill that would modify the boundaries of the Brigantine Wilderness Area in New Jersey in order to allow off road vehicle travel on the Holgate Beach unit of the area. We believe that this legislation would undermine protection of the Holgate Wilderness, harm migratory birds and other wildlife, damage the refuge's sensitive beach ecology, conflict with efforts to recover endangered species, and foreclose a rare opportunity for wilderness recreation. We

also fear that the bill could establish a dangerous precedent for wilderness management. We urge the Subcommittee to oppose this legislation.

As a native of New Jersey, I know all too well how few wild places remain in the Garden State to experience solitude and wildlife in their natural habitat. Less than two percent of the public land in the state is protected as Wilderness. New Jersey's beaches are a source of enjoyment, economic vitality, and pride for the state. Unfortunately, ocean front houses, condominiums, hotels, roads, or other developments mark virtually all of New Jersey's beaches. In addition, more than thirty beaches in the state allow beach buggies and other off-road vehicles to drive along the shoreline. By our estimates, approximately 70 percent of the state's beaches allow off-road vehicle travel by anglers and others. On Long Beach Island alone, where Holgate Beach is located, nearly the entire 18 mile stretch of beach outside of the refuge is open to vehicles. All-too-rare is the opportunity for visitors to birdwatch, fish, beachwalk, and relax on a wild, undeveloped beach, free from the sounds, smells, and harassment of off-road vehicles. The Holgate seashore on the Edwin B. Forsythe National Wildlife Refuge should provide visitors just such an experience.

The Holgate Beach unit of the refuge, on Long Beach Island, was set aside to host thousands of shorebirds that migrate and feed along the coast of New Jersey. The area is so critical that from April through August the beach is completely reserved to allow piping plovers, a Federally threatened species, time to nest and migrate. Moreover, this area remains a prime area for migrating shorebirds through the fall months. Close to 300 bird species have been sighted there, including Atlantic brant, American black duck, and brown pelican. Wilderness designation of the area has, at least in theory, provided an additional layer of protection for the wildlife of the area and provided a recreational experience that is so rare elsewhere in the state of New Jersey.

Unfortunately, illegal beach buggies and other off-road vehicles are violating Holgate beach's Wilderness status. We are concerned that this activity may be having several negative ecological effects in addition to undermining the area's wilderness characteristics and opportunities for wilderness recreation of the area.

Migratory Birds. Off road vehicles on the Holgate Beach are most likely harassing migrating birds during their critical migration seasons. While the beach at Holgate is closed between May and August, during the nesting season of piping plovers, many shorebirds migrate through the area during the early spring and fall months. Driving of off-road vehicles on the beach during this period can disturb birds during critical feeding and resting periods.

Endangered species. While the Holgate Beach is closed during the nesting season of piping plovers, vehicle travel during the rest of the year degrades this nesting habitat. Vehicle travel reduces the amount of wrack on the beach that is an important foraging substrate. In addition, a of migrating piping plovers use the beach after the breeding season.

Vehicle travel on the Holgate Beach is also impacting recovery efforts for the threatened Northeastern beach tiger beetle and the threatened seabeach amaranth. Holgate has been identified as an ideal sight for reintroduction and recovery of these species if vehicle travel were to be discontinued. Introductions of both species are thought to be doomed so long as vehicle travel is allowed to continue on the beach. The amaranth is known to be highly sensitive to vehicle travel, its stems easily broken. The beetle also can not withstand off-road vehicle travel as its larval stage is found in the intertidal zone. National wildlife refuges, particularly refuge wilderness areas, provide some of the best opportunities for endangered species recovery. It is very troubling that recreation vehicle travel is impeding endangered species recovery action on a refuge wilderness area.

Beach ecology. Off road vehicles are known to disturb dune formation, a central component of barrier island ecology, by limiting vegetation growth. Vehicle travel also can destabilize beach structure by breaking the salt crust and increasing sand movement and erosion. I have personally walked the Holgate Beach and witnessed beach buggy tracks near and even above the dune line during periods of high tide.

Beach Invertebrates. Dr. Stephen Leatherman of the University of Maryland has identified significant negative impacts of vehicle travel on ghost crabs, a species that he has called an excellent indicator species for beach invertebrates. On Assateague Island, Virginia, an average of 10 crabs were found on wild beach plots, only one crab was found on plots with "light ORV use" and only 0.3 crabs were found per plot with "heavy ORV use."

For all of the above reasons, the U.S. Fish and Wildlife Service has proposed enforcement actions to stop illegal vehicle travel within the Brigantine Wilderness. The agency has also proposed a ferry system, which could transport individuals who wish to access the southern tip of Holgate without walking. The Service has proposed these actions as part of one of the very first Comprehensive Conservation

Plans drafted after passage of the 1997 National Wildlife Refuge System Improvement Act that the Subcommittee invested considerable effort on developing. We support the Fish and Wildlife Service's efforts to resolve the conflict with off-road vehicle travel on the beach and are troubled that Congress would contemplate taking action to overturn them.

The Fish and Wildlife Service has not proposed banning fishing, hiking, birding, or other pedestrian powered recreational activities within the Holgate Beach. It has merely taken long-overdue action to enforce the Wilderness Act and to protect the wilderness, wildlife, and wildland characteristics of the refuge.

More than 30 of New Jersey's beaches are currently open to off-road vehicle travel for at least part of the year and is used by anglers. By our estimation, approximately 70 percent of the Atlantic coastline in the state is open to this activity. On Long Beach Island alone, where Holgate Beach is located, nearly the entire 18 mile stretch of beach outside of the refuge is open to vehicles. Certainly we should be able to protect the two and a half miles of beach within the Brigantine Wilderness Area.

[The prepared statement of Mr. Semcer follows:]

Statement of Bart Semcer, Associate Washington Representative, The Sierra Club

We appreciate the opportunity to submit this statement into the hearing record and discuss the value of maintaining the legal prohibition on the use of motor vehicles on Federal Wilderness lands on the Holgate Peninsula of the Edwin B. Forsythe National Wildlife Refuge in New Jersey.

The Sierra Club is North America's oldest and largest grassroots conservation organization. The Club exists to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environment.

There are over 700,000 Sierra Club members in the 50 U.S. states and all Canadian territories and provinces. Approximately 21,000 of our members reside in New Jersey. Our members include people from all walks of life who enjoy experiencing the natural world and who value its conservation. One-fifth of our members identify themselves as sportsmen, a group that appreciates the hunting and fishing opportunities found on our national wildlife refuges and in our nation's Wilderness Areas. All of our members have a stake in the outcome of the management of the Holgate Peninsula because it is public land of rare quality that is of immense value to migratory and imperiled species of global importance. For reasons we identify below we are opposed to H.R. 896 and urge this committee not to continue efforts aimed at its passage.

The Holgate Unit of the Brigantine Wilderness is a single beach, encompassing approximately 2.5 miles. It is the only area of Wilderness beach in New Jersey. In contrast, there are over two dozen other beaches in the state where the use of off-road vehicles are allowed, 18 miles of beach alone just to the north of Holgate. In light of this, conserving Holgate as a Wilderness, and enforcing the prohibition against the use of motorized vehicles there for the benefit of hikers, birdwatchers, beachwalkers, and other average citizens who would like to enjoy New Jersey's only opportunity to experience a coastal Wilderness is more than a just compromise. It is an imperative.

In order to appreciate the ecological and recreational value of the Holgate Peninsula as a motor-free Wilderness Area one needs to look at it in the larger contexts of its place as part of the Atlantic coastline, the National Wilderness Preservation System, and New Jersey's public land base.

The Atlantic Coast of the United States is a region of severe ecological distress. Coastal areas of the United States have and continue to undergo an unprecedented growth in human population. In 1960, 80 million people lived within U.S. coastal counties (Bush et al. 1996). Today the number has grown to over 141 million with nearly 14,000 new housing units being built in coastal counties every week, even though these counties account for only 17% of the U.S. landmass (National Research Council 2000). In the area surrounding the Brigantine Wilderness and Holgate Peninsula it is projected that the human population will increase to nearly 3.5 million in 2020, a rise of 31% from 1990 population levels (New Jersey Office of State Planning 1999). In addition, beach areas are popular tourist destinations: 40 percent of Americans list beaches as their preferred site for vacations (National Research

Council 1995), and 100 million people visit the coast every year (National Research Council 2000).

This increase in human population and visitation has been accompanied by an increase in the alteration of native coastal ecosystems. Between 1945 and 1975, development on Atlantic and Gulf Coast barrier islands, one of which the Holgate is a part, increased more than 300% (Slater and Odem 1993). This "occurred largely (over 5,000 hectares) at the expense of wetland, grassland, salt flat, and dune areas although at least 6000 ha of forest were lost. In all these cases the alteration was irreversible since it consisted of activities such as clearing, bulldozing, and dredge and fill operations." As Lubchenco et al (1995) observe in their ecosystem analysis of coastal systems for the United Nation's Global Biodiversity Assessment "[m]any areas are already severely degraded. Moreover, the rates, spatial extent and types of perturbations are increasing alarmingly."

Not surprisingly, numerous species that utilize Atlantic coastal habitats have been adversely affected by these activities. The walrus has been extirpated from the New England coast. Harbor seals, Harp seals, Gray seals and Hooded seals have been reduced in number and extirpated from some of their historic range on the Atlantic coast entirely.

Since the passage of the Endangered Species Act in 1973, species found on the Atlantic coast of the United States that are listed by the Fish and Wildlife Service include: Roseate tern; Piping plover; Leatherback sea turtle; Hawksbill sea turtle; Kemp's ridley sea turtle; Green sea turtle; Atlantic loggerhead sea turtle; Northeastern beach tiger beetle; Bald eagle and Seabeach amaranth. (50 CFR 17.11, 17.21.)

On the Jersey Coast Refuges themselves - of which Holgate and the rest of the Brigantine Wilderness are a part - the New Jersey Division of Fish and Wildlife lists an additional 33 species as either Threatened or Endangered under state law, including: Great blue heron; Little blue heron; Yellow-crowned night heron; Cooper's hawk; Red shouldered hawk; Northern harrier; Osprey; Black rail; Least tern; Short-eared owl; Barred owl; Red-headed woodpecker; Cliff swallow; Sedge wren; Grasshopper sparrow; Savannah sparrow; Vesper sparrow ; Coast flatsedge; Britton's spikerush; Twisted spikerush; Thread-leaved beaked rush; Grass-like beaked rush; Rare-flowering beaked rush; Leathery rush; Bog asphodel; Snowy orchid; Lace-lip ladies-tresses; Wrinkled jointgrass; Bristling witchgrass; Short-leaved skeleton grass; and, Richard's yellow-eyed grass.

As the U.S. Fish and Wildlife Service noted in the recovery plan for the Seabeach amaranth (FWS 1996a:10), this species shares its habitat with a number of the state and Federally listed species identified above, and these species, "unlike many endangered species, are not narrow endemics. Such pervasive declines in a cluster of wide-ranging species occupying the same habitat is an obvious indication of an entire ecosystem in very serious trouble."

While some representative areas of this ecosystem, such as the Holgate Peninsula, have been protected against development, most amount to only semi-protected environments at best. Degradation of their living components continues and efforts to recover ecological integrity are impaired, due in part to ongoing recreational activities, particularly those utilizing motorized vehicles.

The Piping plover, a Federally listed Threatened species and an indicator of a healthy beach ecosystem, is documented to occur on the Holgate Peninsula in both the recovery plan for the species (USFWS 1996b) and the revised draft Comprehensive Conservation Plan for the Jersey Coast Refuges. The species utilizes the Peninsula for breeding, feeding, and sheltering from the early spring into autumn.

From April 1 to August 31 the U.S. Fish and Wildlife Service maintains a complete closure of the Holgate Peninsula, prohibiting pedestrian and vehicular access, as well as boat landings, in order to protect nesting plovers by preventing the impairment of their habitat, harassment of individuals and disruptions of normal behavioral patterns including feeding and sheltering.

The Piping plover recovery plan also notes that there are "large numbers" of the species at Holgate during the post-breeding season. These individuals are vulnerable to and likely experience "harassment", as defined in 50 CFR 17.3, from motor vehicles via flushing and the crushing of wrack into the sand, making it unavailable as cover or for foraging.

The Piping plover revised recovery plan makes clear the threat that motor vehicles pose to the species:

> "Vehicles also significantly degrade piping plover habitat or disrupt normal behavior patterns. They may harm or harass plovers by crushing wrack into the sand and making it unavailable as cover or a foraging substrate, by creating ruts that can trap or impede movements of chicks, and by preventing plovers from using habitat that is otherwise suitable. Vehicles that

drive too close to the toe of a dune may destroy 'open vegetation' that may also furnish important piping plover habitat."

When Piping plovers return to the Holgate Peninsula in the spring to nest they are forced to do so in an area of impaired habitat. This impairment is the result of 8 months of steady use of the beach by motor vehicles that decreases the amount of wrack available to the species for cover and foraging. Piping plovers at Holgate are forced to contend with this decrease at a time in their life cycle when a sufficient amount of habitat for cover and foraging is necessary to their migratory and reproductive success.

Because motor vehicle use on the Holgate Peninsula prior to the Piping plover nesting season results in the significant absence of an important habitat element when the species arrives to use the beach, beach buggy use is responsible for starting the species off at a disadvantage each and every nesting season. We have argued in the public record on the Revised Draft Comprehensive Conservation Plan for the Jersey Coast Refuges that this is a violation of 50 CFR 17.3, prohibiting the "harm" and "harassment" of a species due to the impairment and disruption of essential behavioral patterns under the Endangered Species Act. This violation could be remedied in part by enforcing the Wilderness Act's prohibition of motorized use of the Federal lands of the Holgate Peninsula and we support the efforts of the U.S. Fish and Wildlife Service to that end.

Additional species necessary for Holgate's ecological integrity whose recovery is negatively impacted by motorized use of the area are Northeastern beach tiger beetle and Seabeach amaranth.

Like the Piping plover, the Northeastern beach tiger beetle is an indicator of a healthy beach environment. The species is ecologically important as the dominant invertebrate predator in those habitat areas where it occurs (USFWS 1993). Predation is a key process in the natural maintenance of biodiversity (Terborgh et al. 1999).

The Northeastern beach tiger beetle was once described as occurring in "great swarms" on New Jersey's beaches (Leng 1902 in USFWS 1993). Today the species is extirpated from much of its historic range, including that in New Jersey, save for a small, reintroduced population at the Gateway National Recreation Area. One of the factors identified in the extirpation of the species across the majority of its historic range is increased vehicular traffic on Atlantic coast beaches (Stamatov 1972 in USFWS 1993).

As the Fish and Wildlife Service noted in its recovery plan for the species:

> "Vehicles may physically compact the beach substrate and/or disrupt thermal and moisture microhabitat gradients that are important for the larvae (Schultz 1988). The best evidence of beach vehicle impacts to (the species) comes from a survey of Assateague Island, Maryland (Knisley and Hill 1992). Adults and larvae of (the species) were absent from a 16-km (10-mi) section of beach that receives heavy ORV use, but present on either side of the ORV zone, both on the north end of the island and to the south in the Virginia section. It is also significant that (the species) was common on the northern portion of the ORV zone in 1973, but had disappeared by the summer of 1976, after ORV use became heavy (J. Glaser, Maryland Geological Survey, pers. Comm.)."
>
> "Surveys of (the species) have also indicated an overall pattern of absence from beaches with moderate to heavy ORV use. The Martha's Vineyard site, one of two sites on the Atlantic Coast where the species has survived (Martha's Vineyward) is very inaccessible and has been well protected from visitor use and vehicle use for many years (T. Simmons, The Nature Conservancy, pers. comm). The newly discovered site in Westport, Massachusetts is not used by ORVs, although it receives heavy pedestrian use (S. von Oettingen, U.S. Fish and Wildlife Service, pers. comm.)."

In order to recover healthy populations of the Northeastern beach tiger beetle so that it can be removed from the Federal Threatened species list, the U.S. Fish and Wildlife Service has sought to re-establish populations of the species in places where it has been extirpated. The Holgate Peninsula has been identified as a potential reintroduction site for the species based on the habitat conditions present there. To date however the Service has refrained from initiating a reintroduction program there because of concerns that continued motorized use of Holgate would doom it to failure. The Service has stated that Holgate would be an "excellent" reintroduction site if motorized use of the area were ended. Maintenance and enforcement of the Wilderness Act's prohibitions on motorized use of the Federal lands at Holgate would help to make reintroduction of a key ecological component of the peninsula more feasible, thereby helping to move the species itself one step closer to removal

from the Threatened species list and leading to a healthier overall beach environment.

The Seabeach amaranth is a sand-binding species of plant, listed as Threatened under the Endangered Species Act. Historically ranging from North Carolina to Massachusetts, the species has been extirpated from 6 of the states within its former range, including until very recently, New Jersey. In the past year, the U.S. Fish and Wildlife Service has been investigating the Holgate Peninsula for returned occurrences of the species, an action that indicates the beach is one of the few remaining areas in the state offering the physical habitat necessary for the species to exist.

To date, the Service has not documented a return of Seabeach amaranth to the Holgate Peninsula. Indeed, despite the presence of the necessary physical components for the species to re-establish itself at Holgate, the continued presence of motorized vehicles there is likely a contributing factor to the impairment of Sebeach amaranth recovery in the area. As the U.S. Fish and Wildlife Service (1996) points out in its recovery plan for the species:

> "While seabeach amaranth populations are somewhat tolerant of ORV use from December until May, the brittle, fleshy stems are easily broken, and growing plants (May to December) do not generally survive a single pass by a truck tire. Thus, even minor beach traffic directly across the plants during the growing season is detrimental, causing mortality and reduced seed production."

The recovery plan also notes that "Seabeach amaranth has a particularly close tie with piping plovers, very frequently occupying the same sites. Habitat management for one benefits the other, and no action taken to manage for one has harmed the other." The benefits provided to Piping plover via the existing seasonal restrictions of motorized vehicles are well recognized. We have also argued that extending the seasonal restrictions on motorized vehicles at Holgate would carry additional conservation and recovery benefits for the species. This extension would also benefit the reestablishment and recovery of the Seabeach amaranth at Holgate as it would keep motorized vehicles off of the beach during the growing season months when the species is vulnerable to ORV use.

