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## Legal Obstacles to Private Ordering in Marine Fisheries

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# Opening Comments for the National Fisheries Law and Policy Symposium

**Dr. Barry A. Costa-Pierce\***

I would like to thank the symposium organizers at the Roger Williams University Ralph R. Papitto School of Law and Rhode Island Sea Grant for their hard work in putting this exciting program together. I would also like to acknowledge the contributions of our colleagues at the National Sea Grant Office, the National Sea Grant Fisheries Theme Team, the National Sea Grant Law Center, and the Connecticut, Maine, New Jersey, and Woods Hole Oceanographic Institution Sea Grant Programs for their sponsorship of this timely event.

Modern capture fisheries – for all of the problems you have heard about – remain quite a remarkable field of dynamic, multi-disciplinary environmental scholarship. Stock assessment models have to be developed and tested, not only by mathematically astute individuals in agencies and universities, but also in the real world of business, management and policy. These scientific models affect the lives of thousands of people on a regular basis. Few other fields of scientific endeavor in the environmental sciences have such a remarkable breadth. Furthermore, recent information from the National Marine Fisheries Service indicates that we will face even greater challenges in the future.<sup>1</sup> Despite the conservation measures in place for fisheries on the Grand Banks, several species have declined drastically in recent years. According to one report:

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1. See Kenneth Sherman et al., *The U.S. Northeast Shelf Large Marine Ecosystem: Zooplankton Trends in Fish Biomass Recovery*, in *LARGE MARINE ECOSYSTEMS OF THE NORTH ATLANTIC 195-211* (Kenneth Sherman & Hein Rue Skjoldal eds., 2002).

By 1995, all major cod and flounder fisheries on the Grand Banks were closed and many fish species such as turbot and ocean perch have had their catch levels sharply restricted. These fisheries are slowly recovering due to a concerted effort . . . to enforce existing conservation regulations on Grand Banks fish stocks. As well, an increased abundance of species such as crab, clams and scallops has led to the [increased] development of these fisheries on the Grand Banks in the past five years.<sup>2</sup>

In 1999, the port of New Bedford ranked second in the nation for the value of its commercial fishery landings (\$129.9 million).<sup>3</sup> A nearly complete revision of management regulations for the scallop sector accounted for most of the success.<sup>4</sup> Therefore, it is possible for example, that five years from now we may be in a situation of having to plan for landing and processing not three million pounds per year of yellowtail flounder, but thirty million pounds per year.<sup>5</sup> But where have you heard lately of a mechanism being created for managing *success* in capture fisheries? All we hear about are the failures.

Fisheries are *that* dynamic. Our abilities to develop new, more inclusive mechanisms for multi-disciplinary fisheries scholarship with direct benefits to fisheries stakeholders are primitive, and must improve.

In the modern day context, fisheries decisions are not only tested in labs, but also in the courts of public opinion, and increasingly, in our courts of law. Over 100 lawsuits brought by both conservation and industry groups are now pending against the National Marine Fisheries Service.<sup>6</sup> These lawsuits are adding to a large and growing body of case law on fisheries issues.

My hope is that this symposium will add to this body of dynamic, ever-changing knowledge in fisheries law and help to establish additional routes of communication between the many diverse

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2. GOV'T OF NEWFOUNDLAND & LABRADOR, THE GRAND BANKS, at <http://www.gov.nf.ca/exec/premier/gbanks.htm> (last visited Feb. 26, 2003).

3. MADELEINE HALL-ARBER ET AL., MIT SEA GRANT COLL. PROGRAM, NEW ENGLAND'S FISHING COMMUNITIES 107 (2002), available at <http://web.mit.edu/sea-grant/advisory/marfin/htmlvers/newbedford.html> (last visited Feb. 26, 2003).

4. See *id.*

5. See Sherman et al., *supra* note 1, at 208.

6. Bart Jansen, *Senators: Fisheries Regulated by Lawsuits*, PORTLAND PRESS HERALD, May 10, 2002, at B4.

disciplines in fisheries science and environmental law. Researching the legal aspects of the fisheries challenges we face can only help broaden our perspectives and help deepen our understanding of the issues. During this symposium we will hear case studies that demonstrate the clear need for fisheries managers charged with developing sustainable fisheries to work with legal experts representing the larger public trust. By incorporating the legal aspects into our planning, we may find innovative ways to ease the endless conflicts we face in resolving the most difficult issues in fisheries resource management.

I would like to thank Bruce Kogan – Dean of the Law School, Roger Williams University, Ron Baird of National Oceanic and Atmospheric Administration, and Sea Grant for offering us this opportunity to meet and be challenged by each other.

