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TESTIMONY
Before the Committee on Resources
United States House of Representatives

Hearing on the status of the Eastern Oyster (Crassostrea Virginica) and the Petition to List the Eastern Oyster as Endangered or Threatened under the Endangered Species Act

July 19, 2005

Good afternoon, I am Joseph Gergela, Executive Director of Long Island Farm Bureau, and a 7,200-member general farm organization of farmers, fishermen, landscape contractors and citizens interested in a rural quality of life. In fact, Long Island Farm Bureau has several hundred members that are commercial baymen, lobstermen, fishermen and aquaculturalists. Long Island Farm Bureau is part of the federation of counties that comprise New York Farm Bureau and at the national level the American Farm Bureau Federation. I personally grew up on a 200-acre potato/vegetable farm on Long Island's North Fork and actually farmed with my father until 1987. I have served as Executive Director of Long Island Farm Bureau for last 17 years.

Thank you for allowing me to present testimony regarding the Petition to List the Eastern Oyster as Endangered or Threatened under the Endangered Species Act.

I am not a scientist, nor pretend to be one, or an expert on the science of the petition. I am, however, the advocate for commercial fishing and aquaculturalists on Long Island and in New York State. Long Island Farm Bureau as an organization joins our New York State Senate (Attachment #1) in strong opposition to the listing of the Eastern Oyster as threatened or endangered as it relates to the Endangered Species Act.

Under the ESA, a listing determination can address a species, sub-species or a distinct population segment (DPS) of a vertebrate species (16 U.S.C.1532 (16)). Since the Eastern Oyster is an invertebrate, the entire species would have to be listed under the ESA (or sub-species if information indicates that there are sub-species of the Eastern Oyster) if it is endangered or threatened. A species is endangered if it is in danger of extinction throughout all or a significant portion of its range. (ESA section 3 (6)). It is threatened if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its ranges (ESA section 3 (19)).

Under section 4 (a) (1) of the ESA a species shall be listed if it is determined to be threatened or endangered as a result of any one of the following factors:

1.) present or threatened destruction modification or curtailment of habitat or range

2.) over utilization for commercial, recreational, scientific or educational purposes

3.) disease or predation

4.) inadequacy of existing regulatory mechanisms or

5.) other natural or manmade factors affecting its continued existence.

In addition, Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species. This is the basis by which you are holding this hearing today.

After reading the Petition document by W. Dieter H. Busch it appears to Long Island Farm Bureau and its members that while the Petitioner raises legitimate concerns of the future of the Chesapeake Bay shellfish industry, this Petition is a back door effort, and an inappropriate use of the ESA to prevent the Asian Oyster from being introduced into the Chesapeake ecosystem. We believe stand alone legislation by the Congress to address that issue would be a far better way to prevent a possible "invasive" species from being introduced into the ecosystem. It appears that the Petitioner is using the ESA to usurp local decision makers by asking the Federal Government to weigh in by using the ESA.

That in itself is a dangerous precedent as this could have serious and detrimental affects on the Oyster producing industry in New York State and other states such as Louisiana, Connecticut, Rhode Island, New Jersey, Delaware and so on as the ESA requirements could make the Eastern Oyster endangered throughout the entire population range without justification or consideration of the variation of the 5 criteria of ESA.

The Economic impact of the ESA ruling at this point is impossible to anticipate. The ESA ruling could take many different forms with varying impacts upon the individuals and companies and locations of operations that engage in wild harvest or established aquacultural businesses. In the absence of specific regulations which would be imposed upon listing, LIFB could speculate that the effect could range from minimal or to total elimination of a 12 million dollar a year industry in New York State. Regulations from an ESA listing may preclude aquacultural shellfish farming which has seen a positive trend here in New York State. In 1990 there were 18 licensed permit holders of oysters, as of today there are over 50 according to New York State Department of Conservation Bureau of Shellfisheries located on Long Island. The shellfish industry on Long Island together with our elected officials have worked together through innovation and science to raise the production totals of 9,020 bushels in 1999 to nearly 50,000 bushels in 2004 dockside landings (Attachment #2). It is reasonable to anticipate that regulations would likely result in across the board increases in costs of operation. If there are no other species to farm as an alternative, investment would stop. Capital would likely be withdrawn and when facilities decline, they are likely to be shut down rather than be repaired or improved. The impact would be devastating to the industry affecting businesses, families and the economy of our state.