Congress has clearly stated its desire and intent to recover species listed as Threatened and Endangered under the Endangered Species Act, and to remove them from the lists of threatened and endangered species. It has also clearly stated that in order to do this the ecosystems on which those species depend must be conserved. Likewise, the National Academy of Sciences (1995b) has informed Congress of the indispensability of habitat protection to endangered species conservation and recovery. The Holgate Peninsula is clearly one such ecosystem whose conservation could be achieved, where species recovery opportunities could be enhanced by maintaining and enforcing existing Wilderness Act protections for the area with regard to motor vehicles. Enactment of H.R. 896 however will clearly contribute to the opposite outcome.

Conservation of ecosystems is not exclusively a tenant of the Endangered Species Act but also the subject of a growing body of scientific literature dealing with the design of nature reserve systems. One point that is stressed is the need for ecosystem representation within nature reserve systems. Indeed, "a central goal of conservation is representing a broad spectrum of natural communities in a network of protected areas. Representation is an example of an ecosystem approach to conservation" and is often touted as being more efficient than single-species based conservation." (Noss and Cooperrider 1994).

As pointed out above, Atlantic coast barrier island ecosystems in their native state, or a close approximation thereof, have become increasingly rare as a result of human population growth and the accompanying alteration of the landscape of the Atlantic Coastal Plain. Of those areas that remain essentially unmolested less than 20 have received partial protection as conservation reserves. Only 4 are a part of our national system of Wilderness Areas, enjoying the strongest land conservation measures available to them. One of these areas is the Holgate Peninsula. The Holgate Peninsula is one of only two such protected barrier islands in the New York Bight. It is also the only one along the New Jersey coast, a region of global ecological importance.

Ecosystem conservation is one of the principal benefits of the Wilderness system and Wilderness Areas are increasingly important because of the ecological value they hold.

Because undeveloped areas of barrier island are so rare on the landscape, and because they are even more rare within the national Wilderness conservation system, removing Wilderness designation or the full protection of the Wilderness Act from the Holgate Peninsula would be decisions that ignore the best available scientific

information with regard to land conservation. In recent years Congress has increasingly stated its desire to see our land management agencies base their land use decisions on the best available scientific information. We would like to see Congress hold itself to the same standard by recognizing the necessity and value of including the Holgate area in our nation's system of Wilderness and rejecting H.R. 896.

As part of New Jersey's public conservation land base, undeveloped barrier island ecosystems are even more rare and protection of them as Wilderness is exclusive to Holgate. New Jersey has approximately 701,593 acres of public wildlands including: State forests and parks; wildlife management areas; national recreation areas; and, national wildlife refuges. Of these, 140,382 acres are Federally administered as national recreation area or national wildlife refuge. Federally protected Wilderness in New Jersey is limited to 10,341 acres. The 3,660 acre Great Swamp Wilderness Area on the Great Swamp National Wildlife Refuge; and, the 6,681 acre Brigantine Wilderness on the Edwin B. Forsythe National Wildlife Refuge. In all, Wilderness accounts for only 1.4% of New Jersey's overall public land base, and only 7.3% of the Federal lands in the state. It can easily be said that New Jersey is a very Wilderness poor state, making what Wilderness Area's do exist that much more valuable for conserving both the ecological and non-motorized recreation resource.

The Holgate peninsula is a last bastion of undeveloped land in the most densely populated and heavily urbanized state in the nation. As stated at the beginning, The Holgate Unit of the Brigantine Wilderness is a single beach, encompassing approximately 2.5 miles. It is the only area of Wilderness beach in New Jersey whereas there are over two dozen other beaches in the state where the use of off-road vehicles are allowed, 18 miles of beach alone just to the north of Holgate. The Peninsula is a rare ecological community and offers some of the last habitat available for dwindling populations of our natural heritage. It is exactly the sort of place that Congress sought to conserve when it passed the Wilderness Act of 1964 "in order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition." This sub-committee and all of Congress should reject H.R. 896. It should support the ongoing efforts of the U.S. Fish and Wildlife Service to enforce the law and end illegal motorized use of the Wilderness lands at Holgate so that its special values can be conserved, for our families and for our future.

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Mr. SAXTON. I would also like to ask unanimous consent that Mr. Gilchrest's statement be placed in the record; the testimony of Mayor James Mancini, the mayor of Long Beach Township, New Jersey; and I guess that is it—the testimony of the Alliance for a Living Ocean. I am sorry.

[The prepared statement of Mr. Mancini follows:]

Statement of James J. Mancini, Ocean County Freeholder and Mayor, Long Beach Township, New Jersey

Good Morning. I am James Mancini, an Ocean County Freeholder for the past 19 years and Mayor of Long Beach Township since 1964. I am here today to speak in favor of H.R. 896, a bill introduced by Congressman Saxton that would redefine the boundary of the Holgate Unit of the Edwin B. Forsythe Wildlife Management Area. This new boundary would provide an access corridor along the waterline to allow surf fishermen in motor vehicles to continue traditional recreational surf fishing along the Holgate beachfront. I want to stress that this is a traditional recreational activity on Long Beach Island, long predating the establishment of the Edwin B. Forsythe Wildlife Refuge, or even my 37 years as Mayor. Fishermen have been driving vehicles along the beach to get to where the fish are as long as there have been motor vehicles that could make the trip through the sand.

Since the establishment of the Holgate Unit there has been an ongoing debate between the public and officials representing the recreational fishing community and the U.S. Fish and Wildlife Service concerning motor vehicles on the beach. The U.S. Fish and Wildlife Service is charged with protecting wildlife within the National Wildlife Refuge System. This is their primary goal. Accordingly, public access to Refuge property is extremely limited by the Service in an effort to provide a habitat where wildlife can thrive unimpeded by humans. Since the U.S. Fish and Wildlife Service views any access to the Holgate Unit by motor vehicles as an encroachment on the habitat of the Piping Plover, there is a direct conflict between the primary goal of the Wildlife Refuge System and the recreational fishing community who have fished along the beach at Holgate for generations. This is a conflict that I do not believe will be resolved as long as the beachfront is considered part of the Wildlife Refuge System.

In 1990, an agreement was reached between the recreational fishing community and the U.S. Fish and Wildlife Service to close the Holgate Unit to motor vehicles during the Piping Plover breeding season. Being sportsmen and wildlife enthusiasts at heart, the fishermen agreed to this seasonal closure which runs from April to August. Now, in 2001 the U.S. Fish and Wildlife Service is seeking to break this agreement and is again trying to bar motor vehicles from Holgate year round. Although it is exasperating to have to deal with this issue again, we should not be surprised. The U.S. Fish and Wildlife Service is simply working to achieve their primary goals concerning the National Wildlife Refuge System and the U.S. Fish and Wildlife Service should not be surprised at the wave of public opposition to their proposal. From our view, we that seek to preserve the public's access to public lands settled this matter in 1990. We compromised then, and there is no room to compromise now.

Over the years, the Ocean County Board of Chosen Freeholders has adopted a number of resolutions opposing the closure of the Holgate Unit to motor vehicles on a year round basis. Most recently, comments were sent to the Department of the Interior by both Freeholder Director John P. Kelly and myself, urging the Department to stop further consideration of any Refuge Plan that includes a year round vehicle ban on Holgate. Attached to this statement are copies of those recent letters. The total number of people who have posted negative comments or questioned this proposal is overwhelming. They range from Federal, state and local officials, includ-

ing the New Jersey Department of Environmental Protection, all the way down to individual surf fishermen who simply want to enjoy the beaches that their tax dollars and fees support. A year-round vehicle ban on Holgate would result in minimal benefits to the Piping Plover population and would deprive the surf fishing community of one of the most consistently productive surf fishing areas along the Jersey Shore, an area that cannot reasonably be accessed by surf fishermen without a motor vehicle. Unfortunately, public access for fishing is only a secondary issue in the management of the National Wildlife Refuges. The welfare of the wildlife comes first. Therefore, I have no doubt that the U.S. Fish and Wildlife Service will continue to over-rule public access issues in favor of even minor benefits to wildlife.

There are tax and economic implications associated with a year-round motor vehicle ban at Holgate that need to be considered as well. The beaches are the foundation of Ocean County's largest industry, coastal tourism, an industry whose viability is directly and totally dependent on access to those beaches. An inaccessible beach is of little use to the tourists who come to the shore to spend their hard earned money. Tourism in Ocean County generates an estimated $1 billion annually. In total, New Jersey's coastal economy returns over $3 billion per year to the Federal Government in tax revenues. Denying reasonable access to the beach at Holgate as proposed by the U.S. Fish and Wildlife Service would compromise these tax revenues, particularly in Long Beach Township where I serve as Mayor.

That is why the passage of Congressman Saxton's bill, H.R. 896 is so important. This bill will re-align the boundary of the Holgate Unit to create an access corridor along the high water line at Holgate that would not be located within the Wildlife Refuge. This would allow for the passage of motor vehicles along the beachfront, and would also relieve the U.S. Fish and Wildlife Service of its regulatory obligation to place wildlife protection above public access in this area. It would essentially implement by law the compromise that was agreed to by all parties, local, state and Federal, in 1990.

I want to thank you for the opportunity to testify here today and I also want to thank Congressman Saxton for drafting this bill, which will go a long way towards alleviating a controversial issue that I, as an Ocean County Freeholder and the Mayor of Long Beach Township, have been dealing with for many years on behalf of the people who elected me to those offices.

THE BOARD OF CHOSEN FREEHOLDERS

OCEAN COUNTY
TOMS RIVER, NEW JERSEY 08754

James J. Mancini
Freeholder

March 19, 2001

Richard O. Bennett, Acting Regional Director
United States Department of the Interior
Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589

Re: FWS/Region 5/NWRS - Comprehensive Conservation Plan and Environmental Assessment for New Jersey Refuges and the Year Round Closing of the Holgate Unit to Motor Vehicles.

Dear Mr. Bennett:

I want to thank you for extending the comment period on the above referenced action. As you are aware, the Ocean County Board of Chosen Freeholders, the New Jersey Department of Environmental Protection, Senator H. James Saxton (3rd District), many Ocean County municipalities and numerous recreational fishing organization oppose the Department's proposal to close the Holgate Unit on Long Beach to motor vehicles on a year round basis.

It has been reported that the Department received over 1,700 written comments on the proposal and 1,159 of those comments expressed opposition to the proposed beach closure. With this extensive list of comments from government officials, interest groups and the general public, I am astonished that the Department is still considering the issuance of a Finding of No Significant Impact (FONSI) on a plan that incorporates the year round closing of the Holgate Unit. The list of objectors speaks for itself. The impact of closing this area to motor vehicles would certainly be considered significant by the recreational fisherman who have fished at the Holgate Unit for generations. In addition, the benefit that the proposed closure would have on the Piping Plover population would be negligible, as indicated by the New Jersey Department of Environmental Protection's Division of Fish and Wildlife.

Again, I want to expresses the County's vigorous opposition to any plan or proposal that would incorporate the closure of the Holgate Unit to motor vehicles year round. Thank you for your consideration in this matter.

Very truly yours,

James J. Mancini
Freeholder

JJM/PW/pw
cc: Members, Ocean County Board of Chosen Freeholders
Steven L. Pollock, Administrator
Alan W. Avery, Jr., Planning Director
Pieter Waldenmaier, Principal Planner
Honorable H. James Saxton, Congressman
Honorable Christopher H. Smith, Congressman
Honorable Donald DeFrancesco, Acting Governor
Mayors, Ocean County Municipalities

P.O. BOX 2191 ★ ADMINISTRATION BUILDING, TOMS RIVER, NEW JERSEY 08754-2191 ★ (908) 929-2001 ★ 1(800) 722-0291 ★ FAX # (908) 505-1918

(PW)

THE BOARD OF CHOSEN FREEHOLDERS

OCEAN COUNTY
TOMS RIVER, NEW JERSEY 08754-2191

John P. Kelly
Freeholder Director

(732) 929-2003
Fax (732) 506-5055

April 6, 2001

Richard O. Bennett, Acting Regional Director
United States Department of the Interior
Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589

Re: FWS/Region 5/NWRS - Comprehensive Conservation Plan and Environmental Assessment for New Jersey Refuges and the Year Round Closing of the Holgate Unit to Motor Vehicles.

Dear Mr. Bennett:

As Freeholder Director of the Ocean County Board of Chosen Freeholders, I want to express my deep concern over the Department's continued consideration of a proposal that would close the Holgate Unit on Long Beach Island to motor vehicles on a year round basis. The extension of the public comment period on this proposal is a step in the right direction. However, the Department must ultimately delete the proposed vehicle ban from the draft Comprehensive Conservation Plan due to overwhelming opposition. The Ocean County Board of Chosen Freeholders is not alone in its opposition to this proposal. The New Jersey Department of Environmental Protection, Congressman H. James Saxton (3rd District), many Ocean County municipalities and numerous recreational fishing organizations also oppose any plan or proposal that would close the Holgate Unit on Long Beach Island to motor vehicles on a year round basis.

It is my understanding that the Department received over 1,700 written comments on the proposal and 1,159 of those comments expressed opposition to the proposed beach closure. This is overwhelming opposition in my opinion. With such an extensive list of negative comments from government officials, interest groups and the general public, the Department should not even consider issuing a Finding of No Significant Impact (FONSI) on this draft plan until the vehicle closure proposal has been dropped from consideration.

Again, I want to expresses the County's continued opposition to any plan or proposal that would incorporate the closure of the Holgate Unit to motor vehicles year round. Thank you for your consideration in this matter.

Very truly yours,

John P. Kelly
Freeholder Director

JPK/PW/pw
cc: Members, Ocean County Board of Chosen Freeholders
Steven L. Pollock, Administrator
Ocean County Congressional Delegation
Honorable Donald DiFrancesco, Acting Governor

RESOLUTION

August 2, 2000

WHEREAS, the Edwin B. Forsythe National Wildlife Refuge comprises more than 42,000 acres preserving valuable coastal wetlands and uplands which includes excellent wildlife habitat; and

WHEREAS, the Board of Chosen Freeholders has supported the preservation of these lands and the continued expansion of the National Wildlife Refuge to provide a long-term benefit to both the County's economy and environment; and

WHEREAS, the Board of Chosen Freeholders passed a Resolution on July 7, 1999, opposing a recommendation by the US Fish and Wildlife Service to close the Holgate Unit of the Refuge to all vehicle traffic; and

WHEREAS, it was clearly stated that there would be no change in use when the Holgate Unit was designated a Wilderness Area in 1975 and that the public would experience no change in use; and

WHEREAS, in a good faith effort to protect the piping plover an endangered species, State officials, local officials, fisherman groups, refuge management and the public voluntarily agreed to a restriction in access to the Holgate Unit's State owned tidelands for a specified period during their nesting period; and

WHEREAS, the US Fish and Wildlife Service released the Revised Draft Comprehensive Conservation Plan and Environmental Assessment for the Edwin B. Forsythe Refuge in June of 2000, which proposes to restrict year round vehicle access to the Holgate Unit of the Refuge under Alternative B and Alternative C; and

WHEREAS, Alternative B and Alternative C otherwise have supportable goals of greater land acquisition from willing sellers, and increased public access and educational opportunities on Refuge property; and

WHEREAS, Alternative A is a No-Action alternative which will keep Holgate open to seasonal vehicular traffic, but will not expand public access and educational opportunities elsewhere on Refuge property.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF OCEAN, STATE OF NEW JERSEY as follows:

1. It protests in the strongest possible terms any proposal to restrict year round vehicle access to the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge.

2. The US Fish and Wildlife Service should continue to permit vehicular access consistent with prior agreements on the Holgate the area and it should also pursue increased public access and educational opportunities elsewhere on Edwin B. Forsythe National Wildlife Refuge property.

BE IT FURTHER RESOLVED that certified copies of this Resolution be forwarded to the Bruce Babbit, Secretary, United States Department of the Interior; Steve Atzert, Refuge Manager, Edwin B. Forsythe National Wildlife Refuge; Honorable Christine Todd Whitman, Governor; Robert Shinn, Commissioner, New Jersey Department of Environmental Protection; New Jersey Tidelands Resource Council; Ocean County Congressional Delegation; Ocean County Mayors; and the Ocean County Planning Director.

ROLL CALL
(moved by Vicari, seconded by Bartlett)
AYES: Bartlett, Vicari, Mancini
NAYS: None
ABSENT: Lacey, Kelly

I certify the foregoing to be a true copy of a Resolution adopted by the Board of Chosen Freeholders of the County of Ocean on the 2nd day of August 2000
Patricia A. Brown

[The prepared statement of the Alliance for a Living Ocean follows:]

Alliance for a Living Ocean

P.O. Box 95, Ship Bottom, New Jersey 08008
e-mail: livingocean@worldnet.att.net
(609) 492-0222

May 31, 2001

Wayne T. Gilchrest
Chairman
Subcommittee on Fisheries Conservation, Wildlife & Oceans
H2-188
Ford House Office Building
Washington, D.C. 20515-6232

Dear Chairman Gilchrest:

The Alliance for a Living Ocean, headquartered on Long Beach Island, represents 1,500 supporters. We have members across the United States. Recently, ALO received an award for spending ten years as the prototype for the Center for Marine Conservation's Marine Debris Monitoring program. We practice an active, Adopt-A-Beach program, work continuously toward saving land, and conserve and protect our watershed and coastline. We hold preserved space in the deepest esteem.

If the Edwin B. Forsythe National Wildlife Refuge located on Long Beach Island in Ocean County, New Jersey, had been recently purchased, we could understand the reasoning behind total closure to the public, but that is not the case. Edwin B. Forsythe National Wildlife Refuge managers have spent many turbulent years designing plans for motorized vehicles, giving partial access to the beach area. The last few years have been successful, as we all worked toward "off season access only!" Now, with a sudden attempt to establish wilderness classifications, much ill will towards the U.S. Fish and Wildlife Service has erupted over Alternative B's Comprehensive Conservation Plan. When people are utterly frustrated, they make statements better left unsaid. It is not hard to understand. Their traditions are being threatened.

