

Fabienne Lord: Well, what do you remember from the 1990s?

Andrew Rosenberg: So, how do you want to structure that? So, I began working for the Fisheries Service in 1990 as a science advisor. I was the guy from the Fisheries Science Center who went to the council to present the science advice from the Fisheries Science Center in Woods Hole to every council meeting. Both Mid-Atlantic and New England, I would go to the meetings and either present the science advice or respond to questions. I did that for almost three years, two and a half years probably. Then I had another position for a little while working out of Washington. Then I came back as regional administrator and a member of the council to implement the recovery plan. What period specifically do you want to talk about?

FL: Amendment 5 and Amendment 7.

AR: So, Amendment 5, I was mostly a science advisor leading up to Amendment 5 until the very end when I was actually the representative on the council. So, initially when I came out, I had been working in England before I came back. Even though I'm from here, I wasn't really involved in the fishery or the debate prior to 1990. I had been out of the country for eleven years at that point, so a lot of it was fairly new to me. The science wasn't new, but I hadn't been involved in the debate all through the [19]80s. So, a couple of things struck me when I first started going to the council meetings as science liaison to the center. First of all, at my first council meeting I was told I was not permitted to sit at the table with the council. Because if they wanted something from me, they would ask. Only the regional administrator sat at the table and the scientists shouldn't think that they actually have a role in management. So, I was told that when I presented any comments, I could go up to stand at the public microphone and make my comments from there, and if they wanted something from me, they'd tell me. I was also told that basically, they didn't want to hear from the science center in most cases because the council didn't feel that that was helpful. I remember the council chairman at that time once made a speech saying there's an opportunity for people to go to Washington for new council member training – which wasn't required. It was optional at that time, now it's required – to get an overview of how the regulations work and how the conflict-of-interest policy work and an overview of fishery science and so on, for new council members, like an orientation thing. Then he said, "But just remember the Fisheries Service and the scientists are trying to brainwash you. So, if you go, take the drinks and stay in the hotel, but don't listen to anything they say." I was on the council record at the time. I remember council members who would say, "How come they keep talking about these mort something mortal rates?" Referring to mortality rates, which is the key parameter in any fishery management controlling how much fish infested it is. "We don't care anything about mort something rates, we just care about fishing," as a council member, a guy who had been in the fishery for a long time. At the time, we were presenting the assessment advice. In the beginning of the [19]90s, the advice was if the council for groundfish particularly – it's not what it's called. You're focusing on both groundfish and cod for the Amendment 5. That because there was some good reproduction for both cod and a little bit for haddock in the late [19]80s, and some for yellowtail flounder, that if the council took major restrictions then – and major restrictions at the time, would have been a relatively modest reduction in fishing mortality rate, which would have required either effort per catch control, but not nearly as severe as ultimately required in [19]95. Because of that good recruitment, the stocks could rebuild quite quickly and there really wouldn't be very much reduction in catch and the industry could be

stabilized if they would somehow control the fishing mortality, which is either control the catch or control the effort. Basically, the council just dismissed that and said, "Yes, but we don't want to take any restrictions." So, they blew that opportunity for stabilizing the fishery and that led to the stock collapses. But we had a really good opportunity 1990 through about 1993. I actually did analysis later and used it in a lot of talks and things. If we had taken restrictions at any of these points well before 1994, [19]95, when the emergency happened, we would have had much less impact on fishermen in terms of reductions, much less impact on the stocks because it would've rebuilt more quickly. I was presenting that information over and over again, and it was just dismissed. That somehow the science center was wrong, the science center had some other agenda, and so on, because people were unwilling to take any restrictions. Then as now, it was mostly about allocation, who gets what.

FL: Well, speaking of over and over, other people told me that the science center made some mistakes in the early [19]80s.

AR: Yes, not really. If you actually look at the science center advice, it said, "You are overfishing, the stocks are going to continue to decrease." That turned out to be exactly true. Said, "There's a little bit of good recruitment, you can make use of it." That turned out to be exactly true. "If you don't, the stock will decline." That turned out to be exactly true. "If you back off on fishing mortality rate, these stocks can recover." That's exactly what happened in the late [19]90s. So, if you actually look at the science advice versus what happened, it was pretty much spot on all the way. But every single time it was claimed that it was wrong, every single time. Is there variability in the assessments, is there uncertainty on some stocks, of course there is. There isn't anything. But the basic advice, certainly the advice that – I was just delivering advice from a whole bunch of people at the science center, I wasn't creating it or anything. As far as I can tell, it has been completely blown out by what happened subsequently. I don't think any of the advice that I gave turned out to be incorrect. Again, it wasn't my advice, I was delivering the advice for the science center, but any of it was incorrect in substance. Could somebody say, "Yes, but there was a difference of 0.1 in the mortality rate of what you said it was in 1992 versus what we now think it is with better data for that same year, three years later," sure. There was a long, long argument later on in the [19]90s about what should be the actual target fishing mortality rate. Should it be 0.2 or should it be 0.3? At the time, I remember saying, "The current mortality rate is over 0.6, so maybe you got to cut it in half, maybe you cut it by more than half. But actually, you have to resolve that issue before you start doing something." The answer was, "No. We have to know precisely where we're going to be before we take any restrictions." So, the consequence of that was as it still is. The consequence of doing that is you delay action and the condition gets worse, and therefore the required restrictions are greater because the stock keeps going down. Every year you delay is not neutral, it makes it very much worse. It's like digging a big hole and saying, "Well, how are we going to get out of this hole?" while you keep digging the hole. It gets harder and harder to get out of the hole because you keep digging while you are arguing about how you're going to get out. That's exactly what happened in the fishery, and to some extent still happening although things have turned around for most of the stocks now. So, you've had major recoveries with scallop and haddock and some of the other species are slowly recovering and have been for some years, which again, was what the science advice said would happen. Basically, it happened exactly as the advice said, and it was still claimed it was all wrong even though the history showed that it