From a historical perspective, oystering has been prevalent as a way of life on Long Island for centuries. In the 1640's when the first English-speaking settlers arrived in Orient, they called the tiny village on the tip of the North Fork, Oysterponds. One only needs to look at the historical data to realize that there were many peaks and valleys of dockside landings for hundreds of years. Pollution from point and non-point sources, storm water runoff, pathogens, disease, predators, over harvesting and the whims of Mother Nature contributed to the rise and fall and rise again of the oyster industry. Companies such as Frank M. Flowers and Sons have been in the business since 1887 by developing new technology and adapting to changes in the mariculture process and estuary environment. Mariculture and Aquaculture is being used today to assist in production of high quality seafood. The most dramatic influence that farming the sea has had so far in New York State has been in the oyster business. It has basically saved this historically significant industry. Forty percent of the oysters eaten today are the product of the mariculture industry. New York State has been a national leader in development of mariculture. As early as 1784 officials in Oyster Bay realized that the oyster was in need of protection from over harvesting and was the first community to pass an ordinance

concerning shellfish. That particular law prohibited all but local baymen from taking oysters from Oyster Bay. In fact, Oyster Bay received its name in 1639 from a Dutch sea captain who was so impressed by the abundance of tasty oysters in this area. When he arrived, he discovered huge mounds of oyster shells, obviously the result of many years of feasting by Indian tribes. The shells provided Oyster Bay with one of its earliest industries, the production of lime by grinding of the oyster shells. There was no full-scale business relating to the oyster during Colonial times, as oystering during this period was part of the general search for food and was conducted on an individual gleaning basis.

The real Long Island industry got started in the Great South Bay in the early 19th century and remained an important enterprise for many years. As the taste for the nutritious mollusk grew in demand, the local industry became a national and international large-scale industry. As the business flourished more and more, baymen harvested the vast natural beds in the Great South Bay around a community known as Blue Point. Because of the "Blue Point Oyster's" compact size and hardiness, it was shipped to San Francisco and London. By 1823 the quantities and quality of oysters began to decline. With this problem occurring, the south shore baymen sought new areas to harvest oysters and found new beds along the north shore of Long Island. From Queens to Port Jefferson the bivalve was plentiful. Soon, these areas were also over harvested and thoughts and energies turned to planting the fished out beds with fresh seed oysters from the still bountiful Chesapeake area. In 1855 the first planting took place in New York waters. In planting the seed oysters, the baymen introduced an extremely important dimension to the oyster industry; that planting and harvesting was feasible and not entirely dependant on natural production. As early as 1850 the town of Brookhaven in Suffolk County granted the first leases of town waters for oyster cultivation and soon after other towns granted leases as well. The naturally productive areas of Long Island's bays were not leased and left open for natural harvest. In 1881 Brookhaven began one of the first public mariculture projects in town beds in response to a declining natural harvest by seeding open waters in its jurisdiction. In 1886 Eugene Blackford of the New York State Forest, Fish and Game Commission wrote "the oyster industry is rapidly passing from the hands of the fisherman to those of the planter and oyster culturalist".

Oystering equipment also changed and in 1874 the first steam driven dredge was used. The invention would do the work equivalent to 300 men using tongs. Later the suction dredge was developed and could do the work of 4 regular dredges or 1200 oystermen.

Attention to the east end of Long Island to the waters of Gardiner, Great Peconic and Little Peconic Bays were found to be conducive to maturation of seed oysters around 1890. Up to that time, fishing and scalloping were the premier industries in those waters. By 1900 the East End waters became an important maturation area as the industry moved west to east from New York City. Staten Island, Flushing Bay, parts of the Hudson and East River were areas of production of oysters. By 1927 and since that time, no oystering has been done when New York State condemned the waters around New York City for shellfish harvesting. The early years of oystering on Long Island were from 1855 to 1916, the time mariculture techniques were applied. By the 1880's New York State had become the center of the northern oyster industry and led the country in overseas and transcontinental shipments of oysters.

Oyster production went from its high in 1900 to its low in the 1960's. At the peak there were 150 companies working in the Long Island Sound with hundreds of boats and

thousands of men. By the 1960's the number of boats and companies were down to a dozen. Part of the downfall of the industry was attributed to increased pollution that came from commercial and residential development around the natural oyster beds that diverted river and stream flows, which resulted in a marked change of salinity. These problems were accompanied by over harvesting, oyster disease, and major storms that destroyed the major beds. In addition, there was an increase in predators such as starfish. All of these factors resulted in almost a total wipe out of the natural oyster in Long Island Sound and Great South Bay.

From that point in time in the 1960's, Frank M. Flowers and Sons and other companies and also with help from New York State, New York Sea Grant Institute and Cornell University efforts were undertaken to save the industry by developing hatcheries and new technologies for oyster production. In 1983 the industry got a big boost when the State of New York authorized New York Sea Grant of State University of New York and Cornell University College of Agriculture and Life Sciences to undertake a study and develop a statewide aquaculture plan. In 1983 the first draft was published and later concluded that aquaculture in New York could continue to be a viable healthy and vibrant industry.

In 2004, New York State passed new legislation: Laws of New York 2004 Chapter 425 (Attachment #3) "An Act to amend the environmental Conservation Law in relation to ceding underwater lands at Gardiners and Peconic Bays to Suffolk County for the purpose of establishing an aquaculture management program for the cultivation of shellfish and to repeal Chapter 990 of the law of 1969 related to same".

In 2002 Suffolk County Resolution 1229-2002 directed the Suffolk County Department of Planning, the Division of Environmental Quality in the Department of Health Services, and County Department of Public Works to prepare a plan for the conduct of a survey of underwater lands in Gardiners and Peconic Bays for the purpose of cultivation of shellfish. (Attached #4) This is a copy of the policy guidance document on shellfish cultivation in Peconic and Gardiners Bays conducted by the Suffolk County Department of Planning. While the county is only beginning to promulgate regulations for such a leasing program, an ESA listing for the eastern oyster will most likely make such a program moot, as most of today's shellfish farmers are growing the eastern oyster. It is expected that any expansion of mariculture in New York will also primarily involve the eastern oyster, the only oyster allowed by law to be cultivated in New York State.

