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INDIVIDUAL FISHING QUOTAS (IFQS)

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

February 13, 2002

Serial No. 107-84

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

77-639 PS WASHINGTON : 2002

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OVERSIGHT HEARING ON INDIVIDUAL FISHING QUOTAS (IFQS)

Wednesday, February 13, 2002
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 1:07 p.m. in room 1334, Longworth House Office Building, Hon. Wayne Gilchrest [Chairman of the Subcommittee] presiding.

STATEMENT OF THE HONORABLE WAYNE GILCHREST, CHAIRMAN, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

Mr. GILCHREST. The Subcommittee will come to order. I apologize. I just wanted to call us to order, but we just were called for a vote. So what I will do is ask unanimous consent—I hope none of the staff objects—

[Laughter.]

Mr. GILCHREST. —to have two statements put into the record: my statement and Mr. Underwood's statement, and introduce Dr. Hogarth and Admiral Cross with strong appreciation for both of you gentlemen coming here today to talk about another dimension of our ongoing process to reauthorize the Magnuson-Stevens Act and to begin the process of trying to understand and appreciate the magnitude of the management of the nation's fisheries and the complexity of trying to understand these interesting things known as individual fishing quotas or individual transferable quotas.

[The prepared statement of Mr. Gilchrest follows:]

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

As many of you know, the Subcommittee has spent all of 2001 and the beginning of this year hearing testimony on various aspects of the reauthorization of the Magnuson–Stevens Fishery Conservation and Management Act. This hearing is on one of the most interesting and most contentious issues that we will look at during this entire debate.

Today, we will examine the issues surrounding the concept of Individual Fishing Quotas (IFQs). IFQs have a number of forms—those in which the shares are transferrable and those in which the transferability is restricted. IFQs have also been used in a number of very different fisheries with varying successes across the world. Our own experiences with IFQs in U.S. fisheries have raised interesting policy issues for us to examine. I believe we will hear about a number of the U.S. experiences through testimony today.

The debate on IFQs has been so polarizing in the past that Congress stepped in and stopped an IFQ plan from being implemented even after a Council had passed the plan. Congress then enacted a moratorium that has already been extended once. These are unusual steps for Congress to have taken, but highlight the amount of interest and passion that IFQs create.

As many of you remember, the House of Representatives passed H.R. 39 in the 104th Congress which included standards and guidelines for the use of IFQs. Because of the intensity of the debate, Congress could not come to agreement on these standards so here we are again.

I believe that it is important that Congress creates a set of standards and guidelines for the Councils to follow in developing and implementing IFQ plans.

I do not intend for this hearing to be a rehash of any past IFQ fights or to reopen wounds from earlier debates; but rather, I would like witnesses to help us learn from the past experiences so that when Congress develops standards, we can minimize the mistakes and problems.

I look forward to hearing today's testimony and look forward to your suggestions for us to consider when we start drafting standards.

[The prepared statement of Mr. Underwood follows:]

Statement of The Honorable Robert Underwood, Ranking Democrat, Subcommittee on Fisheries Conservation, Wildlife and Oceans

Thank you Mr. Chairman for holding this hearing today. Given the number of witnesses, it would appear there are very divergent views on this controversial issue. A review of the testimony reveals just that.

There are those that clearly believe Individual Fishing Quotas, or IFQs, are a superior management tool, while there are others who feel they are fraught with problems. Some witnesses think IFQs should be granted in perpetuity. Others believe their duration should be strictly limited to no more than 5 years. Some think IFQs should, without question, be considered a property right. Others believe that just the opposite is true" that they are nothing more than a limited privilege to harvest a public resource and should never be considered property.

To allocate these quota shares, some argue using catch history is the only fair way to go. Yet others believe this is inherently unfair, as it limits access to only recent participants, and that an auction would be a more just allocation system. There is also debate over whether quota shares should be allocated for free or provide a royalty to the taxpayer for the use of this public resource.

Finally, there is dispute as to whether IFQs encourage conservation or potentially provide greater incentives for quota busting and high grading, which could seriously undermine the sustainability of the resource.

These are all very important issues and concerns that must be addressed. In addition, and perhaps of greatest concern to me in my district, is the potential for negative impacts on small fishermen and communities that could occur with the adoption of an IFQ program. Small boat fishermen and fishing dependent communities are the backbone of the Guam industry.

With such wide ranging views and concerns Mr. Chairman, its clear that the development of clear legislative standards to guide the implementation of future IFQ programs will be very difficult. Still, we in the Congress have a responsibility to develop and adopt measures that can address the concerns associated with IFQs before any new programs are implemented.

As we have seen with the halibut IFQ program, and really with the adoption of any program that allocates a public resource, there will be great opposition to change or to retroactively applying any new standards to programs that have already been implemented.

IFQs may be a viable management tool in some fisheries, but we must ensure that the proper measures are in place first to conserve and protect this valuable public resource. That should be our primary goal.

Thank you Mr. Chairman, I look forward to hearing from the witnesses.

Mr. GILCHREST. And what this Subcommittee is attempting to do is to tweak those aspects of the Magnuson-Stevens Act to make the management of the fisheries more beneficial and to improve the process to ensure that we understand the marine ecosystem enough to increase the stock and ensure that the industry remains viable

and profitable. And as these two gentlemen know as much as anybody in the room, Admiral Cross and Dr. Hogarth, that will take every ounce of rigorous mental effort that we have. But I think everybody in the room is up for it.

So at this point, we will recess for about 15 minutes. Thank you.

[Recess.]

Mr. GILCHREST. The Subcommittee will come to order.

You know, people who are standing in the back, why don't you just sit around this little horseshoe up here? That will relieve some of the congestion back there and make you a little more comfortable in case you want to take some notes or things. I don't know if I can yield you any time.

[Laughter.]

Mr. GILCHREST. Thank you.

Dr. Hogarth, you may begin, sir.

STATEMENT OF WILLIAM T. HOGARTH, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE

Dr. HOGARTH. Congressman, I hope this does not mean that they will get to ask us questions, does it?

[Laughter.]

Mr. GILCHREST. You can ask them questions.

[Laughter.]

Dr. HOGARTH. Mr. Chairman and members of the Subcommittee, thank you for inviting me here today to discuss individual fishing quotas or IFQs. I am Bill Hogarth, the assistant administrator for fisheries in the National Oceanic and Atmospheric Administration.

IFQs are one management measure used to implement sustainable fishery policies. We use other measures like community development quotas, fishing co-ops and various forms of individual effort quotas. These measures and IFQs have worked well. However, a broad range of rights-based arrangements should be available to the fishery management councils and NMFS as we manage our nation's living marine resources.

IFQs play an effective role in managing fishery resources on a sustainable basis. However, they should not be treated in isolation from other management tools. Current law provides enough flexibility to structure IFQs so they address concerns regarding their prospective social impacts. However, IFQs are not the answer to every problem; are not appropriate in all fisheries; and are not a substitute for the detailed management measures we use in Federal fisheries. Today, I will review the background of IFQs; their objectives and goals; the role of NMFS and the Secretary and the need for additional statutory guidance.

First, NMFS agrees with many of the major findings and recommendations of the National Academy of Sciences' IFQ study Sharing the Fish. Most significantly, we agree that the moratorium on new IFQs should be allowed to lapse in October. Second, the existing mandates and guidance on IFQs, while not comprehensive, do establish useful boundaries on key points. IFQ objectives range from maximizing efficiency to focusing on social goals related to sustained participation of fishermen and fishing communities. For example, the surf clam ocean quahog and the wreckfish IFQs were

developed and administered largely to improve economic performance. On the other hand, the sablefish and the halibut IFQ in Alaska gives high priority to social goals.

Alternatively, the Atlantic purse seine or bluefin tuna IFQ was designed mostly to ensure harvesting sector stability. All of these examples show we can maintain a flexible application of the Magnuson-Stevens to design IFQs and accomplish several goals. We believe the Secretary should continue to have the flexibility to develop IFQs in Secretarial-managed fisheries. We also believe many critical decisions should be left initially to the councils, such as the initial decision to develop an IFQ; formulas and criteria for determining initial allocations; rules on transferability of IFQ shares in secondary markets; caps on the consolidation of IFQ shares; and the use of alternative rights-based approaches.

However, these decisions and the resulting proposals must be reviewed and approved by the Secretary. The Magnuson-Stevens Act currently provides most of the guidance we need to move forward with new IFQs. However, several difficult and controversial areas are broader than the councils' prerogative and require a national-level solution. While Congress may identify other matters that it must deal with in reauthorization of the Magnuson-Stevens Act, NMFS has identified just three that Congress should consider: first, all implementing regulations in existing IFQs ban foreign ownership. Some experts believe that once the moratorium lapses, a national policy on foreign ownership of IFQ shares will be needed. Such a policy involves trade, investment and foreign policy considerations, all of which are beyond the jurisdiction of NMFS and therefore might be better addressed in law.

Second, the Magnuson-Stevens Act requires the collection of fees to recover management and enforcement costs but does not authorize the capture of some share of windfall profits and/or economic rent. Opinions differ sharply on these issues. Regardless, recovery of windfall profits and/or economic rent would be better addressed as a national policy in Magnuson-Stevens Act due to the tax, budget and natural resources management implications.

Third, fees paid by participants to recover IFQ management and enforcement are capped at 3 percent of ex-vessel values in affected fisheries, and as noted in the NAS study, the cap may be too low in some fisheries. Some even question the need for a national cap for IFQ cost recovery fees. This matter should also be addressed by Congress.

In addition, a number of IFQ issues are probably not best addressed by uniform and nationally applicable norms. Instead, solutions should be crafted to the needs of the specific fisheries. In these instances, the most appropriate action may not be an amendment to Magnuson-Stevens Act. In dealing with these issues, NMFS plans to focus on the matters and the cost of management, enforcement and observer coverage.

We are now in the process of setting up a workshop with the Heinz Center that will bring in the four sectors to look at rights-based management. This workshop should be held within the next 60 to 90 days, and in this, we will review all of the existing data on rights-based management and come forward with any

recommendation or additional criteria or how the process should be worked after we bring in the stakeholders.

Mr. Chairman, in the final analysis, although IFQs remain controversial, considerable interest in them exists in a number of Federal fisheries. If a council or industry believes that an IFQ is warranted, the option should be available. If a council chooses to develop an IFQ, it will need rules and technical support from NMFS. While Congress establishes statutory guidance on IFQs through reauthorization of the Magnuson-Stevens Act, NMFS will be poised to provide any support that you think is necessary.

This concludes my testimony, and I will be happy to answer any questions you may have.

[The prepared statement of Dr. Hogarth follows:]

Statement of William T. Hogarth, Ph.D., 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 another hearing on reauthorization of the Magnuson–Stevens Fishery Conservation and Management Act (MSA). I am William T. Hogarth, the Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration/Department of Commerce. My testimony today will focus on individual fishing quotas (IFQs).

I. Introduction

IFQs have a ten-year history in the United States, and an even longer history in other countries such as New Zealand. As a result, a great deal has been written and said about them. As we all know, IFQs and rights-based management systems generally have spawned sharp debates and mountains of technical and partisan literature.

IFQs are but one of a wide range of management measures that can be used to implement sustainable fisheries policies. We have other rights-based systems, such as community development quotas (CDQs), fishing cooperatives and various forms of individual effort quotas, including management programs based on days-at-sea. By and large, IFQs and other rights-based arrangements have worked well in the United States on both economic and conservation grounds. In fact, the National Marine Fisheries Service (NMFS) believes that a broad range of rights-based arrangements should be made available to the Regional Fishery Management Councils (Councils) when they consider IFQs and to NMFS when we review proposals.

IFQs can and should play a role in our collective efforts to manage fishery resources on a sustainable basis. However, we do not, and they should not be treated in isolation from other management instruments that limit effort and participation in Federally managed fisheries. We believe that sufficient flexibility exists in current law to structure IFQs, so they adequately address concerns regarding their prospective social impacts. If they are well designed and managed, IFQs will, in all likelihood, work well and generate considerable net benefits.

At the same time, IFQs are not the answer to every problem and may not be appropriate nor feasible in all types of fisheries. Given the current state of knowledge about IFQs, we believe they might be difficult to implement in multispecies and multigear fisheries. Also, IFQs are not a substitute for many of the management measures we use such as mesh size regulations and bycatch limits. Simply put, we are not suggesting that the Councils and NMFS absolutely must have IFQs to manage fisheries. However, we believe that, in some Federally managed fisheries, we can manage resources with greater efficiency if the Councils and NMFS have IFQs available as a tool.

We believe that Congress should allow the existing moratorium on new IFQs to lapse, and we will be pleased to work with the Congress as it considers legislation to set additional appropriate conditions under which new IFQ programs could be approved.

To place IFQs in their proper perspective, my testimony will review the background of IFQs, their objectives and goals, the role of NMFS and the Secretary of Commerce, and the need for additional statutory guidance.

II. Background

I will take as a starting point the MSA, in particular two key elements: first, the major findings of the Congressionally mandated National Academy of Sciences (NAS) study of IFQs, Sharing the Fish, which was completed just a few years ago in 1999; and, second, the mandates and guidance governing IFQs in the 1996 Sustainable Fisheries Act (SFA) amendments to the MSA.

First, NMFS agrees with many of the major findings and recommendations of the NAS report. We agree that the moratorium on new IFQs should be allowed to lapse in October 2002. Therefore, the heart of the matter becomes how best to develop and administer new IFQs.