The Alliance is aware of the impact that may occur to the business community should this beach be permanently closed to vehicles, however, we wish to address the damage done to a community's angst. Citizens living here love Holgate reserve. It is their past, present and, hopefully, future. It is a small peninsula that houses wonderful creatures and moments of simple pleasure in the great outdoors. As LBI is almost totally developed, there are few such places left. It is not a wilderness experience, a fisherman or walker can see over the dunes in several places to the bay beyond and its users.

The impact on Brigantine Wilderness Area is negligible due to man's actions. People walking or fishing do not usually make raucous noise, nothing like the helicopters, planes, powerboats and personal watercraft that pass above and beside it on their way to Atlantic City several miles away (within sight). Most damage is caused by erosion from the sea. Land is accruing to the south, where fishing takes place, and to the west, the protected area. This is good news as Holgate continues to change via the littoral drift.

Most fishermen today practice better environmental habits than did our forebears. They don't litter, most debris floats inland from the ocean at Holgate. People are mindful of toxic products and practice catch and release. Knowing that the dunes are "off limits", they respect the allowable fishing area. This is ingrained in them by other surf fishermen and clubs, who police themselves. Boat rescues and alerting the Coast Guard of trouble, often are accomplished by people fishing the south beach. The Alliance for a Living Ocean has offered, several times, to send volunteers to Holgate. Presently, members are helping the reserve. Nesting season is sacred at this special place. ALO spends months each year teaching thousands of school children and adults the necessity of honoring the present rules and cleaning up the beach, in the process.

Might not another national wildlife office and visitor facility create a disturbance of its own, in this small wilderness? It is also redundant in such an environmentally aware community. Just 15 miles to the north, the State of New Jersey has a nature center and a walking path at Barnegat Light State Park.

If the public was no longer allowed on Holgate beach in motorized vehicles, many would be eliminated from a fishing treasure spot. A ferry service is not a rational alternative in these bodies of water. As ALO represents many seniors and disabled citizens, we feel everyone deserves access to the same beaches. The experience of a quiet natural beach, ***where they have always fished***, would be denied them. All of LBI is fragile, as are some of its residents and visitors!

ALO championed the Edwin B. Forsythe National Wildlife Refuge at Holgate's very existence. As Americans, we expect our government to protect our interests and represent us. The Alliance for a Living Ocean is aware that a precedent could occur here, however, the Wildlife Refuge was set up before the Wilderness Refuge which is now being put into place. We ask you to consider adopting the Revision of Boundary Required of Public Law 93-631. (SS Stat. 2153). Trust users to be responsible and stay within federal parameters, penalize those who are not.

Reach out to the public. Edwin B. Forsythe National Wildlife Refuge will have a perfect marriage of mankind and nature. This non-adversarial partnership will maintain the threatened and endangered species we all revere. Can citizens and a community preserve their own ecological space? We think so!

Thank you for your consideration.

Towards Clean Water,

J. Joan Koons

Joan Koons
President
Board of Trustees

Mr. SAXTON. Mr. Ashe?

STATEMENT OF DANIEL M. ASHE, ASSISTANT DIRECTOR FOR REFUGES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE

Mr. ASHE. Thank you, Mr. Chairman.

And I want to thank you for the opportunity to present our views on H.R. 896. And it is a sad duty, indeed, to tell you that we do not support enactment of H.R. 896.

And I appreciate your statements, and I hope that you know, in some respects, I have to say that I have been as frustrated as you. But I think, over the last 2 years, as we have looked at this issue from every different angle, we have realized that there this no latitude.

And we have asked our attorneys on numerous occasions and the question from numerous perspectives. And the issue remains that the Holgate Unit of the Brigantine Wilderness was added to the national wilderness preservation system by Congress without any exception from the prohibitions in the Wilderness Act.

I know what you say about assurances were made. I think that as I look at the record during that period of time, what has been laid out are statements that were made by the Administration at the time of submission that existing recreational uses would not be affected. The statements that were being made by the Administration were relative to the Administration's proposal, which did not include the Holgate Unit.

And at the time the Administration testified, they were asked questions about the Holgate Unit, and their position was that the unit should not be included because of the level of public use that was going on there and because of the motorized vehicle use that was going on on the refuge.

So I think the Administration at the time made it clear that there were conflicting uses occurring on the Holgate Peninsula. And I think their statements about the lack of impact on ongoing recreational uses were not relevant to Holgate because Holgate was not in their proposed package.

I think that as time passed, you are correct, I think assurances were made. I think people glossed over the issue, including the Fish and Wildlife Service. And the Service is guilty of glossing over the issue of motor vehicle use between the tidelands and the area above mean high tide.

You pointed out that the regulation, our regulation, allows motorized equipment. In response to our conversations over the last couple of years, I did go back and I again asked out attorneys about that regulation, and can we exercise discretion under the regulation.

And what they advised me is that our regulation on that point is unlawful, that the Wilderness Act, in fact, authorizes or gives the Secretary discretion to allow the use of airplanes and motor boats where those uses are preexisting. The Service's regulation broadened the language in the law, which does not allow the grandfathering of motorized equipment.

And so, again, in response to our discussions over the last several years, I did go back, in good faith, and ask those questions of our attorneys. And the response that we got was, in fact, that our

regulations, the Service's regulation, on that point is an unlawful expansion of the letter of the law in terms of the Wilderness Act.

I also agree that the agreement that was stricken in 1990, again, I think a good-faith agreement. But the agreement itself recognizes that, as you read, that the tidelands, the motorized-vehicles use could occur on the tidelands, the state-owned tidelands, and that certainly is still our position today.

I think where that agreement overstepped the boundary of the law is when the Service in that agreement did say that people could park within the wilderness. And again, as we put that question again and again to our attorneys, they have told us in very black and white terms, that we may not authorize the use of motor vehicles within the wilderness unless we make a determination that it necessary for the purposes of administering the area as wilderness.

And so, again, I think that the Service overstepped its bounds in writing that agreement. And that doesn't make it any less frustrating to you, I am sure. But I think that is the case.

You covered the factual basis pretty well, Mr. Chairman. I will just summarize by saying that we will continue to be committed to trying to work together with you to find responsible ways of allowing public use on the peninsula, especially fishing.

Fishing continues to be an authorized use. And we do encourage people to visit the peninsula during the time when the seasonal closures are lifted, to walk, to fish.

And we do believe there are other ways to get out to the tip of the peninsula to enjoy those activities. And we will look for ways to accommodate those other methods.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ashe follows:]

Statement of Dan Ashe, Chief, National Wildlife Refuge System, Fish and Wildlife Service, U.S. Department of the Interior

Mr. Chairman, thank you for this opportunity to present our views on H.R. 896, a bill to adjust the boundaries of the Holgate Unit of the Brigantine Wilderness Area within the Edwin B. Forsythe National Wildlife Refuge. This adjustment will allow motor vehicle access to the peninsula at times of high tide, during which there would otherwise be no vehicular access pursuant to the Wilderness Act of 1964 (P.L. 88–577). The U.S. Fish and Wildlife Service (Service) does not support this legislation.

The Brigantine National Wildlife Refuge was established in 1939 under provisions of the Migratory Bird Conservation Act to provide estuarine and nesting habitats for migratory waterfowl and shorebirds. In 1960, the Federal Government acquired the Holgate area from the National Audubon Society, and it became part of the Brigantine NWR. In 1975, Congress designated about 6,600 acres of the refuge—including the Holgate area—as the Brigantine Wilderness Area. Congress combined the Brigantine NWR with the Barnegat NWR in 1984 and renamed them the Edwin B. Forsythe NWR. The refuge boundary and the wilderness boundary for the Holgate Unit is the mean high tide line. The State of New Jersey owns the tidelands portion of the beach, or intertidal zone (the area below the mean high tide line), and the State's Tidelands Resource Council controls public use in that zone.

The Brigantine Wilderness is one of over 600 wilderness units in the National Wilderness Preservation System (NWPS). The NWPS is a network of those areas designated by Congress as wilderness, and managed by four Federal agencies: the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, and the U.S. Forest Service. Of the more than 105 million acres in the Wilderness System, 20.6 million are managed by the Service on 65 refuges. Wilderness comprises approximately 20 percent of the Refuge System.

The E.B. Forsythe NWR is a traditional nesting, migration, and wintering area for waterfowl, marsh birds, and shore birds. The Brigantine Wilderness Area is sig-

nificant ecologically and geologically in that it comprises unspoiled barrier-beach islands with a complex of undeveloped and unspoiled marsh-estuarian islands. This habitat in particular, and barrier beaches in general, has become extremely rare in the highly developed northeast coast. The E.B. Forsythe NWR is a mere 10 miles north of Atlantic City, yet is home to some of the most important migratory bird habitat in the National Wildlife Refuge System. The physical location, geography, and environment have also helped to preserve the wilderness values of the area.

The definition of "wilderness" was provided by Congress in the 1964 Wilderness Act. The Act states that:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Congress recognized the wilderness qualities of the refuge in 1975, when it designated the Brigantine Wilderness Area, including the 256 acres (2.5 miles of beach and adjacent dunes) of the Holgate Unit; the only Federal wilderness on the entire New Jersey shoreline.

The Wilderness Act of 1964 prohibits the public use of motor vehicles in all wilderness areas, including the Brigantine Wilderness. The 1977 Service policy for implementing the Wilderness Act stated that public travel in a wilderness area would normally be accomplished by foot, horseback, or non-motorized boating, unless exceptions were granted by statute. This prohibition against the public use of motor vehicles had been frequently ignored by the public and refuge managers in the Holgate Unit, at least partly because of the difficulty in determining the location of the mean high water line.

In 1988, the New Jersey Tidelands Resource Council approved a three-year seasonal closure from April 15 into August of the area below the mean high tide line of the Holgate Beach to all public uses. The purpose of the closure was to allow the State of New Jersey to study nesting piping plovers, a threatened species. The Service seasonally closed the entire Holgate Unit above the mean high tide line to all public uses during this time to complement the Council action. The State and Federal action together seasonally halted all public use in the entire Holgate peninsula.

In 1990, the "Public Use Management for Holgate Unit" plan instituted a permanent seasonal public use closure (April 1 into August) of the Holgate Unit and the adjoining intertidal zone (tidelands) to protect piping plovers. The plan listed "operation of motorized vehicles in a wilderness area" as a prohibited activity. However, the plan also allowed over-the-sand vehicles to park in wilderness, to ensure that the vehicles were not inundated by the incoming tide. This provision does not comply with the Wilderness Act and has, in practice, authorized motor vehicle use within the boundary of the wilderness area.

In 1996, the refuge manager of E.B. Forsythe NWR began the process of developing a Comprehensive Conservation Plan, or CCP, for the refuge. This involved collecting information on natural resources and public use, developing goals, holding numerous public meetings, distributing workbooks to collect public comments and, ultimately, drafting a CCP/Environmental Assessment, which was released for public review and comment in July of 2000. This process provided the Service an opportunity to remedy its past inconsistent enforcement of the prohibition of motor vehicle use in the Holgate Unit under the Wilderness Act.

Secretary Gale Norton has committed that the Department of the Interior will be a good steward of our lands and lakes and rivers. This means that the Department does intend to enforce the requirements of the Wilderness Act in wilderness areas. While the Department believes that allowing motor vehicles to traverse and park between the wilderness area of the Holgate Unit and the ocean would undermine the wild character of the seashore, the Department recognizes that it is the prerogative of Congress to designate wilderness areas and to adjust boundaries.

I want to conclude by ensuring the Members of this Committee that the Department of the Interior and the U.S. Fish and Wildlife Service will carry out the

Secretary's mandate regarding the four C's of consultation, cooperation and communication—all in the service of conservation. Based on that commitment, we want to work with you and concerned members of the public to identify methods to encourage enjoyment of Holgate Beach, such as fishing, while still preserving the area's wilderness character.

This concludes my prepared statement. I would welcome the opportunity to respond to any questions you may have.

Mr. SAXTON. Mr. McDowell?

STATEMENT OF ROBERT MCDOWELL, DIVISION DIRECTOR OF FISH AND WILDLIFE, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. MCDOWELL. Thank you, Mr. Chairman, for the opportunity for the New Jersey Division of Fish and Wildlife, of which I am the director, to support H.R. 896.

I think this bill represents a correction of a mistake and I am a little shocked that the Service isn't in favor of the bill since the bill would correct the frustrations related to problems that have occurred there because of public access issues.

I think this bill is not really about biological integrity. I don't think that is an issue. I don't think ecological integrity is an issue.

I think the bill is really about correcting a mistake that was made many years ago and fulfilling public promises that suddenly have become no longer a promise.

I think you should know that it is about 2.75 miles from the parking area all the way to the tip of Holgate. This makes it extremely difficult for handicapped people to walk that distance, for folks to gain access to it who are healthy overwise. But in some cases, just carrying the gear down there is a problem. Keeping up with the migrating fish is another issue.

And so, in order to maintain surf fishing in its traditional way, I think this bill has to be passed.

You are going to exclude a lot of people from using this resource, "beach buggies" used for surf fishing, which has been traditional.

I think the options that are offered in the Service's plan are not workable. They have offered some idea that there would be a boat that would pick people up who wanted to make it to the end of Holgate.

If you look at surf fishermen and realize that tides make a difference in their activity. What time of day that they want to fish is not a barrier; it is when the fish are there. So at 2 o'clock in the morning, they want to go because the tide is going to be right and the fish are there.

So having a ferry or something, which has been offered in the plan, is certainly not feasible.

I think this legislation is necessary to preserve the long-standing tradition of surf fishing at Holgate, as I stated earlier. And, on numerous occasions over the last 30 years, as the Chairman spoke about, these traditional uses have been maintained. So, in fact, there is a public promise that this will continue.

I might point out, in March 1973, there was testimony given by Curtis Bohlen, deputy assistant secretary at the Department of Interior for Fish and Wildlife, and that testimony was, there will be no change in public use due to the wilderness status.

Now, the public perception doesn't include the fact that Holgate was added afterwards. But there were no changes in the regulatory posture of the Fish and Wildlife Service after that time. And so the public is still convinced, and public trust is that they will be able to use their beach buggy, get their pass, and go surf fishing as they have in the past.

In 1990, the stakeholders' meeting that you spoke about, Mr. Chairman, we were there. We had discussions about beach-nesting birds. We have co-authority over endangered species. And, clearly, the agreement, which the fishermen reluctantly but did agree to was the beach closure that you mentioned earlier.

And so the fishermen have been more than willing to compromise.

Our biologists report, because of the closure working and the fact that fishermen access the beach, there are no impacts on piping plovers at this time.

The Service's draft comprehensive conservation plan—because fishing is one of the six priorities of the public use policy dictated in the Refuge Improvement Act, it is hard to see why this a conflict that needs to be brought up now.

Two weeks ago, I had the opportunity to meet with the regional director and U.S. Fish and Wildlife Service staff about Holgate and the access issue, access being one of the biggest issues in New Jersey in terms of recreational use of the Fish and Wildlife resource. Although sympathetic to our concerns, the Service indicated it didn't have the legal authority to permit vehicle use.

There is no, therefore, any alternative except pass this law. And we are talking about a very small piece of land; 30 feet, I believe, it was the bill says, by 2.75 miles.

You know, fishing is designated as a priority use, so it would seem to me the Service would go along with this and restore the public's trust in public agencies that manage public land.

H.R. 896 seems to be the only solution to provide assurances given to fishermen over the years. Environmentally responsible fishermen access and safe access is certainly in the best interest of the public. It will still maintain the wilderness experience.

These kinds of beaches are dearly loved by New Jersey citizens, with dunes and beach being maintained in an environmentally sensitive way. And they certainly respect them.

In summary, H.R. 896 will preserve the long-standing tradition of surf fishing, with the use of motorized vehicles at Holgate. And the assurances given to fishermen over the years will still provide for the protection necessary for both the resources at the site and the fish wildlife resources.

So I thank you deeply for the opportunity to support this legislation.

[The prepared statement of Mr. McDowell follows:]

Statement of Robert McDowell, Director, Division of Fish and Wildlife, New Jersey Department of Environmental Protection

Mr. Chairman and members of the Subcommittee on Fisheries Conservation, Wildlife and Oceans, I want to thank you for holding this hearing today in order to gather important testimony pertaining to H.R. 896.

As the Director of New Jersey's Division of Fish and Wildlife, I am stating for the record that New Jersey strongly supports H.R. 896.

The U.S. Fish and Wildlife Service has just completed adoption of a Comprehensive Conservation Plan for the New Jersey Coast Refuges (Edwin B. Forsythe and Cape May Wildlife Refuges). The management alternative selected for the Forsythe Refuge prohibits motor vehicle use year-round in the Brigantine Wilderness Area above the mean high tide line. The wilderness area is located at the southern most tip of the Holgate Unit on Long Beach Island, three miles from the refuge's parking areas. Surf fishing at this area has been a popular traditional use for decades. As a result of the motor vehicle ban, surf fishermen will no longer be able to access the popular surf fishing locations at the Holgate Unit.

There are essentially no real options for surf fishermen to continue to utilize Holgate if motor vehicles are prohibited. Few people are capable of lugging the necessary gear and tackle for the three mile walk on the sand, both in and out of the Holgate Unit. I have serious reservations about the U.S. Fish and Wildlife Service's "initiation of efforts to establish a seasonal boat concession to ferry anglers to the southern tip of the Holgate Peninsula" as they suggested in the Draft Comprehensive Conservation Plan. The Service provided no details about this "seasonal boat concession". Some very important information that was not provided include:

- What is meant by seasonal?
- What is the frequency of the boat departures/return?
- Will it run 24 hours a day?
- What about weather considerations?
- Will there be a fee involved to access this area traditionally accessible to the public?

Due to these concerns I do not believe the "seasonal boat concession" is a viable alternative to provide fishermen access to Holgate's beach.

This legislation is necessary to preserve a long-standing tradition of surf fishing at the Holgate Unit of the Brigantine Wilderness Area in a safe and traditional manner. On numerous occasions over the last 30 years, assurances have been made that traditional uses, with particular emphasis on fishermen access, in the Brigantine Wilderness Area will remain unchanged. To emphasize my point, I would just like to review a brief history of this action.