In 1992 the Peconic Bay Estuary system was formally adopted into the National Estuary Program. Comprehensive Management Plan was adopted in 2002 after many years of the various government agencies at all levels, as well as stakeholder and citizen groups, to prioritize the actions and programs needed to protect and remediate environmental and economic resources of the ecosystem. In fact, as part of the CCMP, Long Island Farm Bureau has been working with the PEP to develop and implement a nutrient and pesticide management plan for the agricultural industry modeled upon the New York State Agricultural Environmental Management Program (AEM). Long Island Farm Bureau is currently working with the New York State Legislature on proposed legislation to further implement recommendations from the CCMP. In the latest version of the PEP newsletter, front-page article, it states, "Compared to other estuaries nationwide the Peconic Estuary is a relatively healthy system." (Attachment 5)

The point being that New York State has been and is currently addressing the issues facing the ecosystem from all the affects of the societal impacts upon the estuary.

While we could continue to dwell on the past, it is time to go forward with the fact that with all of the challenges, there continues to be an opportunity to revitalize and expand the oyster industry on Long Island and in New York.

For your information I have chosen 3 Long Island Farm Bureau members to profile their respective companies to demonstrate the real life human impact upon our members if the Eastern Oyster listing were to happen.

Frank M. Flower and Sons was established in 1887 by the Flower family. The company flourished until the late 1950's when oysters seriously declined. At that time. H. Butler Flower had the foresight to build one of the first major oyster hatcheries. As a result of oyster and clam aquaculture, Frank M. Flower remains as the last of the traditional shellfish companies in New York State.

This multi-million operation employs 50 local individuals. Six vessels ranging from 50 to 90 feet are used to harvest oysters and clams from 1800 acres of underwater lands leased from the Town of Oyster Bay. Some of these vessels date back to the early 1900's. The underwater lands are stocked with 50 million oysters and 50 million clams from the 5000 sq. ft. company hatchery every year. Frank M. Flower is also the major supplier of shellfish seed to aquaculturists and Town shellfish programs in New York.

Aeros Cultured Oyster Company Inc. was incorporated in New York in 1996. It is owned by Karen Rivara* and James Markow. They grow oysters, hard clams and bay scallops. The majority of their production consists of Eastern Oysters. It took them five years to work out a cultivation regime that would protect their crop from predators and allow them to manage around disease pressure.

They have a shellfish hatchery, three nursery system sites, and underwater cultivation grounds totaling 350 acres (250+ in New York.). In 2000 they founded the Noank Aquaculture Cooperative, which now has 14 members in New York and Connecticut. Since 2001, Aeros has increased their plantings of oysters by no less than 20% annually. This season they will plant 4 million oysters and 500,000 hard clams. They will donate several hundred thousand shellfish seed to town sponsored cultivation programs in New York and Connecticut. Their hatchery sells seed to other growers. The total hatchery production will be 9 million oysters, 600,000 hard clams and 400,000 bay scallops. Next year they expect this demand to increase by 20-40% for oysters. They also work with community groups to restore shellfish, mainly oysters, in local estuaries.

Their company has grown to earn income for 2 families and to employ 4 part time workers. Their gross sales for 2005 will approach $500,000. The economic multiplier for shellfish aquaculture is 2.5, although multipliers as high as 4.0 have been used for some operations.

The economic impacts would be as follows:

Crops under cultivation	$800,000	
Boats	175,000	
Nursery System		60,000
Hatchery		60,000
Seed		90,000
Equipment		90,000
Grounds		45,000
Total Investment	$1,320,000	

* Karen Rivara currently is on Long Island Farm Bureau's Board of Directors and is its Secretary.

K&B Seafood Inc. started in 1992 by Thomas J. Kehoe and Roger S. Boccio is located in East Northport, New York. Tom Kehoe serves as President and Roger Boccio as Treasurer.

K&B Seafood has annual sales of $5,000,000. The company employs 14 individuals. K&B Seafood currently ships "Eastern Oysters" all across the United States, Canada, and overseas to Hong Kong and Japan. They are currently developing new markets in other countries.

In addition to K&B Seafood, there are more than 60 companies engaged in the interstate sale of Eastern Oysters on Long Island, and a total of 191 companies across New York State. In addition, there are over 50 individuals and companies actively growing Eastern Oysters on Long Island. This does not include the thousands of restaurants, retail fish markets, and supermarkets that trade oysters daily. Thousands of jobs that would be lost due to the frivolous listing of our oyster as endangered.

In addition to the economic impacts, if New York shellfish farmers are not permitted to grow the eastern oyster due to an ESA listing, there will be less oysters in the environment, creating less habitat, spawning less offspring, filtering less water, and removing less nitrogen.

Thank you for the opportunity to speak today on behalf of our industry. I would be happy to answer any questions.