Second, the existing mandates and guidance on IFQs, while not comprehensive, do establish useful boundaries on many key points. Not only does the SFA establish a moratorium on IFQs, it also:

- defines them for the first time in Section 3(21);
- states in Section 303(d)(3) that IFQs are privileges, not rights; they can be revoked at any time; they do not confer right of compensation; and, they do not create any "right, title, or interest in or to any fish before the fish is harvested."
- mandates in Section 304(d)(2)(A) and (B) the collection of fees to recover management and enforcement costs, capping these fees at three percent of ex-vessel value;
- stipulates in Section 303(d)(5)(B) that new, i.e., post-moratorium, IFQs must provide for "effective enforcement and management," including "adequate observer coverage";
- provides in Section 303(d)(5) significant and detailed guidance on dealing with distributional issues after the lapse of the moratorium, including provisions that initial allocations must be "fair and equitable"; that no participant in an IFQ program may acquire "an excessive share" of quota amounts/percentages; and, that any new IFQ program "considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not qualify for individual fishing quotas"; and
- authorizes in Section 303(d)(4)(A) the use of 25 percent of fees collected under limited entry programs to "issue obligations that aid in financing purchases of individual fishing quotas in that fishery by fishermen who fish from small vessels, and first-time purchase of individual fishing quotas in that fishery by entry-level fishermen."

It is important to emphasize that the same basic regulatory assessments which apply to all fishery management plans (FMPs) and plan amendments are also required of IFQs. Language related to this can be found in Section 303 (which deals with the mandatory and discretionary provisions of FMPs), parts of Section 304, the ten national standards in Section 301, all regulatory provisions in the MSA, and all the required assessments that we conduct under the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866, which deals broadly with the analyses of economic and social costs and benefits.

Also, all ten national standards apply to proposed IFQs, just as they do to any other management measure. At least eight of the ten standards are directly relevant to IFQs and other rights-based measures. They are: NS1 (optimum yield and overfishing); NS2 (best science); NS4 (non-discrimination and fair/equitable shares); NS5 (efficiency); NS7 (cost minimization); NS8 (fishing communities); NS9 (bycatch); and, NS10 (safety at sea).

III. Program Objectives of IFQs

With this information, I think we should look at the various objectives of IFQs. The guiding objectives of an IFQ system can run the range from maximizing efficiency, i.e., matching harvesting capacity with available resources, to focusing on social goals related to the sustained participation of fishermen and fishing communities. I believe that the most helpful approach to understanding this subject is to consider actual examples. Therefore, this portion of my testimony will comment on three short case studies.

Examples of the existing IFQs that were developed and administered largely to improve economic performance, including rationalization of effort and capacity, are the surf clam/ocean quahog IFQ and the wreckfish IFQ. On the other hand, an IFQ that was set up quite differently because the Council and the agency wanted to assign a high priority to social goals, including support for small boat fishermen and certain fishing communities, is the sablefish and halibut IFQ in Alaska. A third category, of which the Atlantic purse seine for bluefin tuna IFQ is a good example, is less well known and was designed in large part to ensure stability in the harvesting sector. Of these four existing IFQs, this testimony will examine three so that we can see more clearly how they can accommodate different priorities. These brief

examples will focus on the social and economic goals of IFQs. Typically, there is a perceived tension between these two objectives but, in practice, IFQs can be structured and administered in ways that mediate between these priorities.

(A) Surf Clam/Ocean Quahog IFQ

This IFQ program was implemented just over a decade ago. Its objectives were economic in nature, with full transferability, no caps on consolidation, few restrictions on the right to purchase quota shares, and without any set-asides for the benefit of small operators. All in all, the surf clam/ocean quahog IFQ has generated significant improvements in economic efficiency and more rational levels of harvesting capacity. The number of vessels in these fisheries has declined sharply, average harvests per vessel have more than tripled, the wasteful derby fishery has ended, and profits per participant have increased considerably. Resource conditions also have improved, especially for surf clam, and the latest quota has been increased appreciably.

At the same time, it should be noted that there has been more progress toward economic efficiency in the higher-value surf clam fishery than in the lower-value ocean quahog fishery. Improvements in vessel safety are hard to document. Economic rationalization and reductions of overcapacity have changed this fishery in some significant ways. Small boat operators are fewer, and owners of medium-sized boats play a relatively larger role. Total employment has declined. The top three processors have increased their share of this market from just over half to almost three quarters in the last decade.

The surf clam/ocean quahog IFQ has produced visible gains in economic efficiency and some improvement in stock health.

(B) Halibut/Sablefish IFQ

The IFQ program for halibut/sablefish in the North Pacific was established with somewhat different priorities—to support small, Alaska-based fishermen and to protect their fishing communities. In fact, when this IFQ was first developed, initial allocations were given to about 6,500 owners of halibut and sablefish vessels. Although some experts maintain that IFQs may be more difficult to enforce in fisheries with a large number of participants, this program seems to indicate that such an IFQ can work well, even when accommodating several thousand fishermen.

Limits on accumulation of halibut shares are highly restrictive—just 0.5 percent or 1.0 percent per participant/owner, depending on the area. Transferability of quota shares, which is tightly regulated, is allowed only among members of the same vessel category. As a result, changes in numbers and the overall level of participation and, hence, more rational levels of harvesting capacity, are not as evident in the halibut/sablefish IFQ as in the East Coast IFQs.

The improvements in the halibut/sablefish fishery cannot be denied. Before the IFQ was implemented, this fishery was a one-week derby fishery accompanied by high loss of life, low prices, processing gluts, and poor quality products. Since this IFQ program has been in place, this fishery has moved in a positive direction on many fronts. For example, the derby fishery has ended, operations are more evenly spread out over the year, more fresh fish is sold, prices have generally been higher, safety at sea has been enhanced, and many small fishermen have remained in the fishery, thereby stabilizing dependent communities. However, efforts to control concentration of the IFQs have spawned intricate regulations, particularly the rules on consolidation caps and transferability, which carry costs. Consequently, administration of this IFQ is more labor intensive and costly than for the East Coast IFQs.

(C) Atlantic Bluefin Tuna Purse Seine IFQ

The Atlantic bluefin tuna IFQ has been managed under the MSA and pursuant to an international agreement on Atlantic bluefin tuna quotas. Also, the purse seine IFQ system was established through Secretarial regulations. Under this IFQ system, a quota of 250 tons is divided among five U.S.-flag purse seiners that operate alongside a far greater number of smaller boats who participate in the "general" category under a separate quota. A major objective of this IFQ is to promote predictability and stability in this small but important fishery. This goal is achieved through limits on transfers, which are allowed only among the five participants.

The Atlantic bluefin tuna IFQ is somewhat unique in several ways: the fishery is managed by the Secretary; the overall bluefin quota is established pursuant to an international agreement; it is a small part of a larger fishery; and, most significantly, its major objectives are to promote predictability and stability.

IV. Flexibility of Goals

As illustrated by the above examples, we can maintain a flexible application of the MSA provisions to design IFQs that accomplish a mixture of economic, social

and other goals. In addition, the Secretary should continue to have the same flexibility to develop MSA-consistent IFQs in Secretarially-managed fisheries. I would like to explain several ways in which the Councils and the Secretary have the discretion to design IFQs that meet the unique needs of Federally managed fisheries.

We believe that many decisions should be left initially to the discretion of the Councils. These decisions and the resulting proposals must be reviewed and approved by the Secretary in conformity with the requirements of the MSA and other applicable laws and executive orders. Nevertheless, the Councils (or the Secretary, with respect to Atlantic highly migratory species) should have a lead role in at least the following areas: (1) the initial decision to develop an IFQ; (2) formulas and criteria for determining initial allocations; (3) rules on transferability of IFQ shares in secondary markets; (4) caps on the consolidation of IFQ shares; and, (5) recourse to alternative rights-based approaches, including CDQs and fishery cooperatives.

(A) Initial decision to develop an IFQ

Three of the existing four IFQs were initiated by the relevant Council, and the fourth, the Atlantic bluefin tuna IFQ, was developed by NMFS. The NAS report stressed the need for local initiative and, within reasonable bounds, local control.

(B) Initial Allocations

The MSA requires that initial allocations be "fair and equitable" but gives little guidance on the meaning of those terms. The practical result is that Councils (or, as appropriate, the Secretary) have wide latitude in setting the conditions for allocating harvest opportunities in IFQ fisheries. Although not required by the MSA, initial allocations have generally been awarded on the basis of catch history. Other formulas for determining initial allocations could be decided by the Councils (or, as appropriate, the Secretary).

In addition, there are other initial allocation issues including proposed allocations to the for-hire recreational sector, i.e., charterboat operators, and processors.

Initial IFQ allocations to charterboat operators are not explicitly addressed in the MSA, and NMFS is not convinced that an MSA amendment is necessary to deal with them. NMFS recommends that initial IFQ allocation issues should be left to the discretion of the Councils, with the clear understanding that all such proposals must be reviewed by the Secretary for consistency with the MSA.

Similarly, NMFS notes that IFQ allocations to processors are not required by the MSA, and that the 1999 NAS report, Sharing the Fish, found no compelling reasons to support or oppose processor allocations. For IFQ programs currently in place, processors were not precluded from receiving initial allocations. However, Councils chose to issue the initial allocations only to harvesting interests. Obviously, vertically integrated firms that both harvest and process fish may have qualified for initial IFQ allocations by virtue of the fact they own and operate boats in that fishery. Our view is that Councils should continue to have the discretion to provide initial IFQ allocations to processors, in which case NMFS will review that proposal for consistency with the MSA and other applicable laws.

(C) Transferability

Transferability is a critically important issue in the design of IFQ programs, and the MSA assumes transferability. Currently, broad discretionary authority is allowed to deal with sales/leases of IFQ shares in secondary markets in conformity with the basic goals of the program. As noted above, transferability in the East Coast Council-generated IFQs is relatively liberal (except vis-a-vis foreign interests), while in the halibut/sablefish program it is sharply limited to transfers among members of the same vessel category.

In principle, NMFS generally supports transferability in IFQs because such programs are more likely to encourage the prudent use of capital and labor, thereby promoting improved stock conservation. However, restrictions on overall concentration in a fishery may be appropriate if they are needed to ensure the social objectives of the Council and are implemented in conformity with applicable law. Councils may, at their discretion, propose restrictions on transferability, and NMFS will review those proposals on a case by case basis.

(D) Caps on consolidation of IFQ shares

Another distributional issue that, under current law, may be addressed flexibly by the Councils, is caps on individual accumulations of quota shares. As noted earlier, Section 303 of the MSA requires that new, post-moratorium IFQs avoid the accumulation of "excessive" quota shares by individual participants, but does not provide guidance on what constitutes an excessive share. Some have suggested that U.S. anti-trust law adequately deals with this matter, but many others believe that fishery-specific guidance is necessary.

It should be noted that this "equity" issue is also addressed in NS4, which provides that allocations among various fishermen must be "carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." In general, Secretarial review under NS4 should be sufficient to deal with this concern, but, in so doing, should give considerable latitude to Council discretion. This determination should depend on the attributes of the fishery, including, among other factors, numbers of participants, the dependency of communities, the existence of competing small and large boat sectors, and the market power of processors. In dealing with proposed caps on consolidation, the Councils and NMFS must be sensitive to at least two related concerns: first, the implications for "equity" of participation; and, second, the possibility that excessive concentration could confer too much market power to a small number of players. The Councils should be afforded flexibility on this issue, and they should explicitly address this issue in the FMP's statement of program objectives.

V. The Need for Additional Statutory Guidance

The MSA currently provides much of the guidance that NMFS and the Councils need to move forward with new IFQs. Nevertheless, difficult and controversial issues remain. Several of these issues are broader than the Councils' prerogative and require a solution at the national level. NMFS would be pleased to work with the Subcommittee on any or all of these issues. While Congress may obviously identify other matters that it must deal with in a reauthorized MSA, NMFS has identified just three that Congress should consider:

• Bans or restrictions on foreign ownership of IFQs

All four existing IFQs ban foreign ownership through their implementing regulations. Some experts believe that, after the moratorium lapses, a national policy on foreign ownership of IFQ shares will be needed. Restrictions/bans on foreign ownership of IFQ shares necessarily involve trade and investment policy, and foreign policy considerations, which are beyond the jurisdiction of NMFS, and therefore might be better addressed in law.

• Public capture of some share of windfall profits and economic rent

The MSA requires the collection of fees to recover management and enforcement costs, but does not authorize the capture of some share of windfall profits and/or economic rent. Both windfall gains and economic rent were reviewed in some detail in the 1999 NAS report. Specialists differ sharply in their views on these issues, and some even doubt that windfall profits, in the strictest sense, exist in IFQ programs. Regardless, recovery of windfall profits and/or economic rent clearly require a national policy because of the budget and natural resource management implications. Therefore, this issue should be addressed by Congress when it reauthorizes the MSA. A well crafted policy may increase resources going to fishery management and enforcement if the IFQ system is providing increased rents to IFQ holders.

• Caps, currently 3 percent, and other restrictions on fees paid by industry to recover management and enforcement costs

Fees paid by participants to recover IFQ management and enforcement are capped at 3 percent of ex-vessel values in the affected fisheries. As noted in the NAS report, that cap may be too low in some fisheries. Some even question the need for a national cap on IFQ cost recovery fees. Therefore, this matter should be addressed in MSA reauthorization.