In a U.S. Fish and Wildlife Service document entitled the 1971 Brigantine Wilderness Proposal under the section, "Social and Economic Consideration" it states "There will be no change in public use due to wilderness status. Fishermen and nature enthusiasts would experience no change in access."

In March 1973, in testimony given before the Committee on Interior and Insular Affairs on the Designation of Brigantine Wilderness Area (H.R. 5422), E. U. Curtis Bohlen, Deputy Assistant Secretary of the Department of Interior for Fish and Wildlife and Parks testified that, "there will be no change in public use due to wilderness status, boats would still be permitted to travel the waterways below mean high tide and land on beaches. Fishermen and nature enthusiasts would experience no change in access and would find added pleasure in the assurance of permanent protection for the solitude and pristine beauty of the proposed wilderness area".

In January 1975, Congress designated 6,600 acres of Forsythe Refuge as the Brigantine Wilderness (P.L. 93–632). Surf fishermen were permitted continued access to Holgate and the traditional use continued.

In 1990, stakeholders, including Federal and State agencies, fishermen groups, local officials and the Forsythe management worked hard to formalize an agreement for the seasonal closure of the beach from April 15 through August 31 in order to protect piping plovers, a Federal and state listed endangered species. Prior to the seasonal closure, there was significant risk that off road vehicles could accidentally kill plover chicks and/or impede their movement between the upper beach and the tide line where they feed. Off road vehicle use could also result in diminished food resources for piping plovers, if they were driven through the tidal lines where the plovers feed. Prior to the seasonal closure, off road vehicles used at Holgate may have affected state endangered species including the least tern and black skimmer that also nest on the beach at Holgate. I would like to emphasize that since the seasonal closure has been in effect, I believe that adverse impacts to the piping plover or their essential habitat resulting from off road vehicle use of Holgate have been eliminated.

The fishermen and local officials that worked with the USFWS in the past to support endangered species protections are now faced with a year-round closure that is not designed to protect endangered species.

The Service's Draft Comprehensive Conservation Plan states that, "Because fishing is one of six priority general public uses of the Refuge system, it'shall receive priority consideration in refuge planning and management." I fail to see how the Service seriously considered fishing as a priority when the decision to prevent fishing access to this area was made. Public review of the Draft Comprehensive Con-

servation Plan generated an overwhelming majority of adverse comments to the year round closure to Holgate from fishermen, local officials, the NJ Division of Fish and Wildlife, NJ congressional representatives and former NJ Governor Christine Todd Whitman. All requests to the Service for a rational resolution to this issue have not been answered.

Two weeks ago, I had the opportunity to meet with USFWS regional staff, about the Holgate access issue. Although sympathetic to the State's concerns, the Service indicated the U.S. Fish and Wildlife Service did not have the legal authority to permit motor vehicle use in wilderness areas. There is, therefore, no alternative but to pass H.R. 896 to ensure continued access for surf fishermen.

I believe the record on this issue is clear. Fishing is designated a priority use in the Federal Refuge system. Time and again, it has been stated that "wilderness" status at the Brigantine Wilderness Area will not affect fishermen's access and there is no question of the traditional use of surf fishing with the use of motorized vehicles at Holgate.

H.R. 896 will provide the assurances given to fishermen over the last 30 years. A narrow transition zone for vehicle use above the high tide line to allow safe, environmentally responsible fishermen access and parking will not have a negative impact on the "wilderness area" and "wilderness experience". In fact, surf fishing has always been part of the wilderness experience at Holgate. This bill further acknowledges the importance of management of the area for the piping plover and allows the Secretary of Interior to continue to restrict access during the breeding season.

In summary, H.R. 896 will preserve the long-standing tradition of surf fishing at Holgate and provide the assurances given fishermen over the years while still protecting the piping plover. I encourage you to support and release H.R. 896 from committee.

Thank you for the opportunity to testify today on this legislation. I would be happy to answer any questions.

Mr. SAXTON. Thank you very much, Mr. Director.

Freeholder Kelly?

STATEMENT OF JOHN P. KELLY, FREEHOLDER DIRECTOR, OCEAN COUNTY BOARD OF FREEHOLDERS

Mr. KELLY. Thank you very much. And, first, I want to thank you, Congressman Saxton, a longtime friend and one who has discussed this issue with the board of freeholders for a number of years, to invite me here this morning.

And it should come as no surprise that I am here today to speak in favor of H.R. 896 that was introduced by Congressman Saxton, one that would redefine the boundary of the Holgate Unit of the Edwin B. Forsythe wildlife management area.

This new boundary would provide an access corridor along the waterline to allow surf fishermen in motor vehicles to continue traditional recreation surf fishing along the Holgate beachfront.

I want to stress that this is a traditional recreational activity on Long Beach Island, long predating the establishment of the Edwin B. Forsythe National Wildlife Refuge. Fishermen have been driving vehicles there for as long as there have been vehicles that could traverse the sand.

I have this testimony that I have given in writing. I wanted to hold a dialogue today with Members of Congress about public trust.

And I was just frustrated and shocked to hear Mr. Ashe talk about the fact that he went to his attorneys to ask about whether in fact this would be allowed or not, and now opposes the bill because some attorney said that, in fact, the statutes won't allow it.

Well, we can agree or disagree that in the legislation today it is allowed or not allowed. But there can be no doubt that H.R. 896 would allow this traditional use.

And let me tell you why it is important. There is a public trust issue. It was discussed here by the DEP. And the public trust is between the people and their representatives, whether those representatives are from the halls of Congress, the board of freeholders, or the mayor.

We hold a public trust. And when we agree with the people of our area that there is a certain thing that we will allow, whatever that may be—this time it is public access—then I think that we ought reach our agreement.

And you want to know what? They have kept their agreement. The sportsmen that use this facility, the outdoor sportsmen, are first and foremost environmentalists. They care about the environmental needs of Ocean County as much as anyone that sits in Washington, DC. I guarantee it. I represent them locally. I know how much they care.

And in fact, it was already talked about twice this morning, but in 1990, there came an issue about the piping plover and whether or not there was a problem with the piping plover. And even though they didn't agree with it in their heart, they agreed that they will go along with the fact that we closed that refuge to all vehicle traffic from April to August each year, because that is the breeding season of this bird. And they have kept that promise.

They have kept their promise to maintain this area in a pristine manner, and it has been done.

H.R. 896 does not remove this area from the wildlife refuge. In fact, it maintains it as a wildlife refuge. It simply allows a traditional use, one that has been met with responsibly to continue into the future.

I think it is a trust that we hold with the outdoor sportsmen. I think we should continue to do that. I appreciate this bill, and it has the full support and endorsement of the Ocean County Board of Chosen Freeholders, and we hope that it will be passed.

[The prepared statement of Mr. Kelly follows:]

Statement of John P. Kelly, Ocean County Freeholder Director and Mayor, Eagleswood Township

Good Morning. I am John Kelly, Ocean County Freeholder Director and Mayor of Eagleswood Township. I am here today to speak in favor of H.R. 896, a bill introduced by Congressman Saxton that would redefine the boundary of the Holgate Unit of the Edwin B. Forsythe Wildlife Management Area. This new boundary would provide an access corridor along the waterline to allow surf fishermen in motor vehicles to continue traditional recreational surf fishing along the Holgate beachfront. I want to stress that this is a traditional recreational activity on Long Beach Island, long predating the establishment of the Edwin B. Forsythe Wildlife Refuge. Fishermen have been driving vehicles along the beach to get to where the fish are as long as there have been motor vehicles that could make the trip through the sand.

Since the establishment of the Holgate Unit there has been an ongoing debate between the public and officials representing the recreational fishing community and the U.S. Fish and Wildlife Service concerning motor vehicles on the beach. The U.S. Fish and Wildlife Service is charged with protecting wildlife within the National Wildlife Refuge System. This is their primary goal. Accordingly, public access to Refuge property is extremely limited by the Service in an effort to provide a habitat where wildlife can thrive unimpeded by humans. Since the U.S. Fish and Wildlife Service views any access to the Holgate Unit by motor vehicles as an encroachment on the habitat of the Piping Plover, there is a direct conflict between the primary goal of the Wildlife Refuge System and the recreational fishing community who have fished along the beach at Holgate for generations. This is a conflict that I do not believe will be resolved as long as the beachfront is considered part of the Wildlife Refuge System.

In 1990, an agreement was reached between the recreational fishing community and the U.S. Fish and Wildlife Service to close the Holgate Unit to motor vehicles during the Piping Plover breeding season. Being sportsmen and wildlife enthusiasts at heart, the fishermen agreed to this seasonal closure which runs from April to August. Now, in 2001 the U.S. Fish and Wildlife Service is seeking to break this agreement and is again trying to bar motor vehicles from Holgate year round. Although it is exasperating to have to deal with this issue again, we should not be surprised. The U.S. Fish and Wildlife Service is simply working to achieve their primary goals concerning the National Wildlife Refuge System and the U.S. Fish and Wildlife Service should not be surprised at the wave of public opposition to their proposal. From our view, we that seek to preserve the public's access to public lands settled this matter in 1990. We compromised then, and there is no room to compromise now.

Over the years, the Ocean County Board of Chosen Freeholders has adopted a number of resolutions opposing the closure of the Holgate Unit to motor vehicles on a year round basis. Most recently, comments were sent to the Department of the Interior by both Freeholder James J. Mancini, who also serves as the Mayor of Long Beach Township and myself, urging the Department to stop further consideration of any Refuge Plan that includes a year round vehicle ban on Holgate. Attached to this statement are copies of those recent letters. The total number of people who have posted negative comments or questioned this proposal is overwhelming. They range from Federal, state and local officials, including the New Jersey Department of Environmental Protection, all the way down to individual surf fishermen who simply want to enjoy the beaches that their tax dollars and fees support. A year-round vehicle ban on Holgate would result in minimal benefits to the Piping Plover population and would deprive the surf fishing community of one of the most consistently productive surf fishing areas along the Jersey Shore, an area that cannot reasonably be accessed by surf fishermen without a motor vehicle. Unfortunately, public access for fishing is only a secondary issue in the management of the National Wildlife Refuges. The welfare of the wildlife comes first. Therefore, I have no doubt that the U.S. Fish and Wildlife Service will continue to over-rule public access issues in favor of even minor benefits to wildlife.

There are tax and economic implications associated with a year-round motor vehicle ban at Holgate that need to be considered as well. The beaches are the foundation of Ocean County's largest industry, coastal tourism, an industry whose viability is directly and totally dependent on access to those beaches. An inaccessible beach is of little use to the tourists who come to the shore to spend their hard earned money. Tourism in Ocean County generates an estimated $1 billion annually. In total, New Jersey's coastal economy returns over $3 billion per year to the Federal Government in tax revenues. Denying reasonable access to the beach at Holgate as proposed by the U.S. Fish and Wildlife Service would compromise these tax revenues, particularly on Long Beach Island.

That is why the passage of Congressman Saxton's bill, H.R. 896 is so important. This bill will re-align the boundary of the Holgate Unit to create an access corridor along the high water line at Holgate that would not be located within the Wildlife Refuge. This would allow for the passage of motor vehicles along the beachfront, and would also relieve the U.S. Fish and Wildlife Service of its regulatory obligation to place wildlife protection above public access in this area. It would essentially implement by law the compromise that was agreed to by all parties, local, state and Federal, in 1990.

I want to thank you for the opportunity to testify here today and I also want to thank Congressman Saxton for drafting this bill, which will go a long way towards alleviating a controversial issue that the Ocean County Board of Chosen Freeholders has been dealing with for many years on behalf of the people of Ocean County.

THE BOARD OF CHOSEN FREEHOLDERS

OCEAN COUNTY
TOMS RIVER, NEW JERSEY 08754-2191

John P. Kelly
Freeholder Director

(732) 929-2003
Fax (732) 506-5055

July 10, 2001

The Honorable Wayne T. Gilchrest, Chairman
Subcommittee on Fisheries, Conservation, Wildlife & Oceans
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

Re: H.R. 896

Dear Congressman Gilchrest:

Thank you for your letter of June 18, 2001 which offered me an opportunity to provide the Subcommittee on Fisheries, Conservation, Wildlife & Oceans with additional information on the use of motor vehicles by surf fishermen at the Holgate Unit of the Edwin B. Forsythe Wildlife Refuge. As you are aware, the County of Ocean strongly supports H.R. 896 as the best way to implement by law, the compromise that was reached in 1990 when the US Fish and Wildlife Service instituted a ban on motor vehicles at Holgate during the breeding season of the piping plover. To that end, I will gladly answer the three questions posed in your letter.

The first question concerns the Borough of Barnegat Light's closing of their beach to motor vehicles in 1975. There is no similarity between the access issues in Barnegat Light and Holgate. Barnegat Light is a fully developed municipality with an extensive road network of 28 streets abutting the beach. This extensive road network is illustrated on the attached map. In Barnegat Light, surf fisherman can access the beach at numerous points. They do not need to drive on the beach. At Holgate there are no roads, so the surf fishermen have no choice but to drive on the beach to follow the fish.

The second question pertains to the economic impacts that a vehicle ban at Holgate would impose on the local community. On Long Beach Island, particularly in Long Beach Township where Holgate is located, recreational fishing generates significant revenue in terms of tourism. This is particularly true in the Fall, when summer tourism has waned and the fishing season begins to develop in earnest. Incidently, this change in seasons coincides with the end of the piping plover breeding season. Each year, serious fishermen flock to Holgate for surf fishing. It should be noted that Holgate is considered by many to be one of the best surf fishing spots in the State due to its proximity to Beach Haven Inlet. If Holgate were closed to vehicles year round, these fishermen would go elsewhere and their contribution to the local economy would be lost.

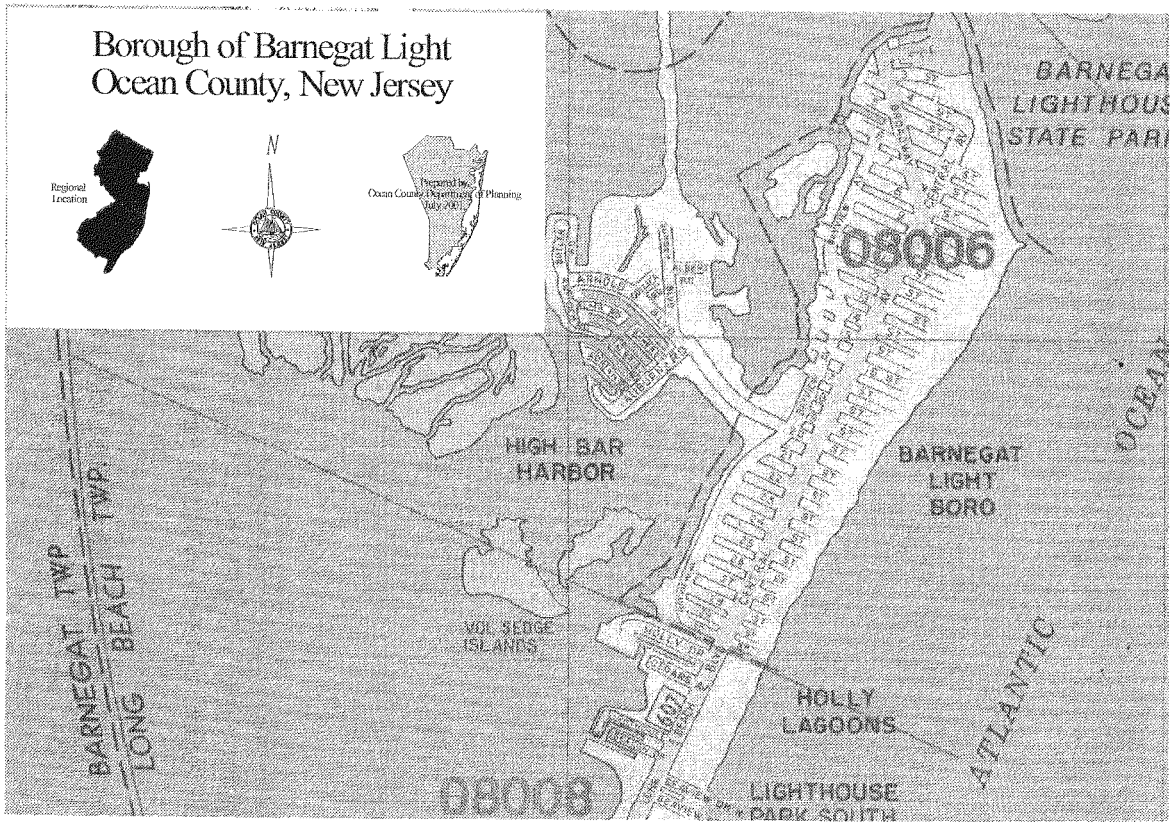
The third question pertains to the US Fish and Wildlife Service providing ferry access at Holgate rather than letting vehicles drive on the beach. It is doubtful that ferry service could be provided at a level that would be conducive to surf fishing. Successful surf fishing involves factors such as the tides, the currents, the phase of the moon, the profile of the beach, underwater structure, the presence of bait fish and the ability to follow the fish once they are found. It is unlikely that this could be accomplished with ferry service.

I want to thank you again for an opportunity to clarify our concerns on this matter. I hope the above answers have provided you with a better perspective on the local issues involved in instituting a year round ban on motor vehicles at Holgate. On behalf of the Ocean County Board of Chosen Freeholders and the citizens we were elected to represent, I urge you to support H.R. 896 and resolve this ongoing controversy once and for all.

Very truly yours,

John P. Kelly
Freeholder Director

cc: Honorable H. James Saxton, U.S. Congressman - 3rd District
Steven L. Pollack, Administrator
Alan W. Avery, Planning Director


Borough of Barnegat Light
Ocean County, New Jersey
Regional Location
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Ocean County Department of Planning
July 2001
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BARNEGAT LIGHT STATE PARK
HIGH BAR HARBOR
BARNEGAT LIGHT BORO
VOL. SEDGE ISLANDS
HOLLY LAGOONS
LIGHTHOUSE PARK SOUTH
BARNEGAT TWP
LONG BEACH TWP.
ATLANTIC OCEAN

Mr. SAXTON. Freeholder Kelly, thank you very much.

I can tell how strongly you meant those words, and we appreciate you coming here to share that with us.