effectively happened almost word-for-word what the advice said. So, in the late 1994, I was asked on an acting basis to go to the regional office as the head of fisheries management and to fit in the regional administrator's position because the regional administrator had stepped down. It was Allen Peterson at the time was acting regional administrator. On Amendment 5, there was this complicated history where there was a lawsuit. The Fisheries Service agreed to the lawsuit and had a consent decree saying, "Yes, the claims in the lawsuit are correct. We have allowed over fishing. We'll do something about it." Put it back to the council who was outraged that in fact, even though they couldn't disagree that they hadn't done their job because it was pretty clear that they hadn't, they were still outraged the Fisheries Service didn't defend them with the position of saying we haven't done our job. Richard Rowe, who was the regional administrator stepped down, moved to Washington. Now, Peterson came in probably the beginning of 1994, something like that, I can't remember the exact dates, as acting. He was the previous regional administrator and had been science center director until he was ill for a couple years then he came back on a temporary basis. He didn't want to continue doing it for a whole number of personal reasons, so I was asked if I would go to the regional office on a temporary basis. I'm not sure I had even applied for the position of regional administrator at that point. But sometime during that period, I did apply rather as an outside candidate because they were having trouble finding somebody who wanted the position. But I was an outside candidate because I was coming out of the science center. I was perceived as being too young. Then there was concern that I didn't have political experience. I sat in effectively as regional administrator from late 1994 just at the point where the big closures on the emergency had been declared in the summer. The big closures on Georges Bank, we implemented in the fall once I was in that position. So, that was sort of my first couple of weeks on the job. Then once the emergency closures were put into effect, the task was to put in place an amendment and a rebuilding plan, which ultimately became Amendment 7. Under Amendment 5, you had closed areas and some reduction in fishing mortality. But it wasn't going to be anything like what was going to be needed to end overfishing, which was the requirement of the law. This was before the ninety-six amendment. But still there was a requirement not to over fish, which just a little bit weaker than the previous requirement. So, my job basically was on both groundfish and scallops, the other plans as well, but primarily groundfish and scallops to work with the council to try to agree a recovery plan. That recovery plan clearly needed a major reduction in mortality rates on principal stocks. The council adamantly at that time held to the position, as many still do in New England, that it had to be you could not control the catch. It was unfair to have catch quotas. The catch quotas didn't work. That was the culture and the conventional wisdom of the New England Council right from the 1980s, right through into the [19]90s, which is why we had effort controls. There's three options in the sense of closed areas with control effort. But you either control catch or you control effort. The council for many years, up until Amendment 5 really, insisted that you did not need the control catch and you did not need to control effort. You could just have some gear controls. You didn't have to control the number of people in the fishery. You could just control the nets a little bit and have some seasonal closures to protect juvenile fish. It just doesn't work under any reasonable model of how fish populations work. While that was pretty obvious and was repeatedly told to the council, in the early [19]90s the council presented Amendment 4 and insisted there would be no limited entry, it would only be gear control. The council had been told that Amendment 4 was unacceptable. But they said, "We don't care about that. We're doing it anyway." So, they basically put a plan in place that really didn't have any impact on fishing pressure on the stocks. It moved people around, but it didn't have any pressure. So, Amendment

5 finally said, there's going to be a limited entry system, which the council was opposed to. Since the council won't accept catch quotas, there needs to be control on fishing effort, which was developed by the council because the culture was so strongly set on you can't use catch quotas. I asked people about that, because again, I came in 1990 and I didn't really know where that came from. They said, "Oh, we had catch quotas back in the late [19]70s, and they didn't work." If you look at the graph, what happened after the extended jurisdiction in 1976 is the stocks started to increase, and then the U.S. catch started to increase, there was no more foreign catch. So, the U.S. started to increase along with the stocks and as the fleets built up. People talk about it as if they've been fishing for a thousand years here. But the fishery was substantially built up after extended jurisdiction in 1976 when farm vessels were pushed out of the fishery completely. That's fine, that's what was supposed to happen. That was the Americanization of fishery. Then if you look at the graphs of both catch and biomass, you see that in around 1981 everything starts to decline. Then again, there's a little peak at the end of the [19]80s because of good reproduction, and then it declined well down into the [19]90s. So, I asked, "So, what happened in 1981?" They said, "Oh, we took those catch quotas off because they didn't work." I said, "Well, if everything declined after that, what do you mean they didn't work?" The response was, "Nobody liked them because they restricted the fishery," which was correct. That's what they meant by work, was that they got in the way. So, based on that the culture has been catch quotas don't work, you can't use catch quotas in a fishery, and therefore you can only control effort. So, it's interesting to me now to read in the paper and to hear people yelling the fisheries is just designed to this terrible effort, (David C.?) system. Well, that was designed by the council, demanded by the fishing industry because they didn't want catch quotas. That's actually true of most of the measures. The only thing that's not really true of it is the big closed areas, the year-round closed areas, not the low-end closures. In fact, most people don't disagree with the year-round closed areas. That's the only one that was really designed by the scientists but agreed to by the council. Of course, everything was agreed to by the council even if they deny all culpability thereafter, which is the way the system works. Once they design it, they present it, then it's the Fisheries Service problem all their fault as if they were never involved. But the David C. Program was demanded by the fishing industry effectively. Because they didn't want a limited entry system, they didn't want any control on the fishery. But that doesn't work under the law. So, back to [19]94 and [19]95, the big area closures were implemented and (David C.?) reduction was put into place. The task then was to negotiate a set of targets and then some measures to get down to hand over fishing under what would become Amendment 6, which had a control which were important but were a sideshow with putting trip limits on how to catch, very effective trip limits in that case. So, my role as a regional administrator, I actually was confirmed in the position in [19]95, was to sit in the council. Now, the regional administrator generally doesn't vote, is a member of the council and the only federal government official that's a voting member of the council. You can vote, but generally you don't and you abstain. The reason that you do is that the council makes recommendations to the Secretary of Commerce who will then approve or disapprove or partially approve the plan. As the representative of the secretary, which is what the regional administrator is, you need to preserve the secretary's option to approve or disapprove the plan. If you vote yes, for example, then it can be construed as compromising the secretary's ability to turn down a plan. Or if you vote no, the same thing the other direction. So, there are only a few circumstances where you vote as a regional administrator or I voted as a regional administrator. There's no absolute rule. It's up to the person at the table with advice from counsel and so on, general counsel. But I just