VI. Regulatory Guidance: The NMFS/Secretarial Role

As the NAS report concluded and our daily experience shows, a number of other IFQ issues are probably not best addressed by uniform and nationally applicable norms. Instead, solutions should be crafted to meet the needs of specific fisheries. In these instances, the most appropriate action may not be an amendment to the MSA. In dealing with these issues, NMFS plans to focus on distributional matters and the costs of management, enforcement and observer coverage.

Accordingly, in its regulatory reviews, NMFS will focus on the following issues:

• "fair and equitable" initial allocations;
• "excessive concentration of shares" of IFQ; and
• special treatment for smaller boat and entry level fishermen, and crew members.

NMFS will also, as required, develop plans to ensure adequate support for management, enforcement, and observer coverage needs. More precisely, NMFS will assess the following:

• management/enforcement costs to be recovered through fees; and
• personnel/budget requirements needed to provide adequate observer coverage.

Finally, NMFS will begin to work on standards, guidelines or methodologies to review and revise IFQs and related management programs, as required under Section

303 (d)(5)(A) of the MSA. With these tools, the Secretary and the Councils can better discharge their MSA obligation to develop procedures and requirements for review/revision of IFQs.

VII. Summary—Elements of a National Policy on IFQs

In conclusion, a national policy on IFQs, as required in Section 303(d)(5)(A), should include the following three elements:

Congress: As previously stated, Congress should allow the existing moratorium on new IFQs to lapse, and we will be pleased to work with the Congress as it considers legislation to set additional appropriate conditions under which new IFQ programs could be approved. At the same time, Congress ought to allow the regional councils flexibility and discretion to address fishery-specific characteristics. NMFS is examining these and other IFQ issues such as foreign ownership, the collection of some share of windfall profits and/or economic rent, and caps on cost recovery fees and will be happy to work with the Subcommittee on how best to address them in a reauthorized MSA.

Councils: In developing IFQ programs, many decision points should begin with the Councils, in particular the decision to develop an IFQ, initial allocations, processor and charterboat IFQ shares, transferability, caps on consolidation, and special treatment for small boat, entry level fishermen and crew members.

Administration/NMFS: NMFS should work with the Councils at each step of the IFQ development process. When the MSA is reauthorized and statutory guidance on IFQs is established, NMFS will undertake the following broad categories of activities:

a) work with the Councils early in the plan development phase to identify appropriate IFQ-related issues and provide technical assistance to ensure that proposed IFQs are comprehensive and meet legal requirements;

b) conduct its mandatory reviews, including those provided in the MSA and other regulatory statutes (especially NEPA, RFA, E.O. 12866) with these issues and other concerns explicitly in mind; and

c) identify costs and staffing requirements for management, enforcement and observer coverage.

With this approach, I believe we can develop a national policy on IFQs that is sound and broadly supported, respects the important role of the Councils, is administratively practical, and leads to improved management and sustainability of our fishery resources.

In the final analysis, while there are concerns and questions about IFQs, there is also considerable interest in them in a number of Federally managed fisheries in the Atlantic, Gulf of Mexico, and Pacific regions. I believe that, if a Council wants an IFQ, they should have that option. If they then choose to develop an IFQ, they will need rules and some reasonable level of technical support from NMFS. When Congress establishes statutory guidance on IFQs through reauthorization of the MSA, the major obligation of NMFS will be to provide that support.

Mr. Chairman, this concludes my testimony. I am prepared to respond to any questions that you and other members of the Subcommittee may have.

Mr. GILCHREST. Thank you, Dr. Hogarth.

Admiral Cross?

STATEMENT OF REAR ADMIRAL TERRY M. CROSS, ASSISTANT COMMANDANT FOR OPERATIONS, U.S. COAST GUARD

Admiral CROSS. Mr. Chairman, members of the Subcommittee, good afternoon. First, let me say it is an honor for me to represent the Commandant, Admiral Jim Loy, and the Coast Guard before this distinguished Subcommittee to discuss the impacts of individual fishing quota programs on fisheries, law enforcement and fishing vessel safety. Sir, I previously submitted a written statement that I would like to have entered into the record, and with your permission, I have a short oral statement.

Mr. GILCHREST. Without objection.

Admiral CROSS. And, sir, before I begin that portion of my statement that relates to IFQs, I think it is important for me to thank you personally on behalf of the entire Coast Guard for your support

for our organization over the last several years and in particular for your support of our fiscal year 2002 supplemental funding. Those dollars were absolutely critical to our ability to enhance our port and coastal security operations while continuing to continue other missions which I know you understand are vital to the nation's security, the public safety and the economic health of the nation. Thank you, sir.

And, of course, one of those missions important to the nation's economy is the protection of U.S. fish stocks from foreign fishers and also the enforcement of international agreements and domestic regulations, including IFQ regulations. Sir, in general, I can sum up the Coast Guard's experience with IFQ programs as follows: any quota system that lengthens the fishing season will likely have two impacts: first, it will require more resources to enforce, because the fishing season will be spread out over a longer period of time. Second, it will likely result in a safer fishery. This is because it will give fishers more time, more of a choice as to when they fish, and the bottom line, it gives fishers an opportunity to avoid fishing in bad weather.

Sir, I also want to note that the Coast Guard plays an active role in the regional fisheries management councils, and we very strongly support this process. Should the Congress decide to lift the moratorium on IFQs, we will assist the councils with our very best recommendations on enforcement and safety issues related to IFQ implementation.

Finally, sir, I need to point out that the Coast Guard represents the nation's primary at-sea enforcement capability. A significant portion of our fisheries law enforcement efforts, especially the protection of our fish stocks within the Exclusive Economic Zone, occur well offshore in the deep water environment. Simply put, we cannot do the job without resources, and I know you are aware of that.

I served as commander of the 17th Coast Guard District in Alaska from the summer of 1997 to the summer of 1999. I know you visited Alaska, I think, during the summer of 1997 and got a chance to see firsthand some of the old, obsolete vessels we still use to enforce fisheries laws in the Bering Sea and the Gulf of Alaska, including the 60-year-old Coast Guard Cutter STORIS. We augmented our force in Alaska in 1999, so you probably did not get a chance to see the 58-year-old Cutter ACUSHNET.

I know the Commandant has emphasized the importance of the deep water program to the Coast Guard. We need new deep water ships and aircraft to sustain our ability to protect the nation's ports and coastal areas; to effectively conduct counternarcotics operations and migrant interdiction operations and also for offshore fisheries law enforcement.

Sir, I would be pleased to respond to any questions you may have.

[The prepared statement of Admiral Cross follows:]

Statement of Rear Admiral Terry M. Cross, United States Coast Guard, U.S. Department of Transportation

Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to appear before you today, on behalf of the Commandant of the Coast Guard, to discuss the effects of individual fishing quota (IFQ) programs on fisheries enforcement and fishing vessel safety. I applaud your efforts to develop standards for the

implementation of future IFQ programs. I know this is a management tool that a number of the Regional Councils and the National Marine Fisheries Service (NMFS) are interested in exploring for application in certain fisheries. As the Coast Guard's Assistant Commandant for Operations and former Commander of the Coast Guard District in Alaska, I have some first hand insight into the effects of these programs on fisheries enforcement efforts and safety.

In general, I can sum up the Coast Guard's experience with existing IFQ programs as follows. First, any quota system that lengthens the fishing season will likely (a) require increased enforcement resources and (b) lead to a safer fishery by giving fishermen greater choice as to when to go out. Secondly, the Coast Guard supports the Fishery Management Councils and their process. Should the Congress decide to lift the moratorium on IFQs, we will assist the Councils with our best recommendations on enforcement and safety issues related to their implementation of IFQs for certain fisheries.

There are currently three individual fishing quota systems in use in this country: the Surf Clam/Ocean Quahog fishery in the Northeast, the Wreckfish fishery in the Southeast and the Halibut and Sablefish fishery in the North Pacific. The Halibut and Sablefish fishery is the newest IFQ program, established in 1995. As such, it has reaped the benefits of lessons learned from previous IFQ regimes. This program is the most widely studied of the IFQ fisheries and reflects the most significant enforcement efforts and challenges. When viewed together (as they typically are), the Halibut and Sablefish fishery is the largest individual quota managed fishery in the world. Through these experiences, we, along with our other management partners, have garnered numerous lessons learned to aid in developing guidelines for future IFQ programs.

The Coast Guard and the Department of Transportation are firmly committed to effective enforcement of our nation's fisheries conservation and management programs. We, along with our Federal enforcement partner, the National Marine Fisheries Service, worked extensively with the North Pacific Regional Fishery Management Council during the early 1990s to craft the individual fishing quota program for the Alaska Halibut and Sablefish fisheries. This comprehensive process, which occurred over a four-year period, combined industry with management and enforcement agencies to develop a realistic management alternative to the derby fishery that existed. Since the implementation of this program, we have learned enforcement, both at-sea and dockside, is a challenging task; a task far more complex and resource intensive than the derby style fishery that previously existed. IFQ management requires a much more extensive permitting and catch monitoring system, which leads to more complex regulations and more extensive enforcement considerations. Because IFQs required the inspection of vessels over greatly extended fishing seasons, the Coast Guard increased the number of cutter days spent on enforcement of the Halibut and Sablefish fisheries by approximately 40 percent averaged over the years since the IFQ was implemented. Similarly, we nearly quadrupled the number of aircraft hours dedicated to this mission during the same period.

In addition to our at-sea efforts, shore side enforcement responsibilities have also grown tremendously. Despite a significant increase in NMFS personnel in the Alaska region, the magnitude of the shore side enforcement effort requires significant Coast Guard participation as well. As a result, the Coast Guard and NMFS are working more closely to coordinate dockside monitoring and surveillance efforts to ensure compliance with the IFQ in this fishery, especially in a post–September 11 world. We have been very pleased with the compliance rates in these fisheries. The violation rate has been cut from an average of 67 violations per year to an average of 19 per year since implementing the IFQ. This represents a reduction of over 70%.

In addition to improved compliance rates, fishing vessel safety has been enhanced. Before the transition to the individual quota system, the Halibut and Sablefish fisheries were textbook examples of the dangers associated with derby fisheries. They were open for short 1–3 day periods, and due to the normally harsh and unpredictable weather conditions in Alaska, they often opened during periods of inclement weather. During the three years prior to IFQs, the Coast Guard conducted an average of 28 search and rescue missions per year and an average of 2 lives were lost per year in these fisheries. Since implementation of the IFQ program, the average number of search and rescue missions has dropped to 8 per year, with an average of 1 life lost every two years. While other commercial fishing vessel safety initiatives implemented during this period also contributed to these positive statistical trends, the change in fishing management techniques was likely a primary factor. This notion is supported by a 1999 study conducted by the University of Alaska's Institute for Social and Economic Research, which found that more than 85% of the

Halibut–Sablefish permit owners felt that the transition to the IFQ system had made their fishery safer.

What I have shared with you today are recent examples of the experiences we have had in what I believe is the very successful management of the Alaska Halibut and Sablefish fisheries. However, this does not mean IFQs are appropriate in every fishery. The social, biological, law enforcement and safety impacts of future management programs, will vary depending greatly on how the program is crafted. In general, a fishery management regime spreading effort over a longer time period will require additional enforcement resources. It will also allow fishermen to take into consideration such factors as weather, market conditions, crew availability, and vessel condition in order to maximize profitability and minimize risk. As future programs develop, Coast Guard representatives on the Regional Fishery Management Councils will continue to advise the councils on the enforcement and safety impacts of any proposed management decisions.

Only through open and honest communication about these issues, as happened extensively leading up to the implementation of the Alaska IFQ program, can our fisheries management system work for the American public. These same types of open communications are occurring more and more often today as the Department of Transportation and the Coast Guard strive to protect both our economic resources and our nation's security. Protecting America from terrorist threats requires constant vigilance across every mode of transportation: air, land, and sea. Without a robust transportation network our nation's vast fisheries off Alaska would be nearly worthless. The agencies within the Department of Transportation, including the U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, and the Maritime Administration (MARAD), touch all three modes of transportation and are cooperatively linked. This is especially true of the maritime mode. Ensuring robust port and maritime security is a national priority and an intermodal challenge, with impacts in America's heartland communities just as directly as the U.S. seaport cities where cargo and passenger vessels arrive and depart daily. The United States has more than 1,000 harbor channels, 25,000 miles of inland, intracoastal and coastal waterways and 95,000 miles of coastline serving 361 ports containing more than 3,700 passenger and cargo terminals. This maritime commerce infrastructure, known as the U.S. Marine Transportation System, or MTS, has long been a Department of Transportation priority. The U.S. MTS handles more than 2 billion tons of freight, 3 billion tons of oil, transports more than 134 million passengers by ferry, and entertains more than 7 million cruise ship passengers each year. The vast majority of the cargo handled by this system is immediately loaded onto, or has just been unloaded from, railcars or truckbeds, making the borders of the U.S. seaport network especially abstract and vulnerable, with strong, numerous and varied linkages direct to our Nation's rail and highway systems.

Thank you for your continued leadership in our nation's fight against terrorism, for your support of the fisheries management process, and for providing this opportunity to discuss the possible impacts of this new fishery management method. I will be happy to answer any questions that you may have.

Mr. GILCHREST. Thank you, Admiral Cross.

Admiral, can you tell us the difference or the similarities between what you have suggested as far as IFQs improving safety in the fisheries because it has lengthened the season to the Fishing Vessel Safety Act and how those two have improved safety, or does one complement the other?