Mr. Savadove?

STATEMENT OF LARRY SAVADOVE, BEACH HAVEN, NEW JERSEY

Mr. SAVADOVE. Thanks for having me. I am happy to be here and glad to add my voice.

My name is Larry Savadove. I live on Long Beach Island in New Jersey. I am a contributing editor to several publications there, and I have written about environmental topics, but I am here as a private citizen.

I am here to plead for a small bit of wilderness at the tip of narrow island in a state that would be anybody's last guess as a place where you could find any wilderness at all.

What is known as the Holgate end of my island is part of the Edwin B. Forsythe National Wildlife Refuge, an amazing put-together of salt marshes, wetlands, sedge islands in the bay, and what snippets of beach have managed to survive. It is a place where piping plovers and black skimmers breed and spawn, gulls congregate, migrating birds take a break.

But I am not pleading for their sake. I am pleading for ours.

Long Beach Island is popular vacation spot. During most of the year, you will find about 5,000 people at any one time strung along its 18 miles.

But during the summer, the population shoots up to about 150,000. They stay in everything from trailer parks to multimillion-dollar mansions. The place has gotten so popular, there are very empty spaces left.

We barely managed to save the dunes, which some property owners wanted to cut down because they obstructed the view. There are almost no bay beaches left, and most of the marshes are gone.

By some stroke of luck, the 3 miles at Holgate have been spared, one spot where the place looks the way it did before we all got there.

But it already is part of a refuge, so the issue is not whether to save it but what to save it for. To protect the piping plover, which is admittedly one of nature's dumber birds, both vehicles and beach workers have long been banned from the place during the summer nesting and fledging season.

Some people complain; most comply. Some fishermen grumble about government interference, but they follow the rules.

But when Forsythe manager Steve Atzert said he planned to close Holgate to vehicles all the time, in line with the Wilderness Act and under the sensible argument that wilderness doesn't mean where the trucks and the SUVs roam, a few of them acted as if he had trod on the Constitution, violated the laws of Moses, and threatened the American way of life.

"What abut our rights?" they wailed.

My father was a fisherman and a lawyer, just a small-town lawyer, but with a deep sense of rights and wrongs. He would have hooted at the idea of the rights of fishermen as they are being represented.

The first thing he would ask would be: What about the rights of others, the beachwalkers, and the shell hunters, and sand-castle builders, and kids digging and tumbling and getting up close and personal with nature, none of whom appreciate the place being turned into just another highway.

Motor vehicles of one kind or another have just about taken over all the world. I call it the revenge of the dinosaurs. Communities are built to their convenience. Roads are cut through forests and across deserts. And where they can't be, the off-road vehicle charges in—all-terrain vehicles, snowmobiles, mountain motorbikes.

There is hardly any place left where the gassy, greasy, fuming, vrooming motor vehicle has not made us all its worshipful and sacrificing subjects. Why can't we keep a few places as a refuge not just for other species but from that one?

None of the arguments for allowing vehicles in the refuge hold much water. There are 18 miles of the island where fishermen can drive. We are looking at 3 miles.

Some of them insist that the fishing is better at that end, but I bet the fish don't know that. I have never met a fisherman without an excuse, including my father. "Oh, if only I could have gone over there or in there or out yonder, I would have scored big time."

There was a compromise suggested that vehicles be allowed, so long as they stayed below the high-tide line. That would mean leaving before the tide came in. "What if the fish start biting then?" came a heated response.

If you are out on a boat fishing and the captain says it is time to turn back because he is running out of fuel, you don't say, "Oh, just another minute, Cap."

This bill aims to move that line up the beach. Some of the fishermen I have talked to go on about tradition; since they have always done it, they should always be able to do it. People used to dynamite fish, too. People used to have parties on the beach with bonfires. Hunters used to shoot shore birds—not for food, just to rack up a score.

I have seen pictures of a hunter standing by a pile of dead birds that must have 300 or 400 birds thick. It was an old and, I suppose, an honored tradition.

I will give you an even older tradition: walking on a natural beach without looking at tire tracks, without stepping in oil or breathing in carbon monoxide, nitrogen dioxide, and sulfur trioxide.

Part of the problem is that more and more people are using bigger and heavier vehicles. It isn't enough to carry a fishing pole and a bait bucket anymore. You need several poles, coolers for the bait and the beer, a couple of tackle boxes, some chairs, and who knows what all.

They have become victims of themselves. Nobody ever made much of a fuss over a few dune buggies. Times change.

So long as damn near anybody can buy damn near any kind of vehicle and take it damn near anyplace he or she pleases, there is no hope of keeping any part of this planet clean.

We ought to start stopping this somewhere. And if it can't be in a wilderness area, then where?

Mr. Atzert is trying to follow the law of the land, which is his job. He has been attacked, called nasty names. The latest piece I read described him as "an arrogant, uninformed, ambitious, bureaucratic zealot"—

[Laughter.]

—and he has been threatened.

In fact, I was told that if I came here to testify, I might find my tires slashed.

I am glad Mr. Atzert is a zealot. The law is a good law, good for all us. It says that some places should be preserved and in as natural a state as possible.

If you are not sure why that is a good idea, you have only to visit someplace like Yellowstone or Yosemite, wait in long lines of rumbling motor vehicles, breathe the fumes, see the smog rise up the tall trees, and shake your head at the trash lining the pathway, and listen to the noise.

Is it anybody's fault that more people want to enjoy nature? No. But it is our fault if we let them destroy it.

Many people who oppose Mr. Saxton's bill are worried about that dread monster, precedent. I myself do not believe that the banning or allowing of vehicles on 3 miles of beach at Holgate will much influence a decision to cut or not cut roads in vast Western wilderness areas, or drill or not drill for oil in the Alaska National Wildlife Refuge. But it will have a great effect on Long Beach Island and the people who live there. They are not all fishermen.

There are those who argue that, "Long Beach Island is already so built up, what difference does a little dab at this end of island make? And besides, you can see the towers of Atlantic City across the bay."

Mr. Atzert wants to preserve a small part of my island in as natural and primal state as possible. Despite the rising up of some people and beach buggy enthusiasts and fishermen, most people want this too. In New Jersey we voted to allot taxes for this. The Army Corps of Engineers is currently trying to restore whole sections of Barnegat Bay and its shores and islands.

Here we have a pristine stretch that, hopefully, we won't have to 1 day restore, that will cost very little to preserve, that will be a blessing and a joy and an affirmation that we won't give the whole world over to the motor vehicle.

The poet Gerard Manly Hopkins said, "What would the world be once bereft of wet and wildness? Let them be left. O let them be left, wildness and wet. Long live the weeds and the wilderness yet."

I plead with you, let them be left.

Thank you.

[The prepared statement of Mr. Savadove follows:]

Statement of Laurence Savadove, Long Beach Island, New Jersey, on H.R. 896

My name is Larry Savadove. I live on Long Beach Island in New Jersey. I am a contributing editor to several publications there and have written about environmental topics, but I am here as a private citizen.

I am here to plead for a small bit of wilderness at the tip of a narrow island in a state that would be anybody's last guess as a place where you could find any wilderness at all. What is known as the Holgate end of my island is part of the Edwin B. Forsythe National Wildlife Refuge, an amazing put-together of salt marshes, wetlands, sedge islands in the bay and what snippets of beach have managed to sur-

vive. It's a place where piping plovers and black skimmers breed and spawn, gulls congregate, migrating birds take a break.

I am not pleading for their sake, though. I am pleading for ours.

Long Beach Island is a popular vacation spot. During most of the year you'll find about 5,000 people at any one time strung along its eighteen habitable miles but during the summer the population shoots up to about 150,000. They stay in everything from trailer parks to multi-million dollar mansions. The place has gotten so popular there are very few empty spaces left. We barely managed to save the dunes, which some property owners wanted to cut down because they obstructed the view. There are almost no bay beaches left. Most of the marshes are gone.

By some stroke of luck, or accident, the three miles at Holgate have been spared, one spot where the place looks the way it did before we got there.

But it is part of a refuge. So the issue is not whether to save it but what to save it for. To protect the piping plover, admittedly one of nature's dumber birds, both vehicles and beachwalkers have long been banned from the place during the summer nesting and fledging season. Some people complain, most comply. Some fishermen grumble about government interference, but they follow the rules.

But when Forsythe manager Steve Atzert said he planned to close Holgate to vehicles all the time, in line with the Wilderness Act and under the sensible argument that "wilderness" doesn't mean where the trucks and the SUVs roam, a few reacted as if he had trod on the constitution, violated the laws of Moses and threatened the American way of life.

"What about our rights?" they wailed.

My father was a fisherman, and a lawyer, just a small town lawyer but with a deep sense of rights, and wrongs. He would have hooted at the idea of the "rights" of fishermen as they are being represented. The first thing he'd ask would be, What about the rights of others, the beachwalkers and shell hunters and sandcastle builders and seaglass collectors and kids digging and tumbling and getting up close and personal with nature, none of whom appreciate the place being turned into just another highway?

Motor vehicles of one kind or another have all but taken over the world. I call it the revenge of the dinosaurs. Communities are built to their convenience, roads are cut through forests and across deserts, and where they can't be, the off-road vehicle charges in—all-terrain vehicles, snowmobiles, mountain motorbikes. People ride tractors nowadays to mow a quarter-acre of lawn. There is hardly any place left where the gassy, greasy, fuming, vrooming motor vehicle has not made us all its worshipful and sacrificing subjects.

Why can't we keep a few places as a refuge, not just for other species but from that one? None of the arguments for allowing vehicles in the refuge hold much water. There are 18 miles of the island where fishermen can drive. We're looking at three miles. Some of them insist the fishing is better at that end, but I'll bet the fish don't know that. I've never met a fisherman without an excuse—including my father: "Oh, if only I could have gone over there, or in there, or out yonder I would have scored big time."

There was a compromise suggested, that vehicles be allowed so long as they stayed below the high tide line. That would mean leaving before the tide came in."What if the fish start biting then?" came a heated response. If you're out on a boat and the captain says it's time to turn back because he's running out of fuel you don't say, "Oh, just another minute, Cap."

This bill aims to move that line up the beach. Some of the fishermen I've talked to go on about tradition: since they've always done it they should always be able to do it. People used to dynamite fish, too. People used to have parties on the beach with bonfires. People used to let their dogs run loose on the beach. Hunters used to shoot shore birds, not for food just to rack up a score. I've seen pictures of a hunter in front of a pile of dead birds. It was an old and, I suppose, honored tradition.

I'll give you an even older tradition: walking on a natural beach without looking at tire tracks without stepping in oil or breathing in carbon monoxide, nitrogen dioxide and sulfur trioxide.

Part of the problem is that more and more people are using bigger and heavier vehicles. It isn't enough to carry a fishing pole and bait bucket anymore. You need several poles, coolers for the bait and the beer, a couple of tackle boxes, some chairs and who knows what all. They have become victims of themselves. Nobody ever made much of a fuss over a few dune buggies. Times change.

Mr. Atzert is trying to follow the law of the land, which is his job. He has been attacked, called nasty names—the latest piece I read described him as an "arrogant, uninformed, ambitious, bureaucratic zealot"—and been threatened. In fact I was warned that if I came here to testify I might find my tires slashed "or worse."

I am glad Mr. Atzert is a zealot. The law is a good law, good for all of us. It says that some places should be preserved in as natural a state as possible. If you're not sure why that's a good idea you have only to visit someplace like Yellowstone or Yosemite, wait in long lines of rumbling motor vehicles, breath the fumes, see the smog rise among the tall trees, shake your head at the trash lining the pathways. And listen to the noise.

Is it anybody's "fault" that more people want to enjoy nature? No, but it is our fault if we let them destroy it.

Many people who oppose Mr. Saxton's bill are worried about that dread monster, precedent. I myself do not believe that the banning or allowing of vehicles on three miles of beach at Holgate will much influence a decision to cut or not cut roads in vast western wilderness areas or drill or not drill for oil in the Alaskan National Wildlife Refuge. But it will have a great effect on Long Beach Island and the people who live there.

There are those who argue that Long Beach Island is already so built up, what difference does this little dab of it make? And beside, you can see the towers of Atlantic City in the distance. Mr. Atzert wants to preserve a small part of my island in as natural and primal a state as possible. Despite the rising up of some fishermen and beach buggy enthusiasts, most people want this. In New Jersey we voted to allot taxes for this. The Army Corps of Engineers is currently trying to restore whole sections of Barnegat Bay and its shores and islands.

Here we have a pristine stretch that hopefully we won't have to one day restore, that will cost very little to preserve, that will be a blessing and a joy and an affirmation that we won't give the whole world over to the motor vehicle.

I and many others have applauded Mr. Saxton's stand on preserving our natural heritage, much trickier in New Jersey, I expect, than, say, Alaska. I was there when he opened the Jacques Cousteau National Estuary Research Reserve on the Mullica River. I interviewed him when he stood up to longline fishermen last year, crossing some particularly raucous picket lines. Most of us on the Island have approved of most of his stands. We're a little disappointed in this one.

The poet Gerard Manly Hopkins said, "What would the world be, once bereft/ Of wet and wildness? Let them be left,/ O, let them be left, wildness and wet;/ Long live the weeds and the wilderness yet."

I plead with you, "Let them be left."

Mr. SAXTON. Thank you very much, Mr. Savadove.

Mr. DeLeonard?

STATEMENT OF BOB DELEONARD, PRESIDENT, NEW JERSEY BEACH BUGGY ASSOCIATION

Mr. DELEONARD. Thank you, Mr. Chairman.

I represent the New Jersey Beach Buggy Association. We are a statewide organization of over 1,800 members, and we advocate reasonable and responsible beach access in the State of New Jersey.

I am also Executive Director of United Mobile Sport Fishermen, which is an association comprised of similar beach buggy associations from North Carolina to Massachusetts. And I speak for all of those organizations as well.

There may be some misconceptions on what a beach buggy is. When you hear the word "beach buggy," don't be thinking the word "dune buggy." It is not one of the pipe-welded kind of Volkswagens. It is actually a registered, inspected pickup truck or SUV.

And we don't even condone walking on dunes, let alone driving on them, as they are very fragile pieces of beach.

So when you just hear "beach buggy," don't be thinking "dune buggies." These vehicles are just, by and large, big tackle boxes we use just to get our equipment to where we want to fish. And don't confuse it with the term "dune buggy."

By the way, on Holgate, from April 1 to September 1, there is no walk-on access permitted either, during that time, let alone vehicle access. There is no access at all.

New Jersey Beach Buggy Association works closely with the State Department of Parks and Forestry. We are, in fact, the largest volunteer organization in the state in that regard.

We, of course, support H.R. 896. H.R. 896 would just make statutory what was made a promise in 1990 and, to start with, in 1973. When the powers that be—it is before my time in 1973—were going to propose what is now the Edwin B. Forsythe National Wildlife Refuge to be part of the Federal wilderness program, Holgate was not even going to be continued because, as an assistant secretary of the Department of Interior mentioned, the public could never enjoy a wilderness experience there.

As Congressman Saxton alluded to, New Jersey Beach Buggy Association collaborated with the New Jersey Sierra Club. In Hope Cobb's testimony in 1973, which I have here—Hope Cobb was president of New Jersey Sierra Club in 1973. The president of New Jersey Beach Buggy Association, Bob Lick, and she collaborated on Ms. Cobb's testimony, praising New Jersey Beach Buggy Association, under continued stewardship at Holgate, and urging, over the objections of the Department of Interior, that Holgate be included as part of the Wilderness Act under the Wilderness Act of 1964.

New Jersey Beach Buggy Association would never have agreed to these terms if beach access for beach buggies was not guaranteed at the time. Senator Case, who introduced the bill in the Senate to include into the wilderness, assured Bob Lick at the time that since the beach is state-owned land, the question didn't even apply.

I may point out, there was a tour road in the middle of Holgate prior to the wilderness designation, an auto tour. You know, you could drive your car in there and there would be little way-stops on the side, and the people could get a representative view of what sedge islands and the vegetation on beach front looks like that they wouldn't normally enjoy.

The day that the wilderness was designated at Holgate, those tours had to stop. They stopped the tours and the auto tours in the middle of the peninsula and they did not stop the beaches. Again, they didn't see a need to. It was a state-owned beach.

It has been 60 years since this ongoing beach access has been allowed to continue.

Endangered piping plovers are not an issue. There has never been an instance in New Jersey of a piping plover being hit by a beach buggy. It has happened five times in other states: twice in Long Island, and three times in Massachusetts, and 22 times documented by Fish and Wildlife Service vehicles.

The fact remains that Holgate is a part of the Federal wilderness. Any wilderness you get in New Jersey ought to be something special. In a state with a denser population than India or Japan, I think any wilderness you get, you ought to try to preserve it and make everyone happy to have it. This isn't the case here.

I think it is a little strange that the same laws that apply to Federal wilderness in Alaska in Rocky Mountain states are also applied in New Jersey. I think a 30-foot barrier, if you want to call it that, just so when high tide occurs, an unusually high tide, and

a person's tire would happen to hit the wilderness, this would just keep the vehicles out of the water.

The mean high tide mark that is the basis for this tide is not a day-to-day thing. It is an 18.5-year average. And I am not even sure where that is. I am not sure anyone does. And I don't even know who determined such a thing.

An amicable and equitable anti-development solution was worked out to give Holgate protection. Continued recreational use was promised. That promise was reinforced by and agreement between Representative Saxton and Fish and Wildlife in 1990. And now the Fish and Wildlife Service wants to renege.

I urge the Committee to please don't let them renege on that agreement.

[The prepared statement of Mr. DeLeonard follows:]

Statement of Robert DeLeonard,, President, New Jersey Beach Buggy Association, on H.R. 896

The Chairman. My name is Bob DeLeonard and I am appearing today as President of the New Jersey Beach Buggy Association (NJBBA). We greatly appreciate the opportunity to testify before the Subcommittee and register our strong support for H.R. 896. On behalf of the Association we thank you for promptly scheduling a hearing on this important bill. We also commend Rep. Saxton for his leadership and continued support on behalf of wildlife dependent recreation within units of the National Wildlife Refuge System.