decided that there were cases that I needed to vote and that I needed to make sure that I had backing in Washington to do that. Those were cases where I felt I had to vote no to tell the council they were going in the wrong direction. That if they proceeded that way, that portion of the plan or the plan as a whole would not be approved. That it was unacceptable to me. Because in fact, the way the system works is that the council plan goes to the regional administrator who makes a recommendation to the head of the Fisheries Service who makes a recommendation to the secretary. So, the first recommendation comes from me. Well, if I knew that something was unacceptable, I felt I should tell the council by voting no. I would tell them verbally, but I'd also vote against it if I thought it was completely unacceptable. If it wasn't that clear or if I didn't think that I would uphold that in Washington, then I would abstain. If I thought it was a crucial portion of the plan, I would vote yes. But probably eighty to ninety percent of the time I would abstain on any votes for actual measures. But I still would talk a lot at the council like I talk a lot anyway. That was a little different from the way the previous regional administrators had handled it, as I understood and as I observed. I was probably more science-based and more direct in the negotiations. I was also much more active with press because I actually thought we should be talking to the press as much as possible, which included fisherman press, public, regular media, and so on. So, I was probably much more engaged with the press than previous and subsequent leaders to Fisheries Services, which I actually think helped. That's probably the time when you see most of the stories about what was going on in the fishery in the broader *Boston Globe*, *Portland Press Herald*, that kind of stuff because I was talking directly as much as possible to reporters from wherever. I was also spending huge amounts of time going to fishermen meetings outside of the council. I had a rule that I would meet with any group perhaps any time that was possible for them and for me. I only had two rules. One was I would not meet in a place that served alcohol. The second one is I would not make any regulatory commitment in the meetings because otherwise I'd have to take administrative record. It becomes part of legal proceedings and everything else. So, we would have a general discussion, but I wouldn't say, "I will do this in the regulations," under any circumstances. I must have had dozens of meetings every year like that with various groups, in addition to the council meetings and all the committee meetings and everything.

FL: That was not something the previous director did?

AR: Yes, they did but probably not quite as much. They probably did it differently. They didn't do it as an open invitation. The previous administrators, I think they had more history with the management side of the fishery. While they both had some kind of background, they weren't coming into it really as scientists and their specific style was different. It was much more of the council was in control. But I felt like the council needed to do things, but I viewed the legal mandate was to end overfishing. The people in Washington that I was appointed by, it was a career position not a political appointee. But I was reporting to political appointees and they were saying, "We want something to happen here for a recovery plan." So, I probably was more aggressive at it than previous – I think as far as I know previous regional administrators, you always talked to fishermen all the time. That's what you spend most of your time doing [laughter]. They probably just did it little bit differently. Instead of just saying, "I have an open invitation, I'll go to meetings anywhere, anytime," they probably did it more informally. They knew more people in the industry and all that sort of stuff. But the idea that I as regional administrator, any regional administrator, you often get people coming up and saying, "You

never talk to the fisherman." It's like, what the heck do you think I do all day long? Go to the regional office, everybody's sitting there on the phone. Who's on the other end of the phone? Fisherman. Go to every meeting, you spend all your time talking to fishermen. Who do you think we're talking to? I would spend, as do all the state directors and everything else, you spend all your time on the road driving to meetings to listen to what people have to say. There's this funny dynamic of people would submit comments, and if you don't, then you'd say, "That's for your comment," or, "That's interesting," or you'd talk with them about it. But if you don't do exactly what they say, then they've assumed that you didn't hear them, you've completely ignored them, and you're not responding to fishermen. Well, ultimately the plans are the compilation of thousands and thousands of comments and opinions and viewpoints and so on. So, you don't do exactly what anyone says. You're effectively in a position of making everyone unhappy because you are negotiating whatever solution you can get, that you can get through the council process. Then you can get through the political process for approval because the approval process is the legal process. But there's still enormous political influence with members of Congress and everybody else calling and trying to influence the secretary, even though the decision, the approval or disapproval, is an interesting structure. Ultimately, Fisheries Service on behalf of the secretary can only approve or disapprove based on the national standards and other applicable law. So, in effect, if I was the first line of approval, and I don't think there was anything that was approved to disapprove, that wasn't in line with my recommendation at the time, subsequently I'm not sure. So, if a plan was submitted and I thought it wasn't a very good plan, and you should do it a different way, I don't have the legal authority to disapprove it because I don't think that's the way you should do it. I only have the legal authority to recommend disapproval if I can show that it doesn't meet the national standards of the Magnuson Act or other applicable law, the Marine Mammal Protection Act, or something else. If they recommend using David C. and I think there should be catch quotas, that's too bad. I can think anything I want, but I don't have a basis for disapproving it unless I can show that David C. don't meet the national standards. So, your constraints on what you're allowed to do are pretty narrow, and that's true of the secretary as well. Effectively, the approval is at the Fisheries Service level. The secretary usually doesn't enter into this much more than that, although sometimes it's portrayed that the secretary does but that's for more for political purposes than something else. So, there was this complex negotiation going on. You go to fishermen meetings, you go to when fishermen are at it. Everything is in a public meeting. There's always this portrayal that there's all these backend deals. I couldn't go to lunch without having a public meeting. Everything is public. Lucky, they allowed me to have bathroom breaks, which wouldn't have to be agreed by the public [laughter]. You can't do anything except in a public setting because that's the way the law is structured. You know you're going to get sued on everything, so there's no sense that maybe you can do something and nobody will see because everything is going to be part of the administrative record. I think I told you this when I went to UNH as dean of life sciences after I left the fisheries. So, I was sitting with a group of deans in my last session while I was negotiating the position. The other dean said, "So, you're coming from outside the university, what kinds of things have you been working on in the government?" I said, "I'm spending a lot of time on litigation." He said, "Oh, yes, we've had a couple of lawsuits in the university over the last five years, but it's just really been a big turmoil." I said, "Yes, when I left the office yesterday, I had 125 open lawsuits that I was dealing with." He said, "Oh." [laughter] You're sued on everything by both sides and almost all the time the government wins because you've got tons of legal advice and you're really very constrained in what you can do. The government

doesn't win because you can manipulate the results. The government wins because you are marching along following the law. People are angry and they sue as if you didn't follow the law. But you're sitting there stepping through a pretty well-defined process. So, someone can claim that you had some other motive, but...