Admiral CROSS. Sir, I think one does complement the other. Let me perhaps try to put it in perspective for you. If you take a look at the fatalities and number of fishing vessel sinkings in the 5 years prior to the Fishing Vessel Safety Act being passed and then the most recent 5 years, you will see about a 30 percent reduction in each of those numbers. However, I think it is instructive to take a look at also the halibut and sablefish IFQ in Alaska, which was actually implemented in 1995, which was long after the Commercial Fishing Vessel Safety Act was passed. And we have some statistics there that I think are relevant.

Prior to the implementation of the IFQ in that particular fishery, we experienced about 28 search-and-rescue cases a year specific to

that fishery and roughly two fatalities per year. Subsequent to the implementation of the IFQ, we experienced about eight search and rescue cases annually and less than one fatality.

Mr. GILCHREST. That is pretty significant.

Admiral CROSS. Yes, sir.

Mr. GILCHREST. And you think a large part of that had to do with the implementation of IFQs?

Admiral CROSS. Well, sir, certainly, on a continuing basis, we do all we can to educate fishers not just in Alaska but throughout the country, and we like to think that that has some impact. But we are forced to draw the conclusion, at least within the halibut and sablefish fishery, that the IFQ materially impacted the safety of the fishery.

Mr. GILCHREST. Now, the clam industry on the East Coast has had an IFQ in place for a number of years, and yet, in recent years, there have been a number of sinkings. Is there any explanation for that that the Coast Guard might offer to that industry or might offer to us in improving the safety of the fishery?

Admiral CROSS. Yes, sir, let me comment on that. In general, over time, with the exception of 1999, that has been a relatively safe fishery. I believe that there has been a loss of only three lives since 1983. However, in 1999, three fishing vessels did sink, with the loss of 10 lives. And we investigated each of those sinkings, and we would be happy to provide a summary of the reports to the Subcommittee if you would like. But our investigation showed that none of these vessels were engaged in fishing at the time they sank, and there is no reason for us to believe that the IFQ fishery had anything to do with the sinking of the vessels. And I can encapsulate all three of those sinkings if you would like and relate what the investigations found regarding why those vessels sank. None of them were fishing at the time, though. I can point that out.

Mr. GILCHREST. We would appreciate that, Admiral, if you could send that report to the Subcommittee.

Admiral CROSS. Yes, sir, I would be happy to do that.

Mr. GILCHREST. We would like to review that.

Admiral—I was about to call Admiral Hogarth.

[Laughter.]

Mr. GILCHREST. I guess we could do that.

[Laughter.]

Mr. GILCHREST. Dr. Hogarth—and thank you, Admiral Cross, very much.

Dr. Hogarth, you stated that your recommendation would be to let the moratorium on implementation of IFQ's lapse in October. Can you give us some specific recommendations that we should include or not include in this reauthorization, which we hope to complete before the end of this fiscal year, as far as the language in the Magnuson-Stevens Act dealing with IFQs? Should we be as specific as we can be as far as standards are concerned to an IFQ fishery?

You mentioned that we should ban foreign ownership, and you mentioned some items about the recovery of the costs, of the fees paid, and I think we can do that. Is there anything else that we should be specific on, and how much latitude would you like NMFS

to have in developing IFQs that are appropriate in the different fisheries, and how much would you like—when you say NMFS, I mean the Secretary—how much latitude, then, should we give to each council in developing IFQs?

Dr. HOGARTH. Well, I think that we should—we do not need a lot of specifics. In my opinion, one size does not fit all in this industry. We have a lot of different types of fisheries: red snapper in the Gulf; you look at the clam fishery, and you look at Alaska, and they are different. And I think the councils need to have the leeway to work with the industry in designing what is the best IFQ for the situation they are looking at.

If Congress ties their hands with a lot of criteria, it is going to be very difficult, because you are going to be looking at, you know, one size fits all, and so, we will not have the latitude, I think, to develop IFQs that we need. If you look at the four that we have in place now, they are in entirely different fisheries, but they all four seem to be working well.

I think that one issue that is not clear is the role of processors in IFQs. I think under Magnuson, they probably should be included, but so far, they have not. The councils have chosen not to. However, that needs to be clarified as to the processor's role in IFQs.

Mr. GILCHREST. If we do mention processors, is there some recommendation? If we mention processors, I am assuming that you would like the Secretary and the councils to have some latitude in different fisheries to include or not to include processors.

Dr. HOGARTH. I think it is going to be clear whether they are eligible or not, and I think if you look at Magnuson now, they may be.

Mr. GILCHREST. As far as—and I did not mean to interrupt you—but as far as the processors are concerned, getting into an IFQ, the language that we would put into the Act would allow the Secretary and the council to make that decision, and should we include an opening for recreational industry, the charter boat industry? Should we worry about how that fishing quota can be transferred or purchased? Should we worry about, then, which to some extent it appears that the IFQs in the clam industry in the mid-Atlantic may be owned—about 60 percent of it might be owned by three individuals.

Do we have to worry about, in the reauthorization of the Act, that type of monopoly, or should we leave that up to the council and the Secretary?

Dr. HOGARTH. I think the last point is an excellent point. I think, you know, we think the councils should be able to address that, but I am not sure that you want to see one company or two companies monopolize the fisheries. And so, it might be good to have some guidance on the, you know, the total percentage.

Other than that, I really—you know, one thing in Magnuson: it defines fisheries as the stock in fishermen, you know. It says the stock in fisheries is defined as fish stock and fishermen. It does not say, well, that includes, you know, processors or includes—what else it includes. I think that is probably where the clarification needs to be if the processors are included, you know, to make sure

that there is no question from a court standpoint as to what you intended.

Mr. GILCHREST. I see.

Dr. HOGARTH. But I really—other than that, you know, I think there is not much we need. I think we just need for it to lapse and let the councils work forward. Like I say, we are going to have a workshop quickly to try to get the four sectors together to see if we are missing some points that we probably need to make, and we will be happy to provide you with that report. And we are trying to expedite that workshop.

Mr. GILCHREST. And when might that workshop be complete?

Dr. HOGARTH. We are hoping to have it in the next 60 days. That is what our goal is.

Mr. GILCHREST. If you can make it in the next 50 days, maybe we can include it in the—

Dr. HOGARTH. We will try to speed up the process, then.

Mr. GILCHREST. Thank you, Dr. Hogarth.

Mr. Underwood?

Mr. UNDERWOOD. Thank you, Mr. Chairman, and thank you for your testimony, both of you.

Admiral Cross, I want to first of all congratulate the work of the Coast Guard. I know it is a very integral part of homeland defense, and its role in that regard is increasing rather than decreasing. And my question pertains a little bit to that in terms of understanding your multifaceted responsibilities. One of them, obviously, is your work in monitoring the EEZ and in the IFQs. And in your own explanation here, you have indicated that in the implementation of the halibut and sablefish ITQ program in Alaska required an increase in the number of cutter days spent enforcing the fishery by 40 percent; a quadrupling of the number of aircraft hours dedicated to this mission.

So maybe you can explain: how are those decisions made within the Coast Guard where to put their resources, since you have—this is a vital part of your mission but has certainly, given the events of the past few months, you are taking on other, very serious responsibilities as well?

Admiral CROSS. Sir, let me just start by saying those judgment are made very carefully. And what we ask our operational commanders to do is to analyze various threats from the various mission areas and then allocate resources appropriately. Let me give you an example, perhaps. On September 10, 1 or 2 percent, certainly less than 5 percent of the Coast Guard's resources were dedicated to port and coastal security. By October 11, a month after the September 11 events, that number had increased to well over 50 percent, based on the perceived threat in the short-term and the time it took us for developing coherent plans and working with the operational commanders.

The Commandant since that time has decided that at least in the short-term, the right number is probably going to be between 20 and 25 percent, so that allows us to reallocate some of our resources that were drawn in for port and coastal defense in the short-term until we built up partnership and developed operational plans. Now those resources, many of those resources, have been redeployed back to Coast Guard missions. So maybe at the end of the

day, your question is what does this mean for fisheries law enforcement?

Well, over the short-term, until we can acquire the resources that we think we need to conduct the port and coastal security mission, it probably means somewhere between about a 5 to 7 percent reduction in the allocation of Coast Guard resources to fisheries.

Mr. UNDERWOOD. But in the President's new budget and the reallocation of resources, has the Coast Guard not received a significant bump-up in terms of security issues and homeland security, and is that not, in a sense, taking care of that?

Admiral CROSS. Well, sir, that is certainly going to take care of phase one, but the reality is we have the money, but we still need to recruit and train those people that the money is going to pay for. We need to get the boats and equipment on line that the money was provided to buy, and we are working at that absolutely as hard as we can. So what I am telling you now, the numbers I am providing now are not the same numbers that we will be talking about a year from now.

Mr. UNDERWOOD. Now, are operational commanders, then, given the latitude to make these judgments in terms of in their own respective area, whether perhaps not as much attention needs to be given to port security? I would imagine that not to be the case.

Admiral CROSS. Typically, the operational commanders receive broad guidance from the Commandant and from the Marine Safety office and operations, myself, program directors, and then, they certainly have latitude within their operational areas to move resources as the threats change. And the threats can change very quickly. For example, the number that I gave you, 5 to 6 percent, 5 to 7 percent, assumes a maritime security condition that the Commandant has termed the new normalcy. And when there are times that the security condition needs to be increased, perhaps with the receipt of specific intelligence regarding a specific threat, then you will see once again the Coast Guard bringing additional resources to bear on the homeland and port coastal security mission, and there is no place for those other resources to come from in the short-term other than from other Coast Guard missions.

Mr. UNDERWOOD. OK; if I could ask—I did not want Dr. Hogarth to get off scot-free here.

[Laughter.]

Mr. UNDERWOOD. Well, thank you. Thank you for that explanation.

Also, Admiral, if you can give some indication—this is for the record—as to the level of resources or assistance given by the Coast Guard to the Freely Associated States, meaning the Marshalls and Palau and FSM, in terms of assisting them in the enforcement of their own EEZs.

Admiral CROSS. Yes, sir, we would be pleased to do that, and I fully understand that just the huge distances and the geography involved make that a very, very difficult area to enforce.

Mr. UNDERWOOD. And it would mean an increase of Coast Guard resources for Guam! That would be the consequence of that.

[Laughter.]

Mr. UNDERWOOD. Dr. Hogarth, thank you for your testimony, and this is just a kind of a conceptual question, so for my own un-

derstanding of the issue, you referred to IFQs as a rights-based management tool, and yet, does the Magnuson-Stevens Act not make clear that IFQs are not property rights in that definition but, instead, a revokable permit? So maybe you can explain the difference, or maybe you can explain what you mean by rights-based management tool.

Dr. HOGARTH. Well, I think from that perspective, we are still taking a public resource and given a right to fish to a limited number through a process. We are saying that you can harvest a certain amount. But we are taking a public trust resource and allowing certain individuals to harvest a certain amount of it, and that is what I think we mean by rights-based. It is a right to do; it is something that the Government permits.

Mr. UNDERWOOD. OK; but the right is not inherent.

Dr. HOGARTH. No; that is correct.

Mr. UNDERWOOD. It is a public resource.

Dr. HOGARTH. Public resource; that is correct.

Mr. UNDERWOOD. OK; clear; thank you.

Dr. HOGARTH. Could I just say one thing for the record?

Mr. UNDERWOOD. Sure.

Dr. HOGARTH. I just—while I got the opportunity with Admiral Cross here—I just, from the National Marine Fisheries Service standpoint, I just publicly would like to thank the Coast Guard. We depend on them quite a bit, and as he said, at sea, we depend on them totally. And it is just a great cooperation that we have working, and Admiral Cross and I met several weeks ago to talk about the issues and how to work closer and how we can work together. I have been in several regions, and I would say that the regions I have been in, on at least a quarterly basis, we would have the Coast Guard call up, and we would get our enforcement together, and they would call me. We would decide then what needed to be enforced. They would ask our input: you know, what do you feel is critical for this quarter so we can do our planning?

I know the events of September 11 have changed that some, but that cooperation is still ongoing, and, in fact, we have some people working with the Coast Guard now in the Houston Channel and some other areas. But just publicly, I would just like to say that we support the Coast Guard, and they support us, and anything to do to help them get back up to the level of enforcement in fisheries, we support. It is a great working relationship.

Mr. UNDERWOOD. Thank you.

Dr. HOGARTH. Just thanks.

Mr. GILCHREST. If the gentleman would yield, I guess just very briefly on the rights issue, I think perhaps—and I am not a lawyer; I am not sure if we have any lawyers up at this end of the room—but a rights-based management system—I do not think it is referred to as that in the Magnuson-Stevens Act, and I think we want to be careful with the language that we put into the Magnuson-Stevens Act for future reference. I believe that IFQs are referred to as privileges. I think, Dr. Hogarth, that the way you used your comments, I would interpret as privileges.

Dr. HOGARTH. That is correct.

Mr. GILCHREST. But I think we should continue to interpret it as such. So when someone is given or purchases an IFQ, that is the standard legal terminology. It is not that I want to split hairs here.

Dr. HOGARTH. Thank you.

Mr. GILCHREST. But it is—

Mr. UNDERWOOD. I want to split some hairs, though.

Mr. GILCHREST. Mr. Underwood.

Mr. UNDERWOOD. I brought it up.