The New Jersey Beach Buggy Association, founded at Island Beach State Park, is a non-profit organization incorporated in 1954. The NJBBA is not a fishing club. It is an association of people who all want the same thing. That is to be able to use a mobile sport fishing vehicle while in pursuit of their favorite hobby, mainly surf fishing. The majority of the members do belong to fishing clubs, but they still realize that one group is needed to lead the way in the fight for our right of continued and reasonable beaches access.

Please do not confuse our beach buggies with present day, modified VW fame types with roll bars and pipe welding. Our beach buggies come in all shape and sizes and are mobile sport fishing vehicles, which ride the level beach, entering and leaving by, access and egress trails approved by authorities. Members must not travel on any dunes or vegetation, as this practice is not consistent with the philosophy of the organization with reference to the preservation of our coastal resources.

H.R. 896 would assure that express promises made by Congress 28 years ago would continue to be honored. This bill would assure that important recreational opportunities will be preserved and that environmentally benign traditional uses will be able to continue. We urge the Subcommittee to act quickly and favorably on this measure.

Rep. Saxton's measure simply keeps a promise: it would statutorily assure what we were promised years ago—that surf fishermen could continue to access Holgate using beach buggies. Over 28 years ago surf fishermen and the environmental community banded together to guarantee the conservation of the wildlife resources of Holgate Beach. We worked with Congress to have this portion of then Brigantine National Wildlife Refuge designated wilderness to prevent unwanted commercial development of the beach. However, we were repeatedly assured that this commitment to conservation would not adversely impact our ability to use beach buggies for surf fishing. With those assurances from Congress, we strongly supported the wilderness designation. We are bitter that the U.S. Fish and Wildlife Service seems intent on disregarding those promises and banning us from the very beach we helped to save. The Association is heartened that Congress appears to understand the need to honor promises and commitments and it can do so by passing H.R. 896.

The U.S. Fish and Wildlife Service (FWS) announced on February 14 a pending decision to limit beach access for the Holgate Unit of the Brigantine Wilderness Area. Under this directive, motor vehicle use by the public would be limited to the area below the mean high tide mark. The mean high tide mark is an 18.5 year average, not a day to day thing. At this time, I do not know where it falls. It may be 50 yards out in the ocean or it may be the entire peninsula. I wonder if FWS knows. Their brochure on beach use shows it as the wet sand between the tides. This is wrong, although many people are not aware.

Because the limiting of beach vehicles is so controversial, the FWS Acting Regional Director provided a 30 day public review period before signing off on the Finding of No Significant Impact (FONSI). This period ended on March 19, 2001. As of this date, June 7, 2001, it has yet to be signed.

FWS has chosen Alternative B of the Comprehensive Conservation Plan (CCP), which was the Service's proposed action all along. Besides limiting, or perhaps banning altogether, vehicle use on the beach, this alternative also triples the refuge staff, triples the operating budget, and makes provisions for "taking" additional land outside the boundary of the Refuge. The current staff level is 17. Alternative B would raise this to 42. Staff and projects funding for the next 15 years is currently $15.3 million. "B" would raise this to $54.2 million. Land protection is currently $19.7 million for 15 years. "B" would raise this figure to $57.7 million. Land protection for what? It is a Federal wilderness!

While it is true that the Edwin B. Forsythe National Wildlife Refuge is protected under the Wilderness Act of 1964, the beachfront that abuts the property is public land, which has been used by mobile sport fishermen for generations before the refuge was established. These "beach buggies" are inspected, insured, street legal pick up trucks or sport utility vehicles that drive at slow speeds along the beach looking for a good place to wet a line. They are not ATV dune buggies racing aimlessly down the beach. It is not consistent with the NJBBA code of ethics to walk on the dunes, let alone drive on them, as they are a very fragile and priceless part of the ecosystem.

In 1973 when the Brigantine Wilderness area was being proposed, Holgate was not even going to be considered as part of it. The Department of the Interior did not want to include it because the public would never be able to get a true wilderness experience there. It was added at the last hour at the urging of the NJ Sierra Club, with backing of NJBBA. NJBBA President Bob Lick collaborated with Hope Cobb, President of the NJ Sierra Club on Ms. Cobb's testimony pushing for inclusion of Holgate on April 12, 1973. These diverse organizations came together to prevent construction of a proposed bridge from the south, with provisions that existing access and usage prevail. At the time, opinion was widely held that the least expensive way for development was to go through public land. NJBBA and the Sierra Club did not think that Refuge protection was strong enough to prevent this bridge construction and resulting development and sought statutory protection provided by Wilderness designation. NJBBA would not have backed this effort without assurance that vehicle access on the beachfront that abuts the property would be allowed to continue. Bob Lick got assurance from Senator Case that, since the beach was state owned and not part of the Wilderness, vehicle beach access would not be jeopardized, and mobile surf fishermen continued to use the beach after wilderness designation, just as before the wilderness designation.

Rep. Saxton in July 1990 helped negotiate a written agreement entitled "Public Use Management for Holgate Unit" which permits the operation of over-the-sand vehicles (OSV) in the Holgate Unit of the Brigantine Wilderness Area. This written agreement, submitted by the (then) Edwin B. Forsythe Refuge Manager, and approved by the Regional Director for Refuges, is in direct conflict with the Final Comprehensive Conservation Plan (CCP) proposed in July 2000 by the Fish and Wildlife Service (FWS).

The 1990 agreement specifies the tidelands will be open to OSVs from September 1 through March 31, and will be closed to all public use including boat landings from April 1 through August 31 to protect piping plovers and their habitat. During the September 1 through March 31 period, OSVs may utilize the tidelands below the mean high water line. In order to minimize the distance of travel on the loose or dry sand above the mean high tide, the OSVs shall be parked within 30 feet of the water edge at high tide and generally park perpendicular to the water edge.

Endangered piping plovers are not an issue in 2001. Surf fishermen agreed to the closure at Holgate in 1990 to protect the endangered piping plover based on the FWS allowing the continued access for OSVs to the end of Holgate Peninsula. It is unfair and unsustainable for the FWS, after signing this written agreement, to propose to discontinue this previously established public use. In eleven years, the fishermen have stayed out of Holgate from April 1 through August 31 in compliance with this agreement. The piping plover nesting pairs have greatly increased and there has been no environmental damage to the wilderness area.

The Department of the Interior utilized its discretionary authority for 28 years to permit vehicles in Holgate because such uses were established prior to the date the wilderness area was designated by Act of Congress. It is outrageous that prior public uses at Holgate have been proposed to be terminated without consideration to this agreement. We have separately communicated with the Department of the

Interior and explained that the law and the facts enable and obligate FWS to continue traditional beach buggy at Holgate. A copy of our letter to Secretary Gale Norton is attached.

H.R. 896 would solve this problem by revising the boundaries of Holgate to provide a narrow transition zone between the mean high tide line and the wilderness boundaries to permit vehicles to safely access and park on the beach without inadvertently entering the wilderness area. This bill would continue to allow access by vehicles into Holgate, as has been the case for nearly 60 years, without negatively impacting the environment. The public is not permitted in the wilderness land only on the state owned beach. This applies to walkers as well. Beach buggy users are happy to share this resource with any other user groups.

H.R. 896 would provide a 30 foot buffer zone along the state owned beach between the ocean and the FWS property so vehicles can safely have ingress and egress during periods of abnormally high tides. Beachfront by nature comes and goes. It is a complex issue. A 30 foot right of way above wet water is not unreasonable and would still be legal within the Wilderness Act. Section 5 (a) mandates access through wilderness to privately held property. Mobile sport fishermen are permitted incidental contact with wilderness property to safely access other parts of state owned Holgate beach during periods of moon tides coupled with east winds where the beach may be constricted. When the beach is constricted on the front, it is coincidentally expanded on the back side. The refuge manager at Holgate immediately claims this "found" land as wilderness property, regardless of any mean tide averages while attempting to claim temporarily eroded beach to an imaginary previous line in the ocean.

In, addition, FWS Wilderness Preservation and management and Regulations (50CFR35.5) specifies: (b) "The Director may permit the use of motorized equipment at places within a wilderness where such uses were established prior to the date the wilderness was designated by a Act of Congress."

The Refuge Improvement Act of 1997 ensures that priority public uses receive enhanced attention in planning and management within the Refuge System. Somehow the refuge manager at Holgate has interpreted this as carte blanche to ban vehicles from the state owned property that abuts the wilderness.

In 1999, when the refuge manager first proposed his new ban on vehicles, the reason given was because the public could never get a true wilderness experience with vehicles on the state owned beach. The walking public is also prohibited on the Federal wilderness and must view from the state owned beach as well. In 1973 when NJBBA and the NJ Sierra Club argued for inclusion of Holgate into the Wilderness Act, we had to overcome the objections of E. U. Curtis Bohlen, Deputy Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior, who was adamant that Holgate did not qualify because, ironically, the public could never get a true wilderness experience there. When asked why he is suddenly asking for a mobile sport fishing ban after nearly 60 years of established use, 28 since wilderness designation, the refuge manager said, "Because the law gives me the authority to do so. Look, we are holding a public hearing because we are required to get public input, but the final decision rests with us. We already have the Wilderness Act. It's clear on not allowing vehicles on the refuge and on what a wilderness experience should be. I really think that's all we need." (New York Times, June 20, 1999). In 2000, with public support dwindling from this demonstrated disdain of the public hearing process, the argument changed to "a violation of the Wilderness Act". Public support has since all but disappeared.

The mismanagement of the Forsythe Refuge damages the public impression of the entire refuge system and has put FWS as head of the list of most despised Federal agencies in New Jersey, a feat that three years ago, I would have thought impossible. The refuge program uses tax money to acquire land, and then attempts to keep taxpayers off that land. It is as if they put up signs that read, "Public property. No trespassing." Future land acquisition by FWS in New Jersey has been put in serious jeopardy because of the arrogance and mismanagement at Holgate. FWS is a bad neighbor.

In 1973 during the hearing for H.R. 5422, which established the Brigantine Wilderness Area, Assistant Secretary Bohlen testified on Holgate. "We did not think that suitable to be recommended as part of the wilderness." he said. "It is part of the refuge, but it is not included as part of the area set aside for wilderness." It has since become less suitable to be part of the wilderness. In 1999 when the FWS first proposed the Comprehensive Conservation Plan, it pictured on the cover of the ensuing manual what they thought to be a representative example of what a wilderness should be. That cover photo showed some sedge land with the skyline of Atlantic City in the background. I pointed out in my testimony in Stafford Township on July 8, 1999 that if they took that picture at night, there would be nothing but

bright flashing lights, searchlights, and assorted casino glitter. So much for the public's ability to have a wilderness experience. Incidentally, in 2000 when the FWS tack switched from the 1999 ploy of "vehicles on the beach have a negative impact on the public's ability to enjoy the wilderness" to "a violation of the Wilderness Act" they had the good sense to shoot the new manual cover photo in another direction.

The fact remains that now Holgate is part of Federal wilderness. Any land that can be designated so in the most densely populated state should be treated with respect, no matter how badly mismanaged. I think that it is unreasonable to treat wilderness land in New Jersey exactly the same as treated in Alaska and Rocky Mountain states. In a state with a population density greater than that of India and Japan, be thankful for any land that can be designated wilderness. In New Jersey, if a person goes out for a wilderness experience, and there are 3000 other people there, consider it isolated. In Holgate, there are only 25 vehicles on the three - mile stretch of beach, mostly all sit parked while the owner is fishing.

An amicable and equitable anti-development solution was worked out to give Holgate protection, continued recreational use was promised, and that promise reinforced by the agreement between Rep. Saxton and FWS in 1990. Now the FWS wants to renege. Please don't let it.

Mr. SAXTON. Thank you very much.

Let me first say that a document has been referred to by several in their testimony, including in my opening statement, which is known as the "Public Use Management for Holgate Unit," which was the agreement that was signed in 1990. And I ask unanimous consent that it be included in the record.

Mr. SAXTON. And also, a statement from Robert Lick, the former president of the Beach Buggy Association; Joan Koons' statement from the Alliance for a Living Ocean; and I have already asked unanimous consent that Freeholder Mancini's statement be included in the record.

[The report, "Public Use Management for Holgate Unit," follows:]

PUBLIC USE MANAGEMENT FOR HOLGATE UNIT

This document provides a statement of objectives for the Holgate Unit of Edwin B. Forsythe National Wildlife Refuge, a review of pertinent laws, and the public use guidelines. In summary, the Holgate Unit will be closed to all public use including boat landings from April 1 through August 31 to protect piping plovers and their habitat. The piping plovers usage of Holgate will be monitored closely and the actual piping plover use patterns will determine the duration of the closure. The tidelands will be open to over-the-sand vehicles (OSVs) from September 1 through March 31. The tidelands and beach will be open to pedestrian public use from September 1 through March 31. The southern tip of Holgate may be closed beyond September 1 to protect the black skimmer colony and their unfledged young.

U.S. FISH AND WILDLIFE SERVICE
EDWIN B. FORSYTHE NATIONAL WILDLIFE REFUGE
OCEANVILLE, NEW JERSEY

July 26, 1990

The Holgate Unit consists of 256 acres of barrier beach, dunes, and tidal saltmarsh located at the southern tip of Long Beach Island. The Unit is administered by the Barnegat Division of the Edwin B. Forsythe National Wildlife Refuge. The Holgate Unit is one of New Jersey's most important areas for beach-nesting birds. Holgate is the state's most productive area for piping plovers. It is also the site of one of the largest least tern colonies and the largest black skimmer colony in the state. There are over fifty other species of birds that occur on the area during the summer season including nesting black ducks, American oystercatchers, willets, and seaside sparrows.

OBJECTIVES

Public use on National Wildlife Refuges is directed by laws, regulations, policies, goals, and objectives. The public use management strategies for Holgate were derived primarily from the following directives.

The broad goals of the National Wildlife Refuge System are:

> To preserve, restore, and enhance in their natural ecosystems (when practicable) all species of animals and plants that are endangered or threatened with becoming endangered.
>
> To perpetuate the migratory bird resource.
>
> To preserve a natural diversity and abundance of fauna and flora on refuge lands.
>
> To provide an understanding and appreciation of fish and wildlife ecology and man's role in his environment, and to provide refuge visitors with high quality, safe, wholesome, and enjoyable recreational experiences oriented toward wildlife to the extent these activities are compatible with the purposes for which the refuge was established.

All field station objectives are to be in support of these broad goals. The protection, enhancement and recovery of endangered and/or threatened species will receive priority consideration in the establishment of refuge objectives and the management of national wildlife refuges. Consideration will also be given to the protection of species identified by the state as endangered or threatened. One of the objectives of endangered species management is to ensure that conflicts between endangered species and other wildlife management or public use are resolved in favor of endangered or threatened species. On January 10, 1986, the piping plover was listed as threatened under provisions of the Endangered Species Act. The piping plover, least tern, and black skimmer are classified as endangered by the New Jersey Division of Fish, Game, and Wildlife.

The endangered species objectives for the Edwin B. Forsythe National Wildlife Refuge are:

Piping Plover

Increase the number of nesting pairs to 30 with an average of 2.0 fledglings per pair.

Black skimmer

Maintain 400 nesting pairs with an average of 1.0 fledgling per pair.

Least tern

Maintain 300 nesting pairs with an average of 1.0 fledgling per pair.

Peregrine falcon

Maintain 2 nesting pairs with an average of 2 fledglings per pair.

Bald eagle

Encourage the nesting of one pair.

Osprey

Maintain 10-20 nesting pairs with an average of 1.2 fledglings per pair.

On January 3, 1975, Public Law #93-632 set aside a total of 6,603 acres of pristine saltmarsh and barrier beach within Brigantine National Wildlife Refuge (now Brigantine Division of the Edwin B. Forsythe National Wildlife Refuge) as a National Wilderness Area pursuant to the Wilderness Act of September 3, 1964 (Public Law #88-577). The Holgate Unit, with its nearly 2 1/2 miles of undeveloped beach and adjacent dunes, is included in the Brigantine Wilderness. The Wilderness Act prohibits the use of motorized vehicles within the designated wilderness area. The Service's policy on off-road vehicles states: "All lands within the National Wildlife Refuge System are closed to off-the-road use of vehicles by the general public unless specifically designated as open to the use of off-road vehicle." The definition of off-road vehicles include the over-the-sand vehicles used by surf-fishermen. Also, off-road vehicle use areas are not to be located in Wilderness Area, where the operation of motorized equipment by the general public is prohibited.

Wildlife/wildlands oriented public use will be encouraged on Service lands where funds are available to support such use and when such activities are compatible with refuge purposes. Public use management will conform to the applicable requirements of Titles 43 and 50, Code of Federal Regulations. The following public use management strategies are compatible with the purpose of the Refuge.

PUBLIC USE GUIDELINES

The Holgate Unit contains a variety of ecological zones with different public use guidelines for each. The major zones are shown in Figure 1.

Figure 1. A cross section of Holgate showing the typical profile, ecological zones, and distribution of major plant communities. The marsh, dune and beach are upland areas. The beach is the located between the dunes and mean high water. The tidelands are the intertidal zone between mean high water and mean low water line. The tideland and the submerged land in the bay and ocean are riparian lands.

1-8000 + next week

Tentatively the Holgate Unit will be closed to all public use including boat landing from April 1 through August 31. The actual dates that public use is permitted on Holgate Unit are based on usage by beach nesting birds, especially the piping plovers. The piping plover usage of Holgate will be monitored on a weekly basis. The piping plover use patterns will determine the extent and duration of the closures. For example, all or a portion of the beach and tidelands area may be open to the public use after April 1 if the piping plover's spring migration is later than usual. Based on the observed breeding chronology and use patterns the northern portion of Holgate will be re-open to public use earlier than the southern portions. The northern portions of Holgate will be re-opened after the young of the plovers that nest on the northern portions have fledged and the territorial defense behavior of plovers nesting in the southern portion diminishes. The southern portion will remain closed until all piping plovers have left the area. The northern portion will re-open to public use between mid-July and mid-August and the southern portion will re-open by late-August.