FL: It is hard to prove, yes.

AR: Yes. It's incredibly hard to prove because most of the issues are procedural. Did you follow the process? You can't say, "I would have done it a different way therefore the court should overturn." Frankly, the government can't make the position that we should have done it a different way and therefore the court should overturn it. You can't sue the council anyway. The council is not a legal entity that can be sued. So, you are in this incredibly complicated negotiation with people from the industry and the industry groups and the council members who are large. The council members largely are the industry, including the state directors to a great extent because the state directors are mostly responding to the industry in their states. Other than a little bit of public prep where people will read it with their coffee in the morning and say, "Gee, the poor fishermen," or, "Gee, the poor fish." None of those people actually engage in the political debate. You never hear from the general public except for an occasional writing campaign from an environmental group that gets public interest up and you have those comments and they're treated as what they are, public comments. But the people are there day-to-day engaging in the industry, so everything's negotiated.

FL: How is this affected in the work environment at the...

AR: At the regional office?

FL: Yes.

AR: Well, you get a little bit of a siege mentality. You've got a lot of staff and some who've been there for quite a while, some who are new, young professionals who are coming in who might be just a couple years out of school and they did a biology degree or they did a political science degree or whatever they might have done. They spend huge amounts of time talking in those days because two things were happening. One, the regulations were up for debate and it was pretty clear that they were going to be restrictive. So, there weren't any options on the table that were going to be less restrictive. People would sometimes maintain that, well, how come you don't just let us do whatever we want? Well, because the law says you can't. But even if your congressman tells you he's going to support you, your congressman voted for a law that says that you can't overfish. That's coloring the entire debate and the fact that the stocks were way down. They were way down. Yes, people could still make a living on it and people would rather go and try even under very poor stock conditions than say, "No, I'm going to back off and let the stocks recover," for all kinds of reasons. One, they don't have much choice. What else are they going to do? They can't just stop working. It's not like there's a lot of other options where they could make anything like the kind of money they could make fishing. It's not a low-income occupation. It's very lucrative, and what are the options? Go flip burgers, go bang nails and be in construction? Well, yes, you can make money with that, but it's an entirely different kind of business. So, even if the stocks are way down, people don't want to stop doing it. But

that causes a lot of stress too. Look at the scallop industry, and in the early [19]90s they were making twelve-day trips, now they make three-day trips when they catch more and it's worth more and the product is better. The point of that is that people are under stress. It's not just from the regulations, it's also from the conditions of – talk to a lobsterman now. It's not like they're bringing in a lot of lobsters, and it's not because they're restricted because the restrictions are pretty mild on lobsters. In fact, there isn't very many in the southern part of the range. Somebody says they're restricted because they only can set eight hundred traps, 365 days a year. That's a little bit of a strange view because eight hundred traps is a lot of traps. So, the attitude in the office, the people you're talking to, are under stress and they're angry a lot of the time. It's not like everybody who calls you is screaming and yelling, but they all are trying to figure out how they're going to work through a very confusing, very difficult situation. That situation, in my view, is created by the fact that nothing was done to regulate the fisheries for, at the time, twenty years since the Magnuson Act was first passed. If in fact we had put reasonable regulations in place much earlier on, it would have been a very stable fishery with quite good income and that had organized itself around that set of regulations. But now you're trying to fix it after the fact, and the only way you can fix it is by restricting people from what they did over the last twenty years and they're not going to like it. So, the kids who are answering the phones day after day after day, yes, they're stressed. They're being told by some people that they're nasty and evil. I was being screamed at and threatened and told that I was evil. I had people sending me pictures of their babies saying, "You're starving my child to death," and then you go home and have a nice evening. That's the setting. Sure, I had a lot of people that were entirely professional, very pleasant, would be very friendly. Even if they disagreed with what I was saying, they'd say, "No, I want you to take this into consideration." I actually was known for getting out of my chair at the council table, walking back in the audience, and asking a fisherman something to figure out. Sometimes it was, "So and so said you can do this. Is that really possible?" Because I'm not a fisherman and I didn't pretend to be a fisherman. But is it stressful? Yes, you bet.

FL: Is there a lot of turnover of employees?

AR: Less than you would think. I'm not quite sure why that is. You really got to want to do it. I think there's a lot of turnover at the beginning at the youngest employees, and there's a lot of people who want to move out of the sixty management jobs into one of the other positions. There tends not to be huge turnover in government anyway because they're good jobs, good benefits, and very secure, but very stressful. Most of the people who were doing it really believed in what they were doing, they thought this was an important job to do, they believed in anything other than, "This is an important job to do, I'm trying to implement public policy." Some of them would come from a fishing background, some of them would come from an environmental background, wherever they came from. I think among the younger staff there was turnover quite a bit because you're some kid in your twenties and people can be pretty rough. Because if they think they can intimidate you, they'll use that as an advantage. Everybody's looking for some advantage. I didn't like it when people want to disagree and yell. First of all, I was the regional boss, they could yell at me all they wanted, they were entitled to do that. That's part of the job. I didn't think that anyone ever had the right to be abusive or threaten me. But if they want to get mad, they can get mad at me. I didn't like it when they got mad at the kids sitting on the desk answering the phone and taking down comments or helping draft regulations.



They're doing their job. They're doing what they're supposed to do. I particularly didn't like it when elected officials or their staff would be abusive, which happened more often than it should where they would scream and yell at young staffers and tell them they were stupid and there's no call for that. They want to yell at me, fine.

FL: They were not even fisheries employees then.

AR: No, they were representing their constituents. But there was particularly one who really that's the way he thinks it's appropriate to deal with people. Well, you can do that to me if I'm the boss. You want to threaten me and tell me I'm an idiot and whatever you want to do as legal administrative, fine. You don't do it to some twenty-five-year-old kid who's sitting on the desk telling him he's too stupid to be in the position and what the hell are they doing there? That's not appropriate for anybody who aspires to be a political leader. That happened too. Is it ever appropriate for somebody to physically threaten anybody? No. Did that happen? Yes.

FL: How many times?

AR: To me, dozens. In any business, there's always going to be some fringe.

FL: No, but did you take it seriously or you just...