Mr. GILCHREST. I was hoping that Mr. Underwood and I can retire from Congress and take care of those islands he described.

[Laughter.]

Mr. GILCHREST. Anyway, I will yield now to Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and thank you for calling this hearing, and I certainly want to thank Dr. Hogarth and Admiral Cross for their testimony.

In following up on Mr. Underwood's testimony, I would again like to pay my personal respects to the tremendous work that the Coast Guard has done for our security. There are some of us here on the Hill who have a very different opinion about reinventing the wheel and having a Homeland Security department-level official when there are six or seven agencies already engaged on the whole question of fighting terrorism and especially on homeland security; for example, the Coast Guard.

It seems that from your testimony, Admiral Cross, that all you need really is more training and personnel and resources, and homeland security is basically on our wharves and docks and on the high seas; this could have been done very effectively by the Coast Guard alone. Are you in agreement with that, or am I off base?

Admiral CROSS. Sir, I think most of the work that the Coast Guard does including port and coastal security involves partnerships. We have, for some time, and we continue to work very closely with the U.S. Customs Service. Dr. Hogarth talked about the work with the National Marine Fisheries Service. What he did not tell you specifically is that we had a shortage of boats and people in a particular area of the Gulf Coast, and we went to the National Marine Fisheries Service, and said you have a boat, and you have some people, and could we partner and cover this particular area? And so, we did that.

We also have a very strong partnership with the Navy. The Navy has given the Coast Guard the use of 13 170-foot patrol boats plus various reserve units, and we have also partnered very closely with state and local officials and the other DOD services. So I do not want anyone to have the impression that this is a solely a Coast Guard effort, because it is not.

Mr. FALEOMAVAEGA. I did not mean to suggest that, Admiral. But what I am saying is before the September 11 tragedy, you were already strapped for resources and ships and everything where possible to fulfill your mandate from the Congress. As Members of this Committee, we all know that.

But since the September 11 tragedy and even with the President's initiative, we have given you a little bit more money, but it is still not sufficient to carry out the responsibilities as you should. Am I wrong on this observation?

Admiral CROSS. I think Admiral Loy has noted that we are working with the administration to provide additional resources for the Coast Guard.

Mr. FALEOMAVAEGA. Dr. Hogarth, your testimony specifically was on the IFQs and also in reference to the reauthorization of the Magnuson-Stevens Conservation Act. Do you see any problems with the current status of the law as it provides this Congressional mandate for these councils, regional councils and the way they operate? I know from years past that these councils have had spats with NMFS, if you will, in terms of who is going ahead or who is coming behind and who is not fulfilling their Congressionally mandated responsibility. Can you comment on that?

Dr. HOGARTH. Well, I think, you know, first of all, I support the council process. I think the open, transparent process is what we need in managing fisheries. I think, you know, we need to work with the councils more greatly, and that is what we are trying to do.

There are some things that we are looking at and that we think probably need to be, you know, tweaked, so to speak. I do not think that there are any major changes that we see in the Magnuson-Stevens, but there are some questions arriving about the balance on certain councils, you know, how do we achieve a balance? It says that there should be, but the Secretary, for example, has to choose from what he is submitted from the governments of the states and has no other choice. So I think we have to look at balance, how do we balance these councils?

And there are a few things that we are putting together, and we will make those recommendations to your Committee hopefully very shortly. They are going through the review process within the agency now, but I do not think there is anything that we see that is major. We think the act is working. A lot of what the problems are is just us getting it implemented. It has been a lack of, to be honest with you, resources since 1995 on the Sustainable Fisheries Act to get some of the work done.

But we have a new process that we are implementing with the councils that seems to be working relatively well right now. It is a lot of pressure on the councils. We put a lot of pressure on them, but we have put a lot of pressure on our own people.

Mr. FALEOMAVAEGA. On the question of IFQs again, do you see that there is a greater strain on moratoriums and putting quotas on the eastern shores and the Atlantic of the variety of the fish? I suppose that you have a lot of lively debate even among the scientific community. How does this compare to those of us from the Pacific? Do you see a lot more of these efforts to put quotas and limitations on IFQs than you would in the Pacific, or are they about the same?

Dr. HOGARTH. I think in some instances, the Western Pacific, the Western Pacific Council, one thing they have done is they have had a limited entry program for a number of years, you know, that has been in place, which is a little bit more advanced than some of the East Coast. We have—you know, I think quotas will be a fact of life for awhile. I think we have to look at the amount of fish that can be extracted, including by-catch, which Congress has, you

know, told us we have to do, and I think we need to do a better job there. But I do not think you are going to get out of quotas.

Mr. FALEOMAVAEGA. As I remember correctly, I think some 100 fishing vessels from the East Coast are now embanked in Hawaii, because there was such a place—there was a moratorium on swordfish.

Dr. HOGARTH. Yes.

Mr. FALEOMAVAEGA. And now, we have got very serious problems in the Pacific even putting that on base. Is NMFS in any way cognizant of some of the problems that we have in the Pacific?

Dr. HOGARTH. We are. Definitely, we are. We are working—particularly now in the long line industry and the fact that vessels are moving around based on regulations that we have had to put into place to save turtles, some as a result of lawsuits; some as a result of the fact that we need to protect some of these species. We are trying to work with the councils to look at, you know, so that they will do the regulation it takes to protect those areas in addition to the movement of vessels.

And that can be done through the council process.

Mr. FALEOMAVAEGA. I do not know if you are aware, but I happen to have the largest tuna canning facility in the world that is based in my district in the Central Pacific, and I wanted to ask if the administration is supportive of the idea of allowing duty-free canned tuna from the Andean countries to be exported to the United States without any duty.

Are you supportive of this position?

Dr. HOGARTH. That decision is above me.

Mr. FALEOMAVAEGA. Because now, the Asian countries are complaining about this policy.

Dr. HOGARTH. Well, potentially—we talk to the industry, and depending on which group of the industry you talk to, some of the industry, some of the canners support it, and some do not. I think that there are some things that we could do for our industry that they have asked us to on canning labels and things that we are trying to work with the Department of Agriculture now that would be of more benefit to them that would probably relieve some of the real concern over this duty free.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Thank you.

Mr. GILCHREST. Thank you, Mr. Faleomavaega. We will refer that to the Ways and Means Committee.

One other quick question, Dr. Hogarth: in your testimony you said that the current state of knowledge of the fisheries and the IFQs, it would be difficult to have multispecies management be compatible, with IFQs. As we begin the process of discussion and moving toward an understanding of ecosystem management of the fisheries, would you say that is a difficult if not impossible management tool?

Dr. HOGARTH. What?

Mr. GILCHREST. Ecosystem management with IFQs.

Dr. HOGARTH. I do not know that it is impossible. I think again, it is going to look at the type of fisheries that you are dealing with within the ecosystem. I think that some we would, and some we would not. What the problem is with multispecies is, for example,

in a group when you have got 53 species—I mean, in this type of group of fishery, for example, in the Southeast, you do not know what you are going to catch. You may catch 20-something species when you are fishing, and it is very difficult to set IFQs from that standpoint.

But I think the ecosystem management, I think, has a lot of potential for the future to help with the management, period. And how it fits in with IFQs, I think, will be worked out as we go forward. But I do not think it is impossible totally for IFQs. You have still got single species in an ecosystem that you catch separate from these multispecies.

Mr. GILCHREST. So as we go through the process of letting the moratorium lapse on IFQs and allow the councils and the Secretary to be flexible in their implementation of IFQs in various fisheries, NMFS and other agencies will continue to pursue an understanding of that dynamic system that we call an ecosystem and in some years down the road pull it all together.

Dr. HOGARTH. Yes, sir. Due to this Committee's direction already, we are doing quite a bit on ecosystem management. There have been several workshops. Even at the American Fisheries Society meeting this fall, there are going to be further. That is a primary issue for us right now that we are trying to sort through and work through. We feel like it is the management of the future, and we have just got to figure out how to do it and how to measure everything together. So it is going to take us and a lot of fishermen and academia to come together, but that is what is underway right now.

Mr. GILCHREST. We are all up for it, Dr. Hogarth.

Dr. HOGARTH. Thanks.

Mr. GILCHREST. Thank you.

Any—Dr. Underwood?

Mr. UNDERWOOD. Thank you very much.

And it is along the line of what the Chairman just asked. If, given the acceptance of the fact that IFQs are really permits to have exclusive access to a public resource, should these programs not be required to demonstrate that they contribute to and enhance the conservation of the resource in question? And should they be subjected to some kind of regular review to see that they are, in fact, doing that?

Dr. HOGARTH. I think that is why we feel that the councils should continue this process and have some leeway is that definitely, they should be conservation based, and they should be reviewed, you know, constantly as far as the council is concerned, yes.

Mr. UNDERWOOD. OK; thank you.

Mr. GILCHREST. Mr. Faleomavaega, any follow-up questions?

Mr. FALEOMAVAEGA. No questions.

Mr. GILCHREST. Admiral Cross, you are not going to retire to Juneau when you are out of the Coast Guard? A lot of Coasties do, I understand.

[Laughter.]

Admiral CROSS. Yes, sir, a lot do. It is not my plan right now, sir.

Mr. GILCHREST. Thank you very much, Admiral Cross and Dr. Hogarth, for your testimony.

Mr. GILCHREST. Before I introduce the next panel, if anybody standing by the back door wants to sit around the horseshoe up here, you are welcome to, or if you find another seat somewhere in the audience.

Our second panel is Dr. Daniel Bromley, Professor of Applied Economics, University of Wisconsin; Dr. Donald Leal, Senior Associate, Political Economy Research Center; Mr. Richard Gutting, President, National Fisheries Institute; Mr. Jim Gilmore, Director, Public Affairs, At-Sea Processors Association; Mr. Lee Crockett, Executive Director, Marine Fish Conservation Network; Mr. Nathaniel Heasley, Fisheries Program Manager, Taxpayers for Common Sense.

Gentlemen, thank you very much for coming.

Dr. BROMLEY. Should I start?

Mr. GILCHREST. I was just waiting until everyone sat down.

Gentlemen, thank you very much for coming this afternoon. We look forward to your testimony and your input, and Dr. Bromley, you may begin.

STATEMENT OF DANIEL BROMLEY, PROFESSOR OF APPLIED ECONOMICS, UNIVERSITY OF WISCONSIN

Dr. BROMLEY. Thank you, Mr. Chairman.

I have a longer statement that I have submitted. If my timing is right, I will have 5 minutes worth of prepared comments here.

Mr. GILCHREST. Yes, sir.

Dr. BROMLEY. I shall comment on whether IFQs should be used as a management tool, but first, I suggest that we need a bit of clarity about IFQs. This is necessary because the literature on fisheries has made such a conceptual mess of IFQs that there seems hardly a problem in the oceans that cannot be solved with IFQs. Not only is much of this literature confused and flawed in its diagnosis of the fishery problem; this literature violates the very first rule of public policy. That rule is that one needs a single policy instrument for each policy goal.

When we read that IFQs will solve problems of excess capacity; that they will lead to the conservation of fish stocks; that they will reduce monitoring and enforcement costs; and that they will solve the alleged tragedy of the commons, we must understand that this is a classic example of severe overstatement. There are three principles I believe that set the stage for thinking about IFQs. First, we must be clear about the public ownership of the oceans. I am reassured in the conversations that have just been completed that this is understood at that end of the room.

There is a myth that the oceans are some empty frontier in which fish are not owned by anyone until they find themselves onboard a vessel. However, since 1976, the Exclusive Economic Zone and the fish within it are clearly the sovereign possession of the citizens of the United States, to be managed on our behalf by the Federal Government. In technical terms, the EEZ is a state property regime on a par with the public lands.

Second, we must be clear that IFQs are not property rights, and this is not splitting hairs. IFQs are permits. The claims and the du-

ties that are inherent in IFQs are against other holders of IFQs, not against the citizens of the United States and not against the National Marine Fisheries Service. The Magnuson-Stevens Act is clear that IFQs are permits that bestow nothing in the way of a property right in fish or the wealth of ocean fisheries. It must not be modified in this respect.

Finally, we must be clear that it remains the obligation of the Federal Government to manage and protect the sustainable harvest of the fish stocks in the EEZ. It is not in doubt that the NMFS has the obligation to protect the biological integrity of all fish stocks, and that obligation, it seems to me, supersedes any other purpose of the agency. Protecting fish stocks is not something that can be passed off to the bogus magic of IFQs under the flawed rubric of rights-based fishing, nor is protection something that can be passed off to the regional fisheries management councils. There must be a national commitment to protect fish stocks and to rehabilitate those that have been driven to the brink of collapse.

Let us now turn our attention to IFQs as a management tool. I submit that IFQs might be considered a feasible management tool for particular fisheries if certain conditions are met: if there is assurance that the harvest levels will not drive stocks to economic or biological extinction; if there is a local desire to force some labor and capital to exit a particular fishery; if it is clear that the subsequent purchase of petty quota shares, as I would put it, will accomplish the desired exit; if there is a realistic annual fee for those wishing to remain in this particular fishery; if those wishing to remain in a particular fishery and seeking quota shares are made to offer bids for royalty payments on landings, with only a subset of those bidding for this—

Mr. GILCHREST. Excuse me, sir; bids for what? I did not hear that. Bids for royalty payments?

Dr. BROMLEY. Yes; if those wishing to remain in a particular fishery and seeking quota shares are made to bid a royalty offer for landings, with only some subset of the highest bidders actually receiving these quota shares.