Frequently the black skimmers, a species listed as endangered by the State of New Jersey Division of Fish, Game and Wildlife, will still be rearing unfledged young on September 1. The areas adjacent to any skimmer colony containing unfledged young will remain closed until the young are fledged and feeding on their own. This may result in the southwestern portion of Holgate being closed up to an additional month. Closures to maintain other endangered species and/or their habitat may be required in the future.

Dunes and Salt Marsh

The dunes and all vegetated areas including the salt marshes of Holgate Unit are closed to all public use or entry throughout the year.

Beach and Tidelands

April 1 through August 31: The beach and tidelands are closed to all public use including landing of boats. This will help ensure that the piping plovers have high quality, protected habitat available on Holgate. Spring and summer beach public use would materially interfere with the refuge objectives and with the refuge's establishment purposes of "use as an inviolate sanctuary, or for any other management purposes, for migratory birds".

These dates may be adjusted in accordance with the above guidelines. Any early re-opening information including the area, dates, time and special conditions pertaining to the re-opening will be posted at the northern boundary of the Holgate Unit. News releases will be sent to local newspapers and to concerned citizens groups.

September 1 through March 31: The beach and tidelands are open to public use activities including walking, shell collecting, bird watching, photography, nature study, fishing, sun bathing, and similar activities. Some of the prohibited activities and items are camping, fires, unleashed pets, disturbance of wildlife or vegetation, horse riding, entering closed areas, possessing and/or use of fireworks, possessing firearms, trapping, hunting, and operation of motorized vehicles in a wilderness area. The preceding is not a complete list of prohibited activities. Additional information on the permitted and restricted uses of the Holgate Unit or the Refuge

may be obtained from the Refuge Manager.

During the September 1 through March 31 period, over-the-sand vehicles (OSVs) may utilize the tidelands which are the hard packed sands below the mean high water (mhw) line. Refuge special use permit obtained from the Refuge Manager will be required for OSVs use. OSVs may enter and travel the tidelands only when the tide is out and the tidelands are exposed. To minimize the distance of travel on the loose or dry sand above mhw the OSV shall be parked within 30 feet of the water edge at high tide and generally park perpendicular to the water edge.

The operation of OSVs on the Holgate Unit may be suspended during coastal storms or when there are exceptionally high tides. During coastal storms or extreme high tides there may be insufficient space to park vehicles between the water line and the dune or vegetated areas. In general this would be when National Oceanic and Atmospheric Administration (NOAA) weather radio in Atlantic City predicts tidal flooding for low lying areas or any high tide where the expected height exceeds 5.5 feet mean sea level based on NOAA's Tide Tables for East Coast of North America. Tide tables will be posted at the refuge boundary. OSVs travel on the loose or dry sand is justified only for bona fide emergencies.

Submitted by David L Beall Date 7-27-90
Refuge Manager

Reviewed by Donald M. Fricke Date 7-31-90
Associate Manager-Refuges North

Reviewed by Charles J Green Date 7-31-90
Assistant Regional Director-Refuges and Wildlife

Approved by C Hamilton Date 8-2-90
Regional Director

July 26, 1990

[The prepared statement of Bob Lick follows:]

250 Bison Trail
Cheyenne, WY 82009
May 22, 2001

The Honorable Wayne Gilchrest
Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans
H2-188 Ford House Office Building
Washington, DC 20515-6232

Dear Chairman Gilchrest and Subcommittee Members:

I appreciate the opportunity to provide testimony supporting Congressman Jim Saxton's Bill H.R. 896 about the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge, New Jersey. I regret a conflict on the scheduled hearing date of June 7 prevents my testifying in person, enabling me to answer questions from the Subcommittee.

My name is Robert E. Lick. I began my lifetime of surf fishing as a youth with my father in about 1948. About that time, Dad assisted his friend in modifying a 1930 Model A Ford to be used as a surf fishing beach buggy. With the body removed aft of the windshield, with flat bed, big tires, rod holders, and rust proof paint added, the Model A provided a very reliable over sand fishing vehicle. The buggy was stored and used at Holgate until about 1958. Many other anglers used a Model A or post WWII surplus Jeep to access the sands and inlet area of Holgate.

The Audubon Society held title to Holgate during my early years there, and in 1960 they deeded it to the Brigantine National Wildlife Refuge, now known as the Edwin B. Forsythe National Wildlife Refuge. Ed Forsythe was my Congressman for many years, as well as my friend and a friend to all fishermen and conservationists. Ed was the driving force in establishing the Refuge. After becoming federal property, fishermen and their beach buggies were allowed to continue to use the state owned beach, operating under rules, regulations and permits administered by Long Beach Township.

In 1972-73 an effort was made to designate portions of the refuge Wilderness, under the Wilderness Act of 1964. The Refuge Wilderness Bill was introduced by Senators Case and Williams with the Holgate Unit of the Refuge later added to the proposal. At that point in time, I was serving as President of the New Jersey Beach Buggy Association (NJBBA). Knowing vehicles are not permitted in Wilderness Areas, the NJBBA became concerned, and I phoned Senator Case's office. The Senator's staff member, familiar with the issue, told me Wilderness designation

would not affect our access, as we use the state owned beach. Assuming our concerns were put to rest, NJBBA took no further action. Congressional Hearing minutes, the Congressional Record, and Senator Case's Press Release all talk about the historical use of the beach by the public, including fishing and beach buggy access. For example, in 1973, during the Wilderness Hearing before the Subcommittee on Public Lands, E. U. Curtis Bohlen, then Assistant Secretary of the Department of the Interior for Fish and Wildlife and Parks stated, "...There will be no change in public use due to wilderness status..." and, "Fishermen and nature enthusiasts would experience no change in access..." Additionally, Senator Case stated "I believe, that public use of the beaches has not been, and need not be, detrimental to administrating the area as a wilderness...." Thus, Congressional intent is very clear; historical public use was to continue. The Refuge Wilderness Bill was subsequently signed into law, which included Holgate.

Anglers were using beach buggies on Holgate for at least twenty five years prior to federal Wilderness designation. Since that time, except for seasonal closures to protect endangered piping plovers and least terns, anglers have continued to operate their beach buggies on the state owned beach adjacent to the federal Refuge without impact to the Refuge for almost thirty years. However, Congressman Saxton has had to introduce H.R.896. The reason for this bill is the misguided and zealous efforts of Refuge Manager Steven Atzert.

Since becoming Refuge Manager, Atzert has caused more disruption, unrest, turmoil, and mistrust than all of his predecessors combined. Ocean beaches, by their nature, are dynamic land forms. Atzert has always made the boundary between the New Jersey owned beach and the Refuge a point of contention, seeking to gain as much land as possible for the Refuge, thereby reducing the width of the beach for fishermen to operate. Congressman Saxton's H.R.896 will solve this problem by providing a minimum thirty foot wide corridor, from the mean high tide line, for anglers to safely ride and park on the state owned beach.

Atzert has maintained his position despite overwhelming state and local governmental and public opposition, and Congressional intent, and intends to prohibit beach vehicles year round at Holgate. Additionally, he plans to prohibit people from walking on the ocean beach at Two Mile Beach of the Cape May National Wildlife Refuge. Not only is the cry of condemnation coming from the public, but many New Jersey town mayors and councils have adopted resolutions condemning Atzert's actions and supporting Congressman Saxton's effort to reach a solution with H.R.896. An angler's protest march to Trenton was recently held, due in part to Atzert's actions. Because of his arrogance and contempt for public opinion, many are sarcastically referring to the Refuge as "Steven Atzert National

Wildlife Refuge." Is this what the congress and our federal land managing agencies define as being a good neighbor? I think not.

Without passage of H.R.896, the southern portion of Holgate's beach and the very productive (from a fishermen's point of view) inlet will no longer be reasonably accessible. It is a two and a half mile walk each way. The need to carry tackle and related gear would place it out of reach for most people, particularly younger and older anglers. Thousands of hours of quality family recreational opportunities would be lost at one of New Jersey's premier surf fishing locations. The loss of Holgate access would also negatively impact the business community of southern Long Beach Island, particularly in the non-summer season when most businesses look to angler generated revenues to carry them through the normally slow season.

In closing, I respectfully request the Subcommittee Members to please consider the traditional use of the state owned beach, promises made in 1973, as well as Congressional intent for Holgate. If you do, I am certain you will approve H.R.896.

Thank you again for allowing me to share my views with the Subcommittee.

Sincerely,

Robert E. Lick

Mr. SAXTON. Mr. Ashe, I am curious about your current position on this issue, because it doesn't seem to track with the general attitude that you exhibited during the last year-and-a-half so, when you would come to my office and then go away with the understanding that you were going to try to find a way to help. And on each occasion, you would return to my office and say, "Gee, we would really like to help, but the law is clear. And our position is, therefore, that we can't help because of the provisions in the Wilderness Act."

So I think that it seems to me, at least, that the provisions in my proposed bill are rather modest and take care of your problem and permit you a way to help. And yet, you oppose it. I find that very curious, because for the last year-and-a-half or 2 years, you say you have been trying to help, and this is a very modest way to solve your dilemma of not being able to do so.

Why would you, therefore, oppose this bill, if all along you have wanted to help?

Mr. ASHE. Mr. Saxton, you are a good friend. And when a good friend asks for help, I try to help him.

And so, as I said, you know, we went back on numerous occasions to try to see if, within the context of the law, we could help you. And unfortunately, the answers were consistently no.

And a number of the panelists here talked about public trust. And we have a public trust. And our first trust is to implement the law of the United States. The Congress has enacted a law, designating the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge as wilderness.

And we are bound by our trust to the America people to implement the law. The law is very clear on this point, that the use of motorized vehicles within a wilderness is prohibited.

And so, it is our duty, pursuant to our trust, to uphold the law.

And it certainly is Congress's prerogative to adjust boundaries of wilderness, but Congress in its consideration determined that there was wilderness value at Holgate that was worthy of protection. And it is now our charge to ensure that that wilderness value is maintained.

And allowing vehicle use at the Holgate Unit of the Brigantine Wilderness does impact wilderness value. This is not about piping plovers. This is not about biological or ecological integrity. This is about wilderness value. And the use of motorized vehicles within that wilderness area does adversely impact wilderness values.

And so that is why we are not supporting your bill, Congressman, because it will have the effect of eroding that trust, which Congress handed off to us 26 years ago when they designated this area as wilderness.

Mr. SAXTON. Well, I worry about trust as well. And I understand what you have just said to me.

When I gave my opening statement, I mentioned that the Forsythe refuge is rather unique because of its noncontiguous nature and the fact that it touches the lives of many people, maybe most people, maybe even all the people of Ocean County.

And there is a trust that we owe to those residents specifically. And in this case, last year, I think I pointed out, that there were 716 permits issued. And I am just going to guess that maybe

during the fishing season, maybe there are 10 people who are associated with each over-the-sand vehicle that fish. So perhaps there are as many as 7,000 individuals, 7,000 families—10 times 700, for those of you who are looking puzzled—7,000 individuals, which translates into 7,000 families, which translates into 7,000 neighborhoods, who think the trust is being broken.

How am I going to come back here and advocate for more money for more expansion of the refuge with 7,000 families in 7,000 neighborhoods thinking that you have created what to those 7,000 people is a terrible misdeed?

How can I come back and advocate for this refuge and the management and the program and fixing the backlog, the maintenance backlog, and all the things that I have done over these years? How can I continue those activities with my constituency thinking they have been mistreated this way?

I guess that is a rhetorical question. There is probably no answer.

Mr. ASHE. It is a difficult issue, Congressman, which is why, in the beginning of my statement, I said, you know, it wasn't a pleasant duty on my part.

I know that it is a difficult issue for you, as it is a difficult issue for us. I guess, on balance, sometimes in the course of a friendship, you have to look friends in the eye and tell them that you can't do what they want you to do. And that is not a pleasant duty.

And I know, from the standpoint of a Member of Congress, sometimes you have look in the eyes of your constituents and tell them that maybe their government is not doing something that they appreciate.

I do believe that, as a whole, the Edwin B. Forsythe National Wildlife Refuge is a tremendous asset to the people of New Jersey and the people of the United States, which doesn't mean that we will make all the people happy all the time. And that is a difficult balance.

And our manager, Steve Atzert, is in a difficult position. He does have a trust. He does have an obligation to safeguard the wilderness value at that refuge. And he is trying to do his job.

And realize that is making some people angry there. And that happens from time to time. But I believe, on balance, the Forsythe refuge and the Holgate Unit are tremendous assets to the people of New Jersey.

And I think hopefully we can help them to realize that.

Mr. SAXTON. Let me ask one more question, and then we will turn to Mr. Underwood.

You mentioned the devaluation of wilderness area, which to me means that there must be some environmental reasons that would cause you say that or some environmental degradation that is done by the fishermen. Can you somehow quantify that for me, because I have not seen it?

Mr. ASHE. I think it is very difficult to quantify, Mr. Chairman, because wilderness is not a quantifiable impact.

If you look at the definition of wilderness in the Wilderness Act, it talks about areas where the Earth and its community of life are untrammeled by man, where the imprint of man's work is

substantially unnoticeable, that provide opportunities for solitude in a primitive and unconfined type of recreation.

Those are clearly subjective values. But one thing that the law does tell us very clearly is that the presence of motorized vehicles is a violation of the concept of wilderness.

And so when Congress told us that this area should be included in the national wilderness preservation system, and did not accept vehicles, they were telling us how to manage that area.

And I will agree with you: Our management has been such that we have allowed this activity to go on over time. That is incontrovertible.

But it is also equally incontrovertible that it is not supportable within the context of the law.

Mr. SAXTON. So I take it from your statement that there is somehow an undefinable degradation.

I mean, you didn't mention that the fishermen throw garbage around. You didn't mention that they are having bonfires, which they start with kerosene, on the beach. You didn't mention that there is continuing damage to the piping plovers.

You didn't mention anything specific. You just said that there is a—maybe you have a feeling that the area is not quite as peaceful or something because there are motorized vehicles going out the beach.

Is that a fair characterization? You didn't point to one specific problem environmentally.

Mr. ASHE. Wilderness value is a subjective value. As I said: "A place where the Earth and its community of life are untrammeled by man." That is a subjective value.

It is not that you can't measure it or that you can't see it. You can. And, again, in general terms, the four land-managing agencies who manage wilderness, generally, mechanized equipment represents a deterioration of wilderness value and are not allowed within wilderness areas.

And so, that is kind of a consistent theme in wilderness management. And, again, motorized vehicles, the presence of motorized vehicles itself, is antithetical to the concept of wilderness and the solitude that wilderness is supposed represent. That is why Congress included that prohibition in the law.

Mr. SAXTON. Thank you.

Mr. Underwood?

Mr. UNDERWOOD. Thank you, Mr. Chairman.

And before I begin, I would also to ask unanimous consent to submit a statement by Dr. Leatherman of the Laboratory for Coastal Research.

[The prepared statement of Mr. Leatherman follows:]

June 6, 2001

Mr. Kevin Frank
Subcommittee on Fisheries, Wildlife & Oceans
U.S. House of Representatives
187 Ford House Office Building
Washington, DC 20515

Dear Mr. Frank:

This letter is in response to H.R. 896, a bill introduced by Congressman Jim Saxton of New Jersey. I have conducted the most the most extensive research on the impacts of off-road vehicles on barrier beaches in the United States (see en-

closed 44 page resume). I am also enclosing a copy of the "Barrier Island Handbook" that chronicles the impact of motorized vehicles on beaches and dunes.

The southern end of Long Beach Island, New Jersey has been designated as a Wilderness Area. As such any vehicular activity in this area is incongruent with the concept of a wilderness area. Therefore, I believe that ORVs should certainly be banned in this area as a matter of principle.

Please feel free to give me a call at 305–348–6304 if I can provide additional information.

Sincerely,

/signed/

Stephen P. Leatherman, Ph.D.
Professor and Director
Florida International University
Laboratory for Coastal Research

Mr. UNDERWOOD. I find the discussion on the intrinsic value of wilderness versus trying to quantify or perhaps determine the science of environmental degradation or the effect of off-road vehicles or fishermen on this particular piece of property.

Yet, there is something very specific in the laws, is there not, Mr. Ashe, in terms of motorized vehicles?

Given that, and your admission that motorized vehicles had been allowed for the time that this has been designated a wilderness area, it seems very difficult to deal with the issue of trust. I mean, I don't know whether trust itself is intangible and whether we can measure that or not. But I would venture to say that if we were going measure trust on the basis of past behavior, it has been a little erratic on the part of the Fish and Wildlife Service.

Mr. ASHE. I guess I would say it hasn't been erratic. I mean, we have been allowing these uses to continue, and have been essentially turning a blind eye to the fact that the uses were in violation of the Wilderness Act.

As the Congressman knows, you know, in some respects, we could take the easy way out and I could tell him, "Well, we will just continue to allow it," which would just open the door for somebody to come in and challenge us under the Wilderness Act.

And so, we are developing a comprehensive plan that lays out a 15-year blueprint for the operation of this refuge, and we would be putting that whole blueprint at risk from a legal standpoint, and certainly that provision of the comprehensive plan.

Mr. UNDERWOOD. Is it—

Mr. ASHE. We have been consistently delinquent in our responsibility to enforce the Wilderness Act.

Mr. UNDERWOOD. Consistently delinquent. Okay.

To your knowledge, Mr. Ashe, is there any other wilderness area where motorized vehicles are allowed, where you have also turned a blind eye?

Mr. ASHE. There are none that I am aware of, Congressman.

There are wilderness areas where Congress has made exception in the establishment of the wilderness area to cherrystem, as they say, roads, to take roads or improve trails out of wilderness areas. There are cases in the refuge system, like Okefenokee National Wildlife Refuge where, in the establishment of the wilderness area, Congress specifically allowed certain kinds of activity that would overwise not be allowed.

In the case of Okefenokee, it is motor boat use. They specifically allowed for the use of motor boats within the wilderness area.

But, again, which to me points out one of the ironies in this situation: Congress knows how to do that, and in the case of Holgate, they did not. They left the prohibition against motorized vehicles intact without providing that exception, as they have done in many other cases.

Mr. UNDERWOOD. Mr. McDowell, to your knowledge, is there any environmental degradation that is occurring as a result of the activities of off-road vehicles?