AR: A couple of times I took it seriously. When somebody was out of control and face-to-face, they would threaten me, I would take it seriously. The letters and the calls, no. I was never bothered outside of work. Nobody ever stopped me on the street and blocked it. Nobody ever called my house. Nobody ever talked to my wife. That's because when somebody was that unreasonable, the rest of the industry was offended by it too. I know that some of my friends and my colleagues who lived in town told people to back off. But I often know that other members of the industry weren't particular friends of mine said, but you don't get it that way. But you're always going to get a few who are just going to be they're out of control and they think that anything is, well, yes, but you're trying to put me out of business. No, I'm not trying to put you out of business, I'm doing a job. I'm doing that job because that's what the law says. I'm doing it because I'm a professional. It's not like I had a personal stake in any of this.

FL: Yes, but they do.

AR: They do.

FL: That is the weird thing.

AR: But that's the weird thing and I understood that. When I taught this stuff later, I'd say a lot of times somebody from outside or from an environment, "Why do fishermen do this?" Well, you got to meet your house payments and your boat payments and keep the kids in school and keep food on the table. They're holding as other people would, they're trying to make a living. They want to keep fishing. There's nothing unreasonable about that. But that doesn't change the public policy job, it's a public resource. Of course, they have a personal stake in it. What I could never figure out is how an elected official or a reporter could accept the premise, which they

seemed to over and over again, that the government is biased and out to get the fishermen and has some hidden agenda. But the fishermen are entirely objective and they're just saying it because of what they observe on the water and because that's where they work. Well, they're not objective. Of course, they're not objective. But what would be my rationale for it as a scientist or as a regional administrator for claiming the stocks were overfished if they weren't? Why? Because I like to be screamed at? I like to have somebody tell me I'm starving their kids to death? Because I really enjoy that? What would be my rationale? Why would I do it? Somebody's paying me off, who? [laughter] To do what? Why would I have any reason for bias as opposed to have a nice, quiet life?

FL: For a lot of them that is the way of life, that is who they are. That goes beyond any other job.

AR: Yes, but what I can't accept, what I don't understand is so fisherman would say, "This can't be right." You can argue over whether the science is right or anything else, but that an elected official or a newspaper reporter would accept that they're unbiased and that I'm biased. How could that be? There's a recent case they're attacking Charles Juliand who's a prosecutor who works on fisheries enforcement now, who I've known for quite a while. I don't know him well, he's not a personal friend or anything, but I worked with him for some years. Really smart guy, did his job very effectively, and they're attacking him. He has something against fishermen. He wants what would he have against. So, you've got guys who actually are accused of breaking the rules, and you've got the guy who's supposed to prosecute them. You're saying that the guys who are accused of breaking the rules, they are unbiased in their view of what happened [laughter]. The prosecutor who's supposed to figure out who you take to court and who you sign under civil fines, he's all biased. How could that be? It doesn't make any sense. So, do people do things that are wrong in government? Sure. But it's not that they're the public, at least the political persona, is wrong. I once was at a meeting or told too many times, I was at a meeting with – I don't even know what the meeting was – but there were a bunch of people from environmental groups, there were a bunch of people from fishing groups and so on. This was after I'd left the regional office, and I was working in Washington. I saw everybody wearing name tags and I saw a name tag from a woman that I had talked to on the phone a number of times. It was from one of the environmental groups. So, I walked over to her and I said, "Hi, I'm Andy Rosenberg, we talked on the phone a bunch of times." She looked at me and she said, "You're not Andy Rosenberg." I said, "Well, yes, I am. What do you want, for me to show you my ID?" She said, "No, Andy Rosenberg is a big, fat, old bureaucrat who must smoke a cigar and sit back in his chair." I said, "Well, yes, I am really." I was probably forty-two at the time. She said, "Well, that's what we all think is that all the bureaucrats are these big, fat, bald guys who just sit there and make up rules." I said, "Well, sorry to disappoint you." That's the public perception of government. Whereas if you actually work in the regional office, you got a whole bunch of people who are working really pretty hard, taking a whole lot of abuse, and trying to figure out how do you do the job? Yes, you expect everybody to be mad at you unless you're naive.

FL: Well, because they did not really have any precedence in making rules for fisheries.

AR: Well, I mean, yes. The rules were very weak previously.

FL: So, you met them and you changed them along the way.

AR: Yes. Well, there was tons of precedent all over the world. There wasn't any magic. There wasn't any secret about what needed to be done or any big confusion about, oh my God, how do we do this? It was pretty damn obvious. The question is, what can you negotiate with the community? But people would say, "Oh my God, your rules are so complicated. They're such a mess. You're doing all this stuff." I'd say, "Hey, if the system would allow me to, I could write a plan that I can guarantee would recover the stocks, virtually guarantee, that everyone would understand, it would be incredibly simple, it would work, there wouldn't be any question about what you would do, and you'd all hate it." Because all of the complications is because you're trying to gain a little left-handed hook fisherman who fish on alternate Thursday, they should have an opportunity. I know a guy who fishes on this little corner of the bank and he only sets up [inaudible] nets and blah, blah, blah. Well, we don't want to restrict that guy. The recreational guys say they have to have an opportunity. The boats under forty feet, they have to have a special opportunity. The big boats, they have to have a special opportunity. So, you're creating this incredible (MOAs?) of regulations because you're doing a negotiation. It's just like legislation, everybody says, "How come Congress writes all these crazy complicated laws?" Because they've got a thousand interest groups who are all saying, "If you just put that in, I can back it." The interest groups are everything from Joe who lives down the street, to the oil companies. In the fishery it's you've got every fisherman's group, every state who's trying to get a little more advantage for themselves, the recreational groups who are trying to get more advantage for themselves. It's all about allocation between groups, who gets it. Nobody cares what the actual quota is. The only reason that they fought over whether they should be quoted or not, is it's much harder to get people to agree on how to divide up the pie. If the pie is smaller, it's harder to get people to agree. So, the first thing you do is you say, "Well, everybody don't worry, we're just going to increase the size of the pie." Unfortunately, the fish don't accept that, they seem to be dying anyway, and the stocks go down. But what should you do? It was pretty easy to figure out what you should do. You needed to restrict the amount of the catch to a particular level. You do it within the precision of the science estimates, that would've worked perfectly fine. The part that the fishery service and any government official can't deal with is how you allocate between user groups. What would be my basis for deciding whether it should be doing it as the trawlers or recreational? I don't have any objective basis for doing that, and in fact, wouldn't do it. Not even allowed under the law for me to decide that allocation. It's only the council that can decide that allocation, which is why the council's job is so hard. They argue about overfishing, but really what they're doing is allocation. In terms of social impact, that's what the council does. They talk about how do we address the social impacts because they're not coming at it as professionals in fisheries management. They're coming at it as representatives of the community. That's what they're supposed to be under the law. The state directors as representatives, they're representatives of the community. So, all they talk about is who's going to be impacted? Of course, their job would be much easier if they didn't have to restrict the fisheries. Because then they wouldn't have to worry about who was going to be impacted so much. So, that's what the fight's all about allocation. The arguments over the science and the arguments over most of the other things are just a sideshow that complicate the allocation. I can't remember where I am in the narrative of what happened in the [19]90s. Ultimately, we spent about a year from [19]95 to [19]96 negotiating Amendment Seven, which was major