The reason I insist on this is that if one really believes in a market economy, what one really wants is for private firms to have the opportunity to reveal to all of us their willingness to pay for something. The way IFQs have been handed out is, in a sense, the dogma of picking winners, which I understood at least in years past, the Government was loath to do, to pick winners, so auctions are precisely the antithesis of picking winners based on catch history.

Let me move on. My sixth condition is if it is clearly understood that the legal nature of an IFQ as a permit stands on the same ground as all commercial contracts and agreements and bears no relation whatsoever to Constitutional notions of property rights; these are not rights-based fisheries. They are quota-based fisheries, and they ought to be called that.

Seventh, if it is clearly understood that monitoring and enforcement costs in an IFQ fishery are not less and stand a very good chance of being greater than they are in a non-IFQ fishery; and finally, if it is clearly understood that IFQs will doing nothing at

all—nothing at all—to turn fishers or fishing firms into good and beneficent stewards of our wealth of ocean fisheries.

I close with a few comments on the national interest in local and regional fisheries: the idea behind the councils is that these councils will ensure us that fishery policy is formulated by those closest to the resource and also the implications of those decisions. However, as we learned in the Pacific Northwest about timber harvests, local interests can often conflict with the larger national ownership and the interest of precious natural assets. Local issues and priorities, of course, warrant some consideration. At the same time, we must be very clear that the ultimate health of marine fisheries is too important to be left to local pressures and local wishes.

It may be acceptable for regional councils to have the option of implementing an IFQ system in one or more fisheries, but that implementation must be consistent with the conditions that I have spelled out above.

To summarize, my position is this: IFQs might be a regional management tool if and only if the conditions that I have alluded to above are guaranteed. I will summarize them here: clear acknowledgement of public ownership of the wealth of ocean fisheries; absolute assurance of the continued Government protection of fish stocks and recovery of depleted stocks; and there must be a pricing protocol that reverses the current artificial inducements to fish and that brings a financial return to the U.S. Treasury for the opportunity to participate in the fishery.

If these conditions are not met in their entirety, then IFQs are not a management tool at all but merely a cunning way to hand over enormous income and wealth streams to the industry.

Thank you very much.

[The prepared statement of Dr. Bromley follows:]

Statement of Dr. Daniel W. Bromley, Anderson–Bascom Professor of Applied Economics, University of Wisconsin–Madison

I have been asked to address a number of questions concerning Individual Fishing Quotas and I will do so in strict accord with the letter of invitation sent by Congressman Gilchrest on October 12, 2001.[1] I provide a brief biosketch at the end of this testimony.

The letter of invitation states that: "The Subcommittee is interested in your views on whether and when IFQs should be used as a management tool, and your recommendations for the development of guidelines that will address issues associated with the development and implementation of IFQ fishery management plans." A number of specific questions are then detailed. To facilitate clarity I shall start by responding to this general programmatic question. I will then turn to the specific questions posed. My answers to the general questions are based upon the detailed points raised in response to the specific issues of interest to the Subcommittee.

THE GENERAL QUESTION:

> Whether and when IFQs should be used as a management tool, and guidelines that will address issues associated with the development and implementation of IFQ fishery management plans.

A useful response to this question first requires some contextual clarification. In that regard, I insist that coherence will come to American fisheries policy if and only if the following five conditions are met:

[1] Many of the ideas expressed here have been developed andd are much elaboratedn Macinko and Bromley [2001].

RECOGNIZE PUBLIC OWNERSHIP

There must be clear recognition that the wealth of ocean resources—but especially the fish stocks—are the exclusive property of the citizens of the United States. This reality for the Exclusive Economic Zone would put fisheries on the same legal basis as grazing on BLM lands, as grazing and timber harvests on U.S. Forest Service lands, and as petroleum extraction from the Outer Continental Shelf.

Recognition of ownership by all of us carries with it the correlated obligation that some government agency be given a clear and non-negotiable mandate to protect—not just "manage"—the wealth of ocean resources for the long-run benefit of all of its owners. This means that fisheries policy would suddenly be driven not by the wishes and priorities of the industry in pursuit of our fish, but in the interests of those of us who are the owners of the ocean ecosystems and all that is contained therein. After all, the fishing industry is merely the first step in a long and elaborate process of converting nature's gift into a valuable product for our consumption. Fishing firms stand on the same foundation as firms engaged in petroleum extraction, timber harvesting, livestock grazing, and mineral extraction. All of these firms exist with but one purpose in mind—to serve us as they collect nature's bounty for our benefit. As long as there is a demand for the product they deliver, we need not worry that there will be clever and hard-working entrepreneurs standing in line seeking the opportunity to serve our cravings. That is, after all, the essence of capitalism and the associated markets we claim to revere.

B. ASSURE SUSTAINABLE HARVESTS

With public ownership clarified, and with the long-run sustainability of the wealth of ocean fisheries assured by the aggressive management protocols of a committed government agency (said responsibility currently residing in the National Marine Fisheries Service), we may turn our attention to the essential matter of assuring the long-run sustainability of the valuable assets of the EEZ. Notice that safe harvests must remain the exclusive province of some government agency. Notice, as well, that the determination of this harvest level—often called the Total Allowable Catch (TAC)—must be resolutely situated beyond a robust firewall that offers absolute protection to government scientists and their technical advisors from local political pressure to push the TAC up beyond what the scientists insist is the safe harvest. In those fisheries without a formal TAC there must be a resolute commitment to follow management advice about closures when stocks are threatened.

Having said that, we must recognize that part of the difficulty in many fisheries is that they are managed on the dubious metaphor—and models—of "surplus production." These models presume that nature produces "extra" stuff that can freely be taken out of the ecosystem without serious implications for other parts of those ecosystems which are either predators of, or prey for, the allegedly "surplus production." When simplistic models of surplus production are built for single species—and unfortunately this seems to be the norm—then it should not surprise us when seemingly "safe" harvests turn out to hold serious implications for a number of fish stocks. In such cases it is not political pressure that constitutes the primary threat to sustainability, but bogus science. If the Congress really is interested in the application of good science to fisheries policy then a major research initiative to advance the primitive art of fishery population dynamics would offer enormous payoffs.

ALLOCATION OF HARVESTS

With individual stocks in each fishery protected from both bad science and political manipulation, the question then turns on how the safe (sustainable) annual harvest from particular fisheries shall be allotted to those who seek to participate. Before answering this question, I must briefly offer a slight but fundamental economic digression. Specifically, the capture of the living resources of the oceans is currently free to all who wish to earn income from that pursuit. It constitutes intellectual dishonesty for an economist to fail to point out that this simple fact leads to an artificial inducement for too many factors of production—oats and labor—o be devoted to that particular pursuit. That is, too much labor and capital will be devoted to catching fish in comparison to other avenues of gainful employment. We know that in other economic pursuits the necessary inputs are priced through markets that ostensibly reflect the value that society attaches to those inputs. Of course fishing is not a costless activity—oats, gear, licenses, fuel, and insurance present formidable costs. However, only in the fishery is the valuable product (the fish themselves) freely given away. Not only is this zero price a false reflection of the true social value of the harvested fish, this zero price results in fishing being artificially cheap compared to other possible avenues of making a living. It follows that there will therefore be too much labor and capital devoted to fishing.

We see that economic efficiency—nd equity with other sectors involved in natural resource extraction—emands that those who seek to make a living from fishing must offer payments to the owners of those fishery resources for the opportunity to profit from that activity. This requires that any allotment of fishing opportunities to the private sector must be predicated upon some scheme in which the U.S. government receives a payment for fish caught. These schemes could be structured in a variety of ways. But the receipt of payments to the U.S. Treasury assures that economic efficiency and equity across resource sectors has finally arrived in U.S. fisheries policy.

D. IFQs AS A MANAGEMENT TOOL

We now have public ownership firmly established, we have safe and sustainable harvests assured, and we have sound economic principles in place to make sure that the current subsidies to excessive entry and landings have been reduced, if not entirely eliminated.[2] From this auspicious foundation I can now address the core question: whether and when (that is, under what circumstances) IFQs should be seen as a feasible management tool in U.S. fisheries?

The answer to this question first requires clarity as to what is meant, precisely, by the concept of an "IFQ." There are four components that are pertinent here:

- A total allowable catch (TAC) is set for a particular fish stock;
- That TAC is then divided into shares (called "quotas") among some subset of all vessels with a creditable "catch history;"
- Permits to catch and land those quotas are then issued free of charge to all with a creditable catch history;
- Those permits to a quota share constitute "individual fishing quotas" (IFQs)

The question therefore concerns which of these attributes alone, or in concert, offer a feasible and prudent "management tool" for fisheries? Notice that mere feasibility is not sufficient. Of course IFQs are feasible—they exist in 6 U.S. fisheries (one is a state fishery in Wisconsin, while the other 5 are Federal programs). So I will answer in terms of the sufficient condition—are IFQs a prudent management tool?

IFQs can be a prudent management tool for particular fisheries if certain conditions are met. These conditions are:

- If there is assurance that harvest levels will not drive stocks to economic or biological extinction (that is, there must be a coherent and safe TAC);
- If there is local pressure to force some labor and capital to exit a particular fishery;
- If it is clear that the subsequent purchase of petty shares will accomplish the necessary exit of labor and capital;
- If there is a realistic annual fee structure for those wishing to remain in a particular fishery;
- If those remaining in a particular fishery and seeking quota shares are made to offer bids for royalty payments on landings (with only some subset of the highest bidders receiving quota shares);
- If it is clearly understood that the legal nature of the IFQ (as a permit) stands on the same ground as all commercial contracts and agreements and bears no relation whatsoever to Constitutional notions of "property rights" (that is, the legal content of IFQs is situated in contract law among other holders of IFQs and bears no relation to the citizens of the U.S. as owners of the wealth of ocean fisheries or the U.S. Treasury);[3]
- If it is clearly understood that IFQs will do nothing at all to turn fishers or fishing firms into good and beneficent stewards of our wealth of ocean fisheries;
- If it is clearly understood that monitoring and enforcement costs in an IFQ fishery are not less—and stand a very good chance of being greater—than those costs in a non–IFQ fishery.

E. THE NATIONAL INTEREST IN LOCAL AND REGIONAL FISHERIES

The final piece in this challenging policy puzzle concerns the relation between the local/regional level and the national interest in U.S. ocean ecosystems. The idea behind the various fishery management councils is that the councils will assure us that fishery policy is formulated by those closest to the resource and the implications of various policy choices. However, as the Pacific Northwest recently learned

[2] There are other subsidies, introduced to "develop the American fishing fleet" in the 1970s, that continue to plague and stifle economically rational fishing policy. This does not seem the place to discuss such practices.

[3] See Becker [1977, p. 13] for the important distinction between "claim rights held against other individuals—in this case other IFQ holders—from those held against institutions—in this case the NMFS or the U.S. Treasury.

about timber harvesting practices, local interests can often conflict with the larger national ownership interest of precious natural assets.

Local issues and priorities of course warrant careful consideration in national fishery policy. At the same time, we must be very clear that the ultimate health of marine fisheries is too important to be left to local pressures and wishes. It may be acceptable for regional councils to have the option of implementing an IFQ system in one or more particular fisheries, but that implementation must be consistent with the conditions spelled out immediately above. To summarize briefly here, as long as that implementation were consistent with: (1) clear recognition of the public ownership of the wealth of ocean fisheries; (2) absolute assurance for protection of each fish stock—and recovery of depleted stocks; and (3) a pricing scheme for fish that assures a return to the U.S. Treasury for the opportunity to participate in the fishery.

We see here a necessary blending of national and regional interests. Regional interests have a stake in the ocean's resources, and there is certainly special knowledge at the regional/local level. But the wealth of ocean fisheries is most assuredly not the fee simple estate of local or regional interests. Rather, that estate is an asset belonging to all citizens of the U.S. The obligation here is that local/regional priorities and interests must always be subordinated to the larger national interest in the sustainability of the fishery resource.

SUMMARY:

These five principles, if assiduously adhered to, offer a plausible chance of rescuing U.S. fishery policy from the incoherence into which it has slowly settled over the past decades. And if IFQs are thought to be a prudent management tool then they must only be introduced under the more expansive list of 8 conditions elaborated under item D above.

I now turn to the more specific issues in Congressman Gilchrest's letter of invitation. In doing so I will draw upon—and reinforce—some of the comments from above.

SPECIFIC ISSUES:

1. Initial allocation among fleet sectors and individuals

One of the major flaws in IFQs as we know them is that the receipt of an IFQ permit represents a gifting of public wealth to private individuals. As a citizen I am offended—and as an economist I am outraged—by this unnecessary enrichment of an industry that is proud of its commitment to what many of its members are pleased to call the wonders of American free enterprise. Unfortunately, the adjective "free" has an insidious double meaning in fisheries policy. I very much doubt that this practice is what most people have in mind when they pronounce on the manifold virtues of a market economy. Indeed, one could make a plausible argument that much of the observed—and much lamented—"excessive entry" afflicting many fisheries is less motivated by the desire to catch fish than it is to acquire some catch history by which firms might then receive one of these wondrous gifts. We call this, with deep irony, "fishing for quota." Notice that the mere expectation that IFQs will be introduced in a number of fisheries has precipitated the "race for catch history"—such racing then providing part of the alleged need and "justification" for IFQs. In an ironic twist, we may fairly observe that the "disease" is caused by the promise of "medicine." And the more likely the prospects of medicine, the worse the disease becomes. This is bizarre in the extreme.