Mr. MCDOWELL. In this particular location, no. And I queried our biologists, who are trying to recover the piping plover, working closely with the Service, and they say there has been no impact on these birds and other state endangered and threatened species in the area.

Basically, when the tide is a high tide, it erases all the evidence—tracks, et cetera—of the fishermen, so it is returned to wilderness, so to speak.

So I know of no environmental impact, impacts on wildlife.

Mr. UNDERWOOD. Has there been any assessment, specific assessment, relative to off-road vehicles activity in other parts of New Jersey?

Mr. MCDOWELL. Yes, on Brigantine Island, we have done that assessment. And because of the assessment, there is a seasonal prohibition and management strategy in there to allow vehicles under certain guidance and closure.

So, yes, we have seen impacts on endangered species, beach nesters. I might point also that swimmers have impacts on some of these species also. So it is a management issue all over the State of New Jersey.

The easiest thing to say is, "No." The most difficult thing to say is, "Yes, but we're going to do it this way."

Mr. UNDERWOOD. I just want to understand, in the rank order of priorities here, so that I understand the full flavor your testimony, not in contrast to Freeholder Kelly, but just to understand it.

Mr. MCDOWELL. Sure.

Mr. UNDERWOOD. If there were evidence of environmental degradation, would you then oppose the off-road vehicles in the area, as opposed, you know, that there is some kind of inherent or preexisting right for fishermen to have access to the area?

Mr. MCDOWELL. We would probably be the first agency to raise that issue, if it was environmental impacts that affected fish and wildlife, certainly. That is our legal responsibility, too.

I think there is one impact nobody is talking about here. You are talking about public trust as an issue. We are very busily, in the State of New Jersey, trying to buy up as much open space as we possibly can. Former Governor Whitman had the Open Space initiative passed. We are spending over $100 million a year, buying open space, getting conservation easements on open space. And the public is behind us 100 percent.

I am one of the people that signs off on the refuge purchases. I think the refuge gaining more land in New Jersey is a good thing—

not only this refuge, but the other four refuges. And we cooperate with the Service completely.

But when you do this kind of thing, in terms of public trust, then it affects all the other agencies that are trying to protect open space, because the public wants to know: Why are you doing this? What are going to do? Are you going to keep me out of here?

Mr. UNDERWOOD. Is there any law in the State of New Jersey about the intrinsic value of wilderness—

Mr. MCDOWELL. Not that I know of.

Mr. UNDERWOOD. —that would be comparable to—

Mr. MCDOWELL. We do have a natural area system and certain management activities, especially, are regulated there in these natural areas.

And so, we understand the concept. But we don't have a Wilderness Act in the State of New Jersey.

There is one other wilderness area in a refuge in the Great Swamp, I believe. It is not very large. And we supported that.

Mr. UNDERWOOD. Just one last question.

Mr. Savadove, I know you spoke to the issue of the intrinsic value of an area of wilderness which is unaffected by human behavior or the intrusion of man.

In your experience, in terms of your own journalistic background, are there a number people who express the same things? Is this a counterbalancing theme to fishermen who want to have access to this area?

Mr. SAVADOVE. I think I do represent—

Mr. UNDERWOOD. Or is it just, you know, a handful of poets?

[Laughter.]

I want to know. I don't want to give the Chairman a free ride here.

[Laughter.]

Mr. SAVADOVE. Well, I am the only one who came down, but I can assure you, I represent, I suppose, a great number of people.

I was going to ask if I could address Mr. Saxton's comment about his constituency and the 7,000 families and neighborhoods. There is, of course, another constituency, which is perhaps certainly the silent one on matters like this, who support more purchases of wild areas and we have noticed—and have voted, actually, with their pocketbooks, by voting for money to be put aside from their taxes in order to buy more areas.

And they, I assure you, are for keeping New Jersey, the part of New Jersey that is still keepable, as it was.

Mr. UNDERWOOD. Keep New Jersey wet and wild.

[Laughter.]

Okay. Thank you.

I have a few other questions I would like to enter for the record.

Thank you very much.

Mr. SAXTON. There are two local environmental organizations. One is known as Alliance for a Living Ocean. We have entered testimony that they support the effort to maintain fishing activity on Holgate and my bill. And there is another organization called Clean Ocean Action, who has indicated that they have no objection and no interest in this proposal.

So the folks who are the most active in our area, relative to these issues, are not opposed and, in at least one case, in favor of this legislation.

Mr. DeLeonard, based on your legal analysis, do you believe there is a way for the Administration, the Bush Administration, to solve the Holgate problem administratively?

Mr. DELEONARD. I believe so, if they stick to what they say they are going to do. In the past, it appears the promises are made only to be broken by the next administration.

I think, yes, if they just make administrative decision and stick by it, that is equitable to everyone involved. We don't have to even pass a law, if that was to happen.

Mr. SAXTON. You have an attorney by the name of Bill Horn, who is with you today, right?

Mr. DELEONARD. Yes, that is true.

Mr. SAXTON. And I am sure that you have seen the letter that Mr. Horn wrote to the honorable Gale Norton, Secretary of Department of Interior.

Mr. DELEONARD. True.

Mr. SAXTON. I would like to, if you all bear with me for a minute, just read—this is a long letter; I won't read the whole thing. This is about an eight- or nine-page letter.

But I would like to reference one page. Mr. Horn writes:

"The Wilderness Act provides that there shall be no use of motorized vehicles in designated wilderness areas. However, the Act expressly provides where state or privately owned land is surrounded by wilderness access of such lands will assured."

"In applying this provision, the courts have repeatedly upheld not only that the property owners' right of access but their right of adequate access"—that is a new term, adequate access, as defined by the courts.

The courts held that, in a certain case, which is referenced here, Nelson v. the United States, the courts held that "because the road over which property owners had access would not provide adequate access to all portions of their land, including the land on which they wanted to develop cabins for rental, the U.S. improperly denied a permit to access their property by a different road."

In a different case, the State of Utah v. Andrus, the court held that the "state must be given access to school grand land within the wilderness such that is necessary for the state's reasonable enjoyment of the lands."

This draft CCP "mistakenly and repeatedly intones that the Wilderness Act requires the closure of Holgate Beach to motorized vehicles. Such an interpretation of the Wilderness Act completely disregards its clear language exempting state-owned land within the wilderness area. The statute and judicial interpretation thereof mandates that states be permitted not just access but reasonable access to their lands."

"The State of New Jersey owns and has jurisdiction over the land below the mean high-tide mark, not the Fish and Wildlife Service. That land is not governed by the Wilderness Act. Additionally, the state land is within or is surrounded by the refuge."

"Accordingly, the Department and the Fish and Wildlife Service must provide the state and its users with reasonable access to its property."

I think that is a fairly clear interpretation, as far as I can see, of the situation.

And as a matter of fact, Mr. Ashe, is this your understanding, that the courts have ruled, at least in these two cases, with regard to the reasonable access language?

Mr. ASHE. I know, Mr. Chairman, in the first instance, you said in areas where state or private land is surrounded by wilderness, and I know in the context of in-holdings within wilderness, much as the same as when we have an in-holding within an nonwilderness refuge, that we have a responsibility to provide in-holders with reasonable access.

Again, I imagine the question in this case is clearly kind of what would be reasonable.

Although, again, our wilderness doesn't surround the state—

Mr. SAXTON. At high tide it does.

Mr. ASHE. Well, there is still water area outside of the wilderness area by which people can access the tidelands. Access by boat is a reasonable form of access.

And as we have said, we continue to maintain that people can access the tidelands and the wilderness by boat.

Mr. SAXTON. Do you really think a court would rule that way? I mean, do you think the court will rule that way? I should ask you that way.

Mr. ASHE. I wouldn't want to predict what a court would do.

Mr. SAXTON. Well, I think it's fairly clear, based on the case law that is cited in this letter, that there have been good indications that the court would come down on the other side from you.

Let me ask another question on this regulation business. The regulation that was passed in 1971 pursuant to the Wilderness Act: The director may permit—I read this language before; I will just do it quickly—subject to restrictions he deems desirable, the landing of aircraft and the use of motorized equipment at places within the wilderness.

Now, this is an official part of the regulations that were passed by the Department of Interior, is it not?

Mr. ASHE. Yes.

Mr. SAXTON. And so the current regime has chosen to disregard this provision, saying that, in your opinion, it is illegal.

Has a judge ruled on this? Has this been challenged in court? Or has there been any reason for you to draw that conclusion based on any court action? Or did you just draw that conclusion because it was convenient to meet the goal that you seem intent on meeting?

Mr. ASHE. Neither. To my knowledge, there has been no court ruling on this portion of our regulation.

But, again, Mr. Chairman, when Congress passes a law, it is my job to take the law seriously and literally. And when I look at the law and the law says that we may allow the use of aircraft or motor boats where those uses were preexisting, those words are very specific.

And the Service's regulation is broader than the law allows. The Service's regulation says motorized equipment.

I don't think there is any question—there is no question in my mind—that the Service's regulation has overstepped the boundary of the law in that case.

And, again, when I asked our solicitors for advice, they gave me unambiguous advice. They instructed me not to take any action based upon that regulation, because they think that regulation oversteps the authority that we are provided in the law.

Mr. SAXTON. Mr. DeLeonard, let me move back to another question relative to any impact that you know of that would be negative in terms of the environment from fishermen's activities, either with or without the use of vehicles in the areas. Is there anything that we should know about?

Mr. DELEONARD. No. Actually, it was alluded to they don't want to walk through oil on the beach. I am from the shore, I have been there all my life, I have never seen any drop of any oil on a beach from a mobile sport-fishing vehicle.

The occasional tire tracks, which come and go with the wind. In fact, it has been proven in a study in Fire Island that tire tracking on the beach is actually beneficial to the beach in that it breaks up the salt berm that builds up on the beach and allows for wind action to cause natural dune formation.

Mr. SAXTON. As a matter of fact, that was part of the testimony early in this process, wasn't it? Not today, but previously.

Ms. Cobb from the—

Mr. DELEONARD. Yes, that was in the 1973 testimony.

Mr. SAXTON. From the Sierra Club.

Mr. DELEONARD. That is that analysis in there.

Mr SAXTON. Recent reports, she says here, actually show that tracking of heavy vehicles, such as beach buggies, can be beneficial during the winter months. They break up the heavy salt crusts that seem to form during the winter, and this permits the sand to blow freely once more and to form dunes.

Mr. DELEONARD. So, actually, it has been proven that there is a benefit to tracking on the beach. And like I say, I have been there all my life, and I have yet to see a drop of oil on the beach.

As far as trash is concerned, the fishermen that fish in beach buggies pick up trash on the beach. They don't leave trash. They see it, they grab it. You know, trash bags are required equipment, and we keep the beach clean.

We are pretty good at policing ourselves. We were conservationists before the practice became fashionable. We fish and we give the fish back. We give back to that beach more than we take.

Like I say, we are the number one in volunteer hours in the State of New Jersey, New Jersey Beach Buggy Association. And not all people that access the beach in a vehicle are New Jersey Beach Buggy Association, but that is their choice. I mean, membership is not a requirement.

Mr. SAXTON. Mr. Savadove, you mentioned in your testimony that there would be—I don't want to put words in your mouth or words in your testimony—but that there was some kind of environmental degradation as a result of the use of motorized vehicles.

Can you be more specific and tell us what you refer to, in specific terms?

Mr. SAVADOVE. It is not the specific harming the birds or leaving tire tracks, although that is part of it.

It is more of what Mr. Ashe referred to as the idea of just having a place where you can go that is—I think his word is wonderful—untrammeled by us, by man. There are plenty of instances—I walk that area a lot, and I breathe the fumes. So I have seen—

Mr. SAXTON. Mr. Kelly, I know you know the area very well. Have you ever seen examples of environmental degradation that would be worrisome?

Mr. KELLY. No, I really haven't, Congressman. And to hear that we ought to let nobody go there, so that when you go there, it is nice, doesn't make sense to me.

What we want to do is continue to have this area managed. And when you want to talk about environmental degradation, to me that means building on every square foot. And look at the rest of Long Beach Island.

Earlier in your statement, you talked about, does the Forsythe refuge impact most of the residents of Ocean County or all of the residents of Ocean County? And I submit that it impacts every person who lives in Ocean County. It impacts them in different ways, but one way is economically.

Long Beach Island is among the highest price real estate in Ocean County. In fact, pays a good percentage of the county tax bill. This part of the island is paying no taxes. We support that. We want that.

Ocean County, in fact, passed a question by two out of three voters to provide more open space. It get backs to: What is open space?

This is truly open space. I have a color photo of the rest of Long Beach Island. Look at every lot that is built. When you buy property on Long Beach Island now, you pay $.5 million and tear the house down to build a new house because there is no more property.

This portion of Long Beach Island is protected and ought to be. The Board of Chosen Freeholders and the people of Ocean County support it in that way. It ought to managed.

But it ought to be managed consistently, like it has since 1973. In 1973, this area became part of the Forsythe refuge, part of the wilderness refuge. Since 1973, there has been no environmental degradation. There has been no testimony today from anyone that it has been seen.

In fact, we heard from the sportsman who said what I said earlier: They are environmentalists. They are protecting the area.

We are simply allowing access to people who are paying the bill to preserve that future generations, and allowing them the right to fish there.

That doesn't seem to be a very horrible request.

Mr. SAXTON. Thank you.

Mr. McDowell, there is another area known as Island Beach State Park, which is under the auspices of the state and beach buggies are permitted there. Is that right? And if that is right, has

there been any environmental problem that you can point to on Island Beach State Park?

Mr. MCDOWELL. No, because, first of all, everybody gets a permit to go on there, and the Beach Buggy Association has been very supportive of Island Beach State Park, so I know of no environmental impacts due to beach buggy use at Island Beach State Park.

It is interesting that in October, the first weekend in October, we have the governor's surf fishing tournament there, and there are beach buggies and families and all kinds of things going on on the beach. And a couple days later, you go back, you can't even tell they were there.

Mr. SAXTON. If I were to say that activities involving fishing, fishermen, and beach buggies, in an environmental sense, are fairly benign—

Mr. MCDOWELL. Yes. And more than benign. They are the first people that blow the whistle on a problem out there in the ocean or the beach or the barrier dunes. They are the sentinels of environmental quality when it comes to the ocean and the bay shore, in my experience. And I receive lots of the phone calls.

Mr. SAXTON. Mr. Ashe, just for the record, if the current regulations are contrary to law, why hasn't the agency taken steps to repromulgate the regulations?

Mr. ASHE. Mr. Chairman, we are in the process of looking at our wilderness policy and evaluating our wilderness policy. And I think it will be our intent to consider repromulgating that portion of the regulation. Again, that has been the advice of our solicitor, to repromulgate that portion of the regulation.

Mr. SAXTON. Let me ask you to revisit something with me for just a moment, and then we will finish up here, because I think we have just about been over the territory as thoroughly as we can. But I just want to—Mr. Savadove said that the argument, in his opinion, that somehow this would set a precedent that would be followed elsewhere is probably not a worry, but that it has a great local impact. And he made reference to a negative local impact in terms of the environment, I believe, to be fair to his statement.

But it does have a rather significant local impact because of the uniqueness of this situation, where this activity has been going on for almost 30 years, while the wilderness area designation was in place.

So the passage of my bill, which you said earlier you opposed, which I wish you would review, seems to me to have a local impact, creating a fairness, creating a consistency in policy, creating a 30-foot setback of the border of the wilderness area, setback to the west. That doesn't seem like something that should be troublesome, to me, if, in fact, Mr. Savadove is right and it doesn't have great national meaning, in terms of setting a precedent or something like that, because of the uniqueness of this situation.

And I wonder if perhaps you could revisit this with the new administration and see if perhaps a new thought process might evolve here relative to supporting this bill or one like it.

I originally thought it might be a good idea to have something that one of our staffers called a transition area, where it would still be part of the wilderness area, but it would be transitional in that

motorized vehicles could back up on it, as spelled out in the 1990 agreement.

And then somebody said, "Well, maybe that is a bad idea because transition zones are something new. So why don't you just move the border 30 feet to the west." And I said, well, it makes sense to me. It accomplishes the same thing.

Would you be willing to revisit this with the new administration and see if there might be some new thought processes here that might permit the Administration to support the bill?

Mr. ASHE. I am always willing to explore it, Mr. Chairman, but, I mean, the position that is developed and represented here today is the position of the new administration. I mean, we have, you know, discussed this issue at length, as I know you have with Secretary Norton—

Mr. SAXTON. Oh, but, not at the highest levels.

Mr. ASHE. Higher than Secretary Norton?

Mr. SAXTON. Sure.

Mr. ASHE. I think that we certainly can continue to discuss it, Mr. Chairman.

I guess on the point of precedent, I think that a number of the statements that have been made, again, about environmental impact and about whether the context of western wilderness is rightfully applied in the eastern United States, I think that wilderness is wilderness. And the law doesn't differentiate between western wilderness or eastern wilderness.

And so, again, it is our responsibility, when Congress says that there are important values to protect, wilderness values to protect, to protect those values and take that seriously, until and unless Congress removes that protection.

Mr. SAXTON. Unfortunately, the buzzers are ringing again. And I am not going to put you all through the process of waiting for us to come back.

I think we have been over this pretty well today.

I guess I would just conclude by saying I am convinced, as I have been over the last couple of years, over the last 10 years in dealing with this issue, that the real issue of fairness is to permit this historic use to continue; that it does no environmental damage whatsoever; that there are 500 or 700 families, depending on the given year, that would be disadvantaged, in their opinion, quite severely and unnecessarily by the provisions of the CCP.

And I further believe, particularly in the last several days in looking at the legal aspects and opinions relative to this case, that ultimately the fishermen are going to win.

It seems to me it would be to everybody's benefit to let that process happen as expeditiously and as easily as possible, rather than dragging this out through the courts and all of the things that are involved in that.

So I am hopeful that we will be able to move this legislation expeditiously. And I am hopeful that we will be able to do it with the help and support of the new administration.

Thank you all for coming here today.

Dan, I look forward to working with you as we move forward on this and other issues.

And I thank my friends from New Jersey for traveling here to Washington today to share their points of view with us.

Thank you, and we will adjourn for the day. Thank you.

[Whereupon, at 12:40 p.m., the Subcommittee was adjourned.]