reductions in David C., as well as making the closed areas permanent and adding a couple of other ones, particularly Jeffreys Ledge, which was agreed by the council, included in the council plans, voted. It actually passed with a fairly large majority, as I recall. There was a point in the council meeting where someone made a motion that the council informed the secretary of commerce that they just couldn't do this job. They were refusing to create a rebuilding plan. That was one of the votes that I actually voted on. I voted against that motion and I made a statement at the time saying, "I don't believe that the council should abrogate its responsibility under the law." You want to resign from the council, resign from the council. If you don't think the job should do it – but I don't think the council as a body should vote and say, "We refuse to do the job that we were created to do under the law." That motion failed by one vote. It was a committee vote, as I recall in the groundfish committee. The plan was driven forward at the time by Phil Coates, who was the state director.

FL: But why did you want them to have that vote?

AR: Why did they want to do that? Because partly it was they felt the job was too hard and they wanted to send a signal with, I guess, some expectation or hope that the secretary would come back and say, "Oh, well, we just won't have a recovery plan." I don't know. It was startling to me. I was really quite upset by the fact that they wanted to have a vote saying, "We're not going to do our job."

FL: Yes, but I do not understand what consequences are or what we are pursuing by doing that?

AR: Well, the consequence would have been that two things would have happened. The council either would have said, "Well, the groundfish committee is dissolved, they can't do it." Or if they had held to that vote, then they would be saying, "Secretary, you write the plan," which is allowed under the law. It could be a secretarial plan if a council fails to do so.

FL: But then things would have been probably even worse.

AR: It would have been, but then they could have absolved themselves of any blame. So, some members wanted to dare the secretary politically because it's extreme. The reason the secretary doesn't write plans is Congress set up the council system to write the plan, and because the council system gives political cover to the secretary. If the secretary wrote the plans, then it's all the fault of the government. Well, it's bad enough now. But at least you can go back to officials say, "You told us to get the recommendations from the council. Well, the council recommended this and that's what I did." Then that's the process. Now, the council says, "Well, we're not going to do it, go ahead." Well, you're basically focusing all of the political heat solely without any political cover on the secretary. So, a secretarial plan is very rare. Amendment 6 was a secretarial plan, which protected the haddock fishery. It put a trip limit on haddock. What happened to the haddock fishery? Well, it's now rebuilt and that's where a lot of people are making a lot of money. Literally opposed at the time. Absolutely. Everybody's going to go out of business, demonstrations and go out there screaming and yelling.

FL: How do you know about what people are saying from what happened?

AR: That's a good question. There's a couple of things. First, we talk to a lot of people. I would have a lot of people that I would talk to in the industry as well as outside, but probably mostly fishermen, on things that I wouldn't necessarily be able to figure out on what might work and what wasn't likely to work. I also would use my judgment and intuition based on the science background and some policy background, it's a judgment call. So, I remember at one meeting, it was actually a Mid-Atlantic meeting, some guy got up with the microphone and he said, "You decided to do this and you could have decided this, and you could have decided that. You could have done all these other things, which I think would have been better." At the end of his comment, I said, "Thanks a lot. With your regional administrator, you can make those decisions. But I decided to do it the way that I thought was best." That's the job, you got to use your judgment. Then I would tell the staff that I thought that my job was to get as much conservation, which is conservation management. It's for the fishery. It's not protection, as much conservation as I could without somebody taking the authority away from me. That somebody would be a federal judge or a political appointee or a member of Congress, who in some sense would have the ability to override my decision. So, I wanted to push things as far as I could in terms of what I thought was the right thing to do, but not so far that somebody would have either a political basis or a legal basis to take the authority away. The reason was not because I wanted it all to be in my control, but that's what I thought my job was. I figured that I knew more about fisheries and fisheries management and fishery science than any federal judge, probably any political appointee, and certainly not any member of Congress. So, you make a judgment call, is this as far as I can go? Amendment 7 was not really sufficient, it should have been stronger. No question of that, as far as I could get it in my judgment. So, I then tried to push it to a council vote to approve it, and they approved it, and I think, again, by one vote. But at that point, we needed to have a plan. I knew that plan wasn't good enough if it wasn't strong enough to recover the stocks, but I knew that it was a hell of a lot better than what we had in place. Could I have pushed it further? Maybe.

FL: How is the conservation method [inaudible] into that?

AR: The first one in the early [19]90s or the later ones?

FL: The later one and both.

AR: The first one I think was important because the Fisheries Service came to a consent decree. It gave the government at the time an opportunity to change the dynamic itself. The rest of the stuff...

FL: So, you did not take it?