If Congress is intent on gifting public wealth to the private sector then there must first be a clear set of criteria whereby that gifting can be justified and explained to the American people—and to the U.S. Supreme Court.

It is clear that if IFQs are to be introduced then the only economically rational way for that to be done is on the basis of the willingness of fishing firms to pay for the opportunity to pursue that particular income stream. It would seem odd, I suggest, were oil companies to be given free access to the deposits in the Outer Continental Shelf. It would be odd, as well, were logging firms and sawmills to be given free access to the timber growing on public lands in America. And indeed we know just how much controversy exists over the allegedly low grazing fees paid by western ranchers for access to forage on the public lands. One thing that can be said for the ranchers—at least they are paying something for what they receive from the public domain. The same cannot be said for America's fishing fleet.

I have earlier (item C above) pointed out that pursuing fish is artificially cheap. All fishing firms should be required to pay substantially more than at present to pursue our fish. That alone would solve much of the alleged problem of "excessive capital" in (or lurking near) many fisheries. I also insist that if an IFQ system is instituted, access to an IFQ permit should be contingent on submitting bids (royalty

payments) for each fish landed. Such auctions are common in natural resource policy and must be part of any IFQ program [Macinko and Bromley, 2001].

This is not the place to articulate the details of several feasible auction systems. It is, however, the place to insist that only auctions can uncover the market's assessment of the economic value of fishing. And, only through auctions will we finally bring the proper economic incentives to an industry that has, for too long, had free access to the wealth of ocean fisheries. To those who worry that auctions would eliminate small firms I wish to point out that auctions could be designed in a way that would partition the allowable catch in a way that would reflect local characteristics, culture and concerns. In addition, the auction systems would lead to fishing permits for set periods of time—ranging from 2–10 years—depending on the circumstances of each fishery. This would facilitate management flexibility as conditions change. Finally, there could be limits on maximum share of any fishery that could be controlled by a single firm—or by a combine of firms. Notice that the proceeds from this system of auctions could, in the beginning, be dedicated to programs that would ease the transition of firms unwilling to continue to fish. The proceeds could also serve to ease transition costs in particular communities hit hard by the transition to the new fishery regime.

2. Should processors receive quotas?

It is important to point out that the excessive and quite unnecessary controversy about whether or not processors should receive quota shares arises from the fact that there is an expectation that the quota shares—and the immoderate income streams associated with said permits—will be given away free. In rather blunt terms, those who fish seek to make sure that they are the only ones to benefit from this wondrous wealth transfer and the associated income stream. Members of this House know all too well that there is an unlimited demand for income streams given away free of charge by the government.

But, under my proposal, anyone who seeks to acquire an opportunity to earn a living from fishing must first agree to pay higher fees for the opportunity to fish, and they must participate in an auction where they would bid for royalty payments on the fish caught and landed. Notice that structuring the initial allocation in this way would immediately truncate the very long line of supplicants who would otherwise appear before you at frequent intervals claiming to be much in need of a government handout.

3. Impact of IFQs on conservation and management of fisheries resources

We come now to the basis of most, if not all, of the bogus dogma concerning IFQs. This dogma appears in many forms but the most blatant form seems to be:

Major Premise:	IFQs are private property rights
Minor Premise:	Private property rights cause good stewardship
Conclusion:	IFQs will bring forth good stewardship of the public's wealth of ocean fisheries.

Notice several things about this chain of reasoning. First, IFQs are assuredly NOT private property rights. Hence the major premise is patently false. The Congress [Magnuson–Stevens Act, Sec. 3 (21)] has defined an IFQ as:

> ...a Federal **permit** under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. (emphasis added)

In fact, Congress went on to provide further clarity regarding property rights and permit-based limited access systems generally [Magnuson–Stevens Act, Sec. 303 (d)(3)]:

An individual fishing quota or other limited access system authorization:

(A) shall be considered a permit for the purposes of sections 307, 308, and 309;
(B) may be revoked or limited at any time in accordance with this Act;
(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and
(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

Unfortunately the fishery literature—including that emanating from the National Marine Fisheries Service—is replete with incoherent claims that an IFQ fishery is a "rights-based fishery." Let us be clear about one fundamental point: the Exclusive Economic Zone (EEZ) represents nothing if not the reach of the sovereign authority of the U.S. Government over the entirety of economically important natural assets within the EEZ. It is therefore patently false to claim that the American fishery in the EEZ is a "common property resource." It is also false to claim that no one

"owns" the fish until they are captured by the fishing firm. The American people own the fish in the EEZ and all of the associated natural systems central to the health of the oceans [Bromley, 1991].

What of the minor premise—the quite extravagant claim made for the wonderful stewardship properties of private owners? Economic theory is quite clear on this point. If the rate of time preference of a private owner is greater than the rate of reproduction of a living resource (i.e. fish) then it follows that the owner will find it preferable to drive the resource stock to extinction and consume the proceeds. Or, if interest rates are favorable, the private owner will invest the proceeds where they will grow faster than if the resource had been managed conservatively to yield an income over time. We call this the iron law of the discount rate [Macinko and Bromley, 2001].

There is other evidence of the flawed story about private ownership and stewardship. Specifically, public policy has clearly recognized—at least since the days of Theodore Roosevelt—that private individuals suffer from a "faulty telescopic faculty" when it comes to the treatment of nature. There is only one entity whose time horizon gives proper account of the future. That entity is the collective authority of government, looking not to the present value of future earnings, but looking instead to the future value of present actions. One can only imagine what would have become of the Grand Canyon had this magnificent jewel not been taken firmly into the public domain. One can almost see the roller-coasters racing from rim to rim over the Colorado River. Just imagine—the world's largest water slide at Yosemite.

The question therefore, restated from above, is: what is the "impact of IFQs on conservation and management of fishery resources?" The simple answer is that there is nothing in IFQs that assures "conservation" of fishery resources. The evidence from several international fisheries with long histories of IFQs systems, when stripped of all the propaganda, is that conservation remains a fundamental problem. Indeed, several fisheries in New Zealand have begun to practice "shelving"—a practice in which quotas are not taken back from fishers but merely "shelved" as the allowable harvest is reduced under continued overfishing. There is, in other words, an explicit agreement between the government and the industry not to pursue the entirety of the TAC. The extra TAC not taken is simply "left on the shelf" so as not to alert too many people—but especially the bankers who have extended credit to IFQ-dependent fishing firms.

The obvious question becomes, if IFQs are a credible management tool then why are several New Zealand fish stocks still threatened after more than a decade of IFQs? In fact, we see that the government has encountered fierce resistance from the fishing industry to make necessary reduction in the TAC in several fisheries. The record in Iceland is also far from encouraging. So much for the magic of IFQs [Macinko and Bromley, 2001].

4. Costs of implementing and enforcing IFQ programs

You will probably hear from witnesses who will have a better answer to this question than I might provide. But I must point out that IFQs do nothing to reduce enforcement costs in the fishery. Indeed, with a strict limit on allowable landings it is plausible that the incentive for dumping and high grading is exacerbated in an IFQ fishery. A great bit of the received dogma has it that the IFQ fishery is a self-enforcing fishery. Do not believe it for a minute.

This skepticism will be well rewarded by the realization that IFQ permit holders remain exposed to the same externalities that afflict all fisheries—these externalities have been identified in the fisheries literature as stock, mesh, and crowding externalities. In short, what possible incentive does one fisher have to relinquish a promising fishing ground to a competitor who also holds an IFQ permit? Moreover, there are absolutely no incentives in an IFQ fishery to discourage permit holders expending time and money to lobby for higher total allowable catch limits (TACs). Indeed, the economic literature on rent seeking behavior is very clear that the opposite is to be expected. Does a smaller group of fishing firms increase the possibility of supply manipulation? This remains an open question. But the smaller the group of firms, the greater are the prospect for such behavior—and the further the fishery moves away from the competitive ideal most economists find so compelling.

Obviously, if future TAC levels are reduced because of excessive harvest in the current season then the value of a unit of quota goes down—and conversely. This is the basis of the contention that IFQ permits are necessary and sufficient for cautious stewardship of the fishery resource. But, as I insist above, the logic here is utopian for the simple reason that no single holder of a permit can control the fishing behavior of other permit holders. And unless each vessel owner can be assured of complete reciprocity on the part of all others in a fishery, there is little

that one fisher can do to buttress the future value of quota shares. We are, in other words, back to the free riding problem that is allegedly solved by "ownership" of a quota. The absence of complete control by each individual over the precise behavior of the rest of those harvesting means that no permit holder can control: (1) the economic value of what is held (the quota share); (2) the fugitive resource (fish); and (3) the ecosystem(s) affecting that fugitive resource. To call this "ownership" is a contradiction in terms.

The practical effect is that by themselves IFQs provide little in the way of savings on enforcement costs. Of course if a large share of the firms are removed from a particular fishery—via IFQs, via entry fees, or by license limitation schemes—then enforcement costs might fall by the simple logic that it is cheaper to monitor 25 vessels than 150. But this reminds us that enforcement costs are a function of the incentive structure operating on the firms under scrutiny, and on the number of firms that must be watched. Since IFQs do not materially change the income incentive structure of fishing firms then the only impact on enforcement costs must arise because of the reduced number of fishing firms. However, that reduction cannot be credited to IFQs but rather to the fact that there are now fewer firms in a fishery. If we wish to design fishing schemes to reduce enforcement costs then there are other policy instruments at our disposal.

5. Impacts on individuals and communities who do not receive IFQs

The frequent call to "rationalize" the fishery is predicated on the assertion that there are "too many boats chasing too few fish." From this blanket indictment it follows that the proper policy is to reduce—often dramatically—the number of firms (vessels) in each particular fishery. Leaving aside for the moment the truth content of the premise about too many boats chasing too few fish, this policy prescription guarantees that there will be a number of firms denied access to the fishery, and therefore it is plausible that there will be a number of fishing communities that will be adversely affected by the loss of fish landings and jobs.

By definition, IFQs will reduce the number of fishing firms; that is precisely their justification. The experience of IFQ implementation is that there is far too much catch history to be sustained and so the alleged "need" for rationalization is exacerbated by the speculative chase for catch history. When it is time to allocate an unsustainable total catch history it often happens that those firms most responsible for adding investment into the fishery have large qualifying catch histories. Most other firms will have qualifying catch histories that likely bear little relation to their recent catch levels. Then, when quota shares are allocated many fishing firms, even those with a catch history, will receive quota shares that are below the level required to maintain a viable going concern. Those firms unable to acquire additional quota shares to bring their landings back to their former level will have no choice but to sell their minimal share. This large number of forced sellers has the practical effect of suppressing the quota sale price, bestowing yet a second windfall on those who received, free of charge, larger quota shares. It is these initial large holders who will eventually control a larger portion of the total allowable catch in an IFQ fishery. The recipients of large initial allocations are thus advantaged twice—once from the windfall from the citizens of the United States, and then again when they enter the market for additional quota shares. We may fairly regard this as consolidation under duress. Of course no one is forced to sell their petty quota share. But if it is too small to be of any possible benefit then it is economically irrational to hold it. In economics we have the concept that the poor will always sell out first (or at a lower price). Why is this? Because their preference for liquidity is higher than it is for those with rather more ample money in their pocket (or in the bank).

Quite obviously, ridding fisheries of allegedly redundant firms will hold serious implications for those firms forced out of the fishery, and to those communities inordinately dependent upon fishing activity. The more aggressive economics literature is inclined to dismiss these dislocations with the utopian palliative that we should not worry about such things because the labor and capital suddenly "liberated" from the fishery will then be free to move to some other location and find its next best employment. The story will then be advanced that the nation as a whole will be better off since those newly liberated factors of production can suddenly be deployed elsewhere in the economy. Such theoretical niceties cannot be expected to find much sympathy in the fishing firms—and fishing communities—suddenly "liberated" from the fishery. The problem here transcends the allegedly simple task of "rationalizing" the fishery. The problem becomes one of economic and social strategies for individuals and communities that have long depended on the fishery.

6. Windfall profits to initial recipients

I have previously commented on the windfall accruing to those who manage to acquire a large initial allocation of IFQ shares. The issue, however, goes beyond windfall "profits." Indeed, the proper way to consider the matter is to understand that the initial allocation of IFQ permits represents an enormous wealth transfer from the citizens of the United States to the private sector. The holder of an IFQ permit suddenly acquires a license to reap large income and wealth from the public's oceans resources. There can be no justification for such windfalls and the auction scheme advocated here would eliminate those egregious gifts of wealth to the private sector.

7. Limiting duration of IFQ permits

All future fishing permits should be awarded only to those who are the successful bidders for the opportunity to catch fish—that is, those firms that submit winning bids to pay royalties for fish caught. The duration of this system of purchased opportunities to pursue and catch fish should be crafted to local fishery conditions, but there is no basis for having a time period that extends beyond a 10-year period.

8. Other limited access systems (cooperative fishing agreements)

The recent interest in so-called "cooperative fishing agreements" warrants but brief mention here.

At first blush, the term "cooperatives" conjures ideas about alternative business arrangements where members are also regarded as "owners" in a loose sense of that term. However a close look at what passes for "cooperatives" seems to reveal a very different picture indeed. Is this not the deployment of cunning language to conceal what is at work? If such arrangements were called by their proper name—cartels—we might well be less enamored of this latest fad.