AR: Yes, well, actually we did. We'd point to a consent decree and said, "Yes, you're right. We will develop Amendment 5." The original lawsuit, technically it says we agree with the plaintiff, we're not going to defend this. That changed the whole dynamic from one of the Fisheries Service is there to do whatever the council wants and is effectively there for the industry to know. It's a public policy position that says, we're doing this on behalf of the public. The law says, do this. We agree we haven't met that standard, and we will try to now. Or not try to, we will do it now. The subsequent lawsuits, I thought mostly were unhelpful. I thought that they

were suing on the wrong things. They were suing on the plans, not the results. The effect was just to create more turmoil, but it didn't really have any effect on the course of action. The only one that had effect on the course of action was the original lawsuit in, I think it was [19]91 or [19]92, something like that. The subsequent ones you can – suing on the plan, first of all, for most of it other than the bycatch provisions aren't enough or whatever the court said. Putting on a plan is basically saying, well, your judgment about what will work isn't right. My judgment is better. There's not very many cases where you're going to win that. Secondly, you don't know. Who says your judgment isn't right? So, you are arguing over what you want to happen as opposed to what did happen. Now, in some cases, they were saying you didn't end overfishing, overfishing is still occurring. Fair enough, that continues to push the process forward. But remember there were huge numbers of fishermen lawsuits at the time, too. Not as if it was only environmental groups. Most of the lawsuits against the Fisheries Service are from fishermen. It's just they don't win very often because the claims are, this is unfair to me, you didn't use the best science, all the usual claims. Rarely, if ever, is that the case that you can show in court that somebody didn't use the best science. I defended a whole bunch of those too. Fisherman lawsuit in Maine go before the judge in Portland and he says, "I want to hear from the scientist." I think for that hearing it was Mike Sissenwine, me, Steve Murawski, Phil Logan was an economist. It's not boastful to say, but that list, all of us are amongst the top twenty or thirty people in the world at this stuff. So, you're saying, oh, we just all made it up, or we've got it wrong? By anybody's ranking in terms of the discipline, maybe it's not the top twenty, it's the top fifty. But it's not like we just fell off the back of the wagon coming into town and did a fishery analysis. So, those kinds of claims usually every once in a while, you get a judge who will decide they're smarter than anybody on earth and they'll substitute their opinion in any discipline. We had one judge who said, "Well, I took an economics class in college and clearly my professor was the best economist in the world. So, I'm going to write to him and ask him what he thinks about this fisheries' economics problem." I don't even know who his undergraduate professor was. The guy was in his seventies, so his undergraduate professor was probably dead. But he just decided he knew more about economics because he took a course in college. Nobody is going to correct them, some of them are going to be federal judges. But generally, you get professionals who do this for a living. Can you get stuff wrong? Sure. But most of it isn't. That's going to be a very rare exception. On the regulations themselves, usually the problem is, did you accept something because that's as far as you think you can go? Back to that same premise of how far do you think you can push it? You either pushed it a little bit too far or you didn't push it far enough and somebody – depending on which side is suing you.

FL: But basically, it depends on what you think important.

AR: That's right.

FL: So, then you do not think it is a little biased?

AR: Oh, of course it's biased.

FL: But this bias is something that is saying that you make a living out of that.

AR: Sure. No, it's not because you have a different stake in the outcome. You have a very

different stake in the outcome. If I decided that, well, all this overfishing stuff really wasn't important and I really like fishermen and they're telling me they want to fish harder, and I decided I didn't really need to push the rules very far. The consequence of that is the government might lose a lawsuit and be told to restrict a little bit more. The personal consequence for me is nothing. It might be an emotional consequence, but it doesn't affect my income. It might affect my standing amongst some people. Same thing if I say, "No, these restrictions have to be much tougher." I don't know why I would do that other than if I accept my job as you take the science, you look at the law, and you try to adhere to what the law tells you to do. Personally, I think I did that as honestly as anybody possibly could. There's plenty of things I would have done differently if I was given a free hand. I never thought I had a free hand. I'm constrained by the science. I'm constrained by the law. I'm constrained by the public policy. I'm constrained by the politics. I have been in situations where I disagreed with the lawyers and I did something anyway. Been in situations where I disagreed with the scientists and probably, I'd have to figure out what would be my technical justification for doing something anyway. You write a decision memo, "This is what I recommend you do, this is why I recommend you do it." I have to state that in public. That doesn't mean you always do things right, but if you're doing the job straight up, then you're not doing it in constraint. Fishermen have an entirely different set. They're trying to figure out how to run their business and make their income and so on. They're going to come at us from that perspective. I don't think they're doing anything wrong. Some government officials do things wrong.

FL: You had some job satisfaction from doing this?

AR: Job satisfaction? Yes, best job I ever had.

FL: The best job you ever had?

AR: Yes.

FL: A part of it was?

AR: Yes, because I was doing something. It was real people. It was trying to do something that actually mattered to the industry, community, and environment I cared about. I was the one who was trying to make it happen. In my view, I was trying to make it happen. Every time I give a talk now, I show a slide that shows the stocks going down, down, down, down, down, and then the stocks going up. Because that's what actually happened to the resource not just for the paddock, but for the whole set of stocks. There's a line on those graphs that says, "Here's when the recovery plan was put in place." That line goes right through the bottom point on that curve of stock abundance and of fishery catch. If you did it by a fisherman incoming, it would probably do the same thing. I can say I became regional administrator at the bottom of that graph, and when I left, it was going up. So, yes, best job I ever had. Not dangerous, but still best job I had. After that I was deputy director of the Fisheries Service. I used to say then I'd rather be yelled at by fishermen than by congressmen, because I cared about what the fishermen are yelling. Congressman, I'm not so sure.

FL: That is funny, because they had the perception that nobody was listening to them.

AR: Go ask my wife when I'd come back from these meetings, was I tired and was I beat up, and sometimes emotionally completely exhausted? Yes. I don't mean beat up physically. Yes, it was the most hands-on thing where you could actually – I knew what I needed to accomplish and I got partway there. So, maybe that will happen in my present job. For university, yes, there was some job satisfaction. But basically, on the public policy issues, you're just an external advisor. There's not very many cases where you're not just an external advisor saying what other people ought to do. You're in the position of trying to do it. So, for me, that was the best job I ever had.

FL: What do you do now?

AR: The deputy director of the Fisheries Service was promoted and the head of the Fisheries Service asked me to come as deputy. I probably had a choice. But one thing you have to be careful of in those jobs, which are very upfront public to the industry you're working with, it's not like I would've known throughout [inaudible], but well, I probably could have stayed for a couple of years more. But at some point, you want to be really careful the argument doesn't become about you, it's still about the issue you're working on. So, I was persuaded that I could stay two more years. But some point in there, it would become too much about me as I think I debated too much about the regional administrator. Now, it's gotten to the point where it's all personal attacks on the regional administrator. I'm the chief enforcement attorney on various people. That's such a distraction from what you really need to do, but at that point you need to move on if you have an option. I left the Fisheries Service because it's entirely different. That was for personal reasons two years later. But I was asked to move to Washington, work on national issues, which I did, which was not as hard but less satisfying, less dangerous.

FL: Do you have any other comments?

AR: Yes, one other thing would be that a lot of the measures that are in the plan, and I think I said before, really came from fishermen. But some of them it's almost laughable, probably the cod trip limit being the biggest example. The cod trip limit in Amendment 7, which became highly controversial, demonstrations in Gloucester Harbor, yelling and screaming, was actually proposed by the industry to the council, but originally to me. A group of fishermen came who oddly enough the fishermen who are most vociferous against the cod trip limit and have argued that it's the biggest example of horrible government micromanagement, were the ones, and I could repeat their names pretty easily, came and said, "We just can't tolerate another closed area, but we can accept and make a trip limit work if you'll accept a trip limit." Because I was pushing that Amendment 7 didn't have quite enough to protect the cod. I wanted these closed areas to extend it. They said, "We just can't live with that." I thought that they could probably withstand, politically they would be able to block an extended closed area. They said, "If you just put a trip limit on cod, we'd all adhere to it. Everybody would be self-enforcing and we'd all back off of cod and fish some other stuff." I said, "If you propose then I won't outright oppose it." That's on the council record somewhere, these guys getting up to the microphone and saying, "Just give us a trip limit, we'll make it work." Soon as we agreed to trip limit, "You idiots. Trip limit, this is another example of government just not knowing what the hell it's doing. Trip limits is stupid. We're going to throw away this fish, blah, blah, blah, blah, blah." Still goes on to this day from



the same people. Most of the measures were done, with the exception of closed areas, came from the industry. There were often better alternatives, often higher. Other people would tell them better alternatives. Then after the fact, it's like we had nothing to do. We never even heard of this, it came from the sky. It was some bureaucrat's bad dream. So, when you hear how things develop, you get huge amounts of revisionist history. I had a scholar come up to me at a meeting probably five or six years ago now. Guy walked up to me and he said, "You're still here. God damnit, you never listened to the fishermen. We told you those closed areas would work. We told you that you just need to put those closures in. When you finally listen to them, see how good that worked in recovering the stocks? But you never listen to the fishermen." Now, this was a guy that at the time when we were implementing the closed areas, he actually threatened me. Told me he was going to put everybody out of business. He didn't care what he had to do, even if that included getting rid of me. If I was going to implement those closed areas, he was going to do it. I don't know what it is, seven years later, he comes up and he says, "You just never listened to us. We were begging you." He actually said, "We begged you to close those areas."

FL: The other thing I heard basically is to reduce this notion that you are claiming not to contain closed areas.

AR: There's stories like that. But that to me was a classic because it's like I can't believe, then he believed it. He believed that at the time they were asking us to close the areas and we wouldn't listen because I thought I was smarter than everybody else. But damnit, when you finally did what the fisherman told you to do, it worked. So, you get a huge amount of revisionist history. Now, I'm sure I'm subject to that too. Although I think I have a pretty good memory, but everybody thinks they have a good memory of what happened. But you get incredible amounts of revisionist history about what happened. I was the guy signing the regulations, I think I pretty much know. There's a myth out there that closing the big closed areas on Georges Bank was just a mistake because the government's officials were too stupid to realize they were going to block the scallop. I've been told that a million times. It was just a byproduct of the groundfish regulation. The actual debate was we know we need to recover both the scallop stocks and groundfish stocks. We're going to use the vehicle that's moving through either groundfish or scallop the quickest for those closed areas, but they will be closed to both groundfish and scallop. Now, closing those areas to scalloping, recovered the stock so it's easy for them. They've made a fortune out of it, absolute fortune, four hundred million bucks worth between less than two hundred bucks every year, and that's because of recovery. But the myth was, that was just a mistake because I was too stupid to know what I was doing, which I've heard over and over again. We sent the scallopers out there not realizing when we wrote the regulation, that it wouldn't allow scalloping in there. I've also heard, they were reopened because Brian Rothschild at UMass Dartmouth proved the science was all wrong and Bonnie Frank went in and demanded the area be reopened. That's nonsense too. Total crap. Not at all what happened. Bonnie did go in yelling and screaming. Brian was on the outside. The work was done by the guys at the Fisheries Science Center. The limited openings for the closed areas was already on the books. We said to the secretary, "Well, we'll do it two weeks earlier so you can go back to Bonnie and tell him that he had an impact, so he can tell his constituents that he did something." Anybody who thinks you prepare the regulatory paperwork overnight is dreaming. It was already done. But they wanted to give him something. So, the secretary was able to say,

"I've listened to the fishermen. I've allowed scallopers back into some of the closed areas on a limited basis." Congressman Frank could go home and say, "I demanded it and they had to listen to me because I'm such a jerk to you." So, there's huge revisionist history and all this stuff.

FL: It is complex to get everyone's side of everything.

AR: Yes. So, when you're trying to figure out social impact, everything is buyer's viewpoint. The hard part to extract is what was the real impact? Was the real impact that some people went out of business? Was that a social impact? Is anytime somebody goes out business, is that a social impact?

FL: I think it had social impact of every group that were involved. That is it. Now, how can you get in regulation as a social impact assessment tool for...

AR: Yes, it's very hard to do. We also have to figure out, so what do you do with that? So, there's an impact, what do you do with that? There's nothing in the law that says you should minimize social impact, because what does minimize social impact do? What? I would argue that's what the council was designed to do, figure out what's acceptable in the social setting for that region. That's what the council does. They don't do it as professional. There isn't any optimization model they're going to use. They're doing it from their intuition. Sometimes their intuition is good and sometimes it's bad. Frankly, from the government side, they're doing a lot of things by intuition. The difference is you've got a lot of other people who are in the structure of saying, well, here's what the legal standard requires, and here's what the science advice says you should do. Some of that's good, and some of it's bad.

[end of transcript]