While I may be mistaken, the idea of fishing cooperatives is that members agree to act in a particular fashion in order to avoid some allegedly undesirable circumstance. Is "derby fishing" a problem? Perhaps a cartel can result in the pacing of fishing activity so that the worst aspects of a derby are alleviated. Isn't cooperation better than cutthroat competition and racing?

My only caution here is that a small group of fishers who can coordinate their activities to avoid derby fishing can as easily coordinate their activities in the interest of influencing price. That is, perhaps deliveries to processors can be timed in a particular fashion to benefit one segment of the industry?

It is, therefore, imperative that we be clear as to the social benefits produced by "fishing cooperatives." At the moment I remain dubious.

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Mr. GILCHREST. Thank you, Dr. Bromley.

I have a vote, and I think what I am going to do rather than try to get one or two more speakers in and then miss the final three, I am going to race over there and race back. But given the time constraints of everybody today, I will turn the chair over to Mr. Underwood, and I will be back as soon as I can.

Dr. Bromley, thank you very much. That was clear and succinct and right on the mark. I will try to be back in time so that I can ask you questions about it.

Mr. UNDERWOOD. [PRESIDING] OK; Mr. Donald Leal?

STATEMENT OF DONALD LEAL, SENIOR ASSOCIATE, POLITICAL ECONOMY RESEARCH CENTER

Dr. LEAL. Thank you, Mr. Chairman, members of the Subcommittee. Thank you for the opportunity to testify on individual fishing quotas in relation to reauthorization of the Magnuson-Stevens Act. Because IFQs affect both wealth and the structural makeup in a fishery, the Subcommittee expressed interest in hearing views on a number of issues related to their use. Before launching into these issues, I want to make something really clear at the outset: IFQs arose in response to significant problems plaguing many U.S. fisheries, namely overharvesting, overcapitalization, falling fisherman income, poor product quality, rising fishing costs and hazardous fishing.

These are problems that decades of traditional regulations such as restrictions on fishing vessels and gear, areas fished, fishing times and even a total allowable catch have failed to solve, and indeed, sometimes, they have actually exacerbated the problems associated with a race for the fish. In case after case, both here and abroad, fisheries that have adopted IFQs and have rigorously enforced them have been able to end the race for the fish. I have a booklet that I completed a year ago documenting every fishery that has used IFQs in New Zealand, Iceland, Australia, Greenland, Netherlands, et cetera, in the four fisheries that are Federally managed here. They have all in general done much better than they did before under regulations, and I think we all need to keep that in mind when we are discussing this.

Therefore, you can predict what I am going to recommend, and I recommend that Congress lift the moratorium on the development of IFQ programs for U.S. fisheries. Now, in order to assure that IFQs work effectively, I also recommend the following as they relate to the issues that were outlined in the letter on the testimony. First, IFQs—I am going to take exception to Dr. Bromley's point of view, and that is I believe IFQs should be made a permanent property right to a percentage share of the total allowable catch to encourage fishermen to be bonded together; to act collectively to conserve the resource.

New Zealand is a perfect case study to see what happens when fishermen have real property rights in the individual harvest and that they have invested in foreign management companies to improve the health of fish stocks and that they invest in the research of fish stocks. They have actually even implemented their own more rigorous regulations in that they are more accepting toward conservatively set total allowable catches, because they know that that right—they are protecting the value of their own property right. Let us keep that clear.

Recognize that certain restrictions may be necessary to alleviate certain concerns over quota concentration, as we heard previously. I believe, however, that there should be as few as possible restrictions on the transferability. Why do I believe this? Transferability is critical to the proper functioning of IFQs. Transferability is one way that the industry can finance a way of eliminating the excesses in the fleet that have built up over years and years of regulations in that. Instead of a taxpayer-funded buyout, consider it an industry-funded buyout, when the more efficient fishers, those who

lower fishing costs, raise product value and buy out the less efficient fishers, and those less-efficient fishers get compensated, and they do so voluntarily when they exit the fishery.

In addition, transferability allows fishermen the flexibility to adjust the size of their operations. Those who want to increase the size of their operations buy more quota. Those who want to reduce the size of their operations sell their quota. So keep that in mind when we put restrictions on the transferability aspect of IFQs. Although they may be in certain cases warranted, as in the case of a small, rural town with few employment options and that you may want to be concerned about not letting quota be concentrated. So direct the councils to say consider these aspects and put a concentration limit as far as quota go.

New Zealand, it can vary anywhere from 1 percent to 25 percent or, I believe, 35 percent. There is no hard and fast rule. I would leave it up to the councils.

Now, on the most controversial issue, and that is initial allocation, I believe here that the rationale for allocating quota on the basis of historical catch is probably the most feasible approach to date in allocating shares of the catch among current fishermen. They, after all, invested their capital and risked their capital in developing the fishery, and that, in turn, means that they should be recognized in doing so. Imagine, if you will, if we had said the same thing to the people who homesteaded the Western frontier, that, oh, by the way, you can work those 160 acres, and now, we are going to have an auction system, or we are going to have another system that does not recognize what you did to work that land. It is kind of late in the game.

Auctions are an efficient mechanism for generating revenue for the Government and also allocating the quota to those who value it most, but in these cases where it is a mature fishery, I do not think they are realistic, especially in the case where it is a depressed fishery. In new or emerging fisheries, certainly consider an auction.

As to processors, I believe there is a valid argument to consider processors in the form of compensation for any losses they incur to market changes from IFQs. Whether they should be allocated a quota, I do not think so. As far as quota holders, the value of quota and the full cost, I believe since the quota holders are going to become permanent property right holders if I had my perfect world, that they should also pay the full costs of managing IFQs and that they should be able to retain the full value of their IFQs. That is the bond, the cohesion that makes fishermen work together to improve the fishery both economically and environmentally.

That about summarizes my main recommendations on IFQs. Thank you.

[The prepared statement of Dr. Leal follows:]

Statement of Donald R. Leal, Senior Associate, Political Economy Research Center, Bozeman, Montana

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on individual fishing quotas (IFQs) as they relate to reauthorization of the Magnuson–Stevens Act. Because IFQs affect both wealth and the structural makeup in a fishery, the subcommittee expressed interest in hearing views on a number of issues related to the use of IFQs. Before launching into these issues, I would like

to point out something at the outset: IFQs arose in response to significant problems plaguing many U.S. fisheries—namely, overharvesting, overcapitalization, falling fisher income, poor product quality, and hazardous fishing.

These are problems that decades of traditional regulations' restrictions on fishing vessels and gear, area fished, fishing times, and a total allowable catch (TAC) have failed to solve. Indeed in a number of cases they have exacerbated these problems. For example, in the Alaska halibut fishery prior to IFQs, season duration was progressively shortened to prevent actual harvest from exceeding the total allowable catch (TAC). Not only did actual harvests often exceed the TAC, fishermen overinvested in vessels, gear and labor in an attempt to win the race for fish. The compressed fishing season also forced fishermen to fish under hectic and sometimes dangerous conditions. There was enormous waste of halibut from lost or abandoned gear and from spoilage. Fresh fish was delivered over short periods which led to market gluts and frozen halibut for consumers for most of the year.

IFQs have eliminated or significantly reduced these problems. By allowing managers to extend the fishing season from a few days to about 8 months, fresh halibut is available for most of the year; fishing safety is vastly improved; the amount of fish lost to abandoned gear has fallen dramatically, and annual harvest goals are being met (See Exhibit A).

Fleet excesses have also been reduced as intended (Exhibit B). Some vessel owners and crew have exited the fishery but new entrants, including hired skippers and crews under the old regime, are now quota holders in the fishery. According to Alaska's Commercial Fisheries Entry Commission, previous crew members acquired after four years of the program anywhere from 9 to 17 percent of the quota share units outstanding depending on the region fished.

The Alaska halibut fishery exemplifies the kinds of improvements that have occurred in other fisheries under IFQs around the world. Overall, IFQs have reduced overcapitalization in the fishery, raised fisher income, reduced hazardous fishing, improved product quality, and importantly, when IFQs represent permanent shares, as they do in New Zealand, they have encouraged fishermen to cooperate and invest in improving the health of fish stocks.

On the question of whether IFQs be used as a management tool, the evidence is clear. IFQs are a far superior approach to traditional regulations in correcting the problems of overfishing and overcapacity. As such, I recommend that Congress lift the moratorium on the development and implementation of IFQ programs.

IFQs work because they give the holder the certainty that his or her allocation of the TAC will not be taken by someone else. This certainty has proven very effective at mitigating the race for the fish. Moreover, because they are transferable, IFQs can be very effective in reducing overcapitalization plaguing so many U.S. fisheries. Rather than engaging in a losing a proposition less efficient fishers sell their quota shares and move on while more efficient fishers work to reduce fishing costs and product more value in the fishery.

The one drawback as IFQs are defined under current U.S. law is that the incentive for fishers to act collectively in husbanding the resource and in complying with regulations for conservation is hampered by the lack of permanency of quota shares. To enhance fishermen cooperation to conserve the resource an IFQ should be made a permanent right to a percentage share of the TAC.

There has been much controversy on the initial allocation of IFQs. Typically IFQs are allocated to individual vessel owners on the basis of their catch history in a fishery. The rationale for selecting vessel owners and using their catch history is that it provides a quantitative way of taking into account prior investment in developing the fishery. As evidence by the near universal use of this approach in IFQ fisheries around the world, it appears to be the most acceptable approach for initial allocation, at least among current participants.

This approach is not free of criticisms, however. Long delays between the time period used for determining a participant's catch history and implementation of IFQs can lead to controversy. In the Alaska halibut fishery, for example, a long delay in implementation resulted in the exclusion of some fishers who were active in the fishery just prior to IFQs but not active during the time period used to determine catch history. Understandably, these fishers felt they were making the investments in developing the fishery but being left out of initial allocation of quotas. To avoid such controversy, the time between the control period used in determining catch history for initial allocation and the implementation of IFQs should be as short as possible.

There are other criticisms related to this approach. Since IFQs are allocated free of charge no revenue is generated from this process. Critics charge that giving away quota amounts to a windfall gain for current participants. In addition, individuals like hired skippers and crew with no record of catch history can feel they are being

treated unfairly. Also, processors may experience lower returns from their investments because of market changes that IFQs bring about.

One obvious way to address these concerns is through the use of auctions for initial allocation. Such an approach is not unprecedented for a public resource, e.g., spectra rights. An auction will generate revenue up-front and allocate quota shares efficiently, if shares are to go to the highest bidder. But an auction can also be modified so individuals who have invested in developing the fishery have at least a price preference in their bids over other bidders. Such an approach can be effective in retaining a majority of prior investors while generating revenue for the government. However, given the fact that bidders will vary in their ability to access financial capital, auctions will probably not eliminate the perception of an "unfairness" in initial allocation. As such, awarding initial allocations on the basis of catch history still appears to be the most attractive option at this time with some modifications.

One modification is that councils should allocate a percentage of the TAC to local fishing communities likely to suffer some employment reductions in transitioning to IFQs. These communities, in turn, would have the option of either hiring displaced skippers and crews to fish their allocation or sell or lease to them shares of their allocation. While such an approach may require current participants to give up a fraction of their historical allocations, the willingness to do so should be enhanced by the potential for IFQs to change incentives from maximizing catches to maximizing returns.

In the case of processors, there appears to be no compelling argument for mandating initial quota shares to processors across all fisheries adopting IFQs. Evidence indicates processor impacts will differ on a case by case basis. In cases where councils determine that processors will be adversely affected by IFQs, another modification is that councils offer them some form of compensation, such as buyouts of obsolete and unmalleable capital.

The costs of monitoring and enforcement in a fishery increases under IFQs. Unfortunately, information is quite limited on the magnitude of these. Data from British Columbia and Alaska's halibut fisheries gives us some idea of enforcement costs relative to ex vessel price. In 1993, $0.067 per lb., or 3 percent of ex vessel price, was spent on enforcement in the British Columbia halibut IFQ fishery. For the Alaska halibut fishery under IFQs, an estimated $0.073 per lb., or a modest 4 percent of ex vessel price, was spent on enforcement in 1997. In any case, quota holders stand to benefit greatly from IFQs and thus should pay the full costs of managing IFQs.

Some argue for an additional annual tax on quota value. This is based on the belief that as trustee of a public resource the government should receive the associated economic surplus or economic rent, which is capitalized along with other profits in quota value and not easily measured. This argument, however, fails to consider the secondary impacts of taxing away quota value. For one, as Johnson (1995) argues in an article in Marine Resource Economics, the industry becomes less motivated to conserve the exploited resource preferring that the government set a higher overall harvest level even if it means lower abundance in the future. Moreover, as profit maximizers, private operators are in the best position to lower fishing costs and raise product value in the fishery. The government has neither the willingness nor the ability to do the same. By taxing away quota value the incentive for quota holders to act collectively in lowering costs and improving product value in the fishery is reduced. Indeed taxing away quota value may actually result in lower returns to the treasury than from a fishery whose main source of revenues are taxes from ordinary income. Thus, quota holders should be allowed to retain the full value of their IFQs.

Monitoring and enforcement is part and parcel of management costs and is critical to maintaining the integrity of an IFQ system. To ensure system integrity, councils must require a dual-channel reporting system comprised of fish harvesters and their buyers as well as stiff penalties to discourage cheating. All fish receivers—fish wholesalers and processors—are required to report fish purchased from fishers. All fish permit holders are required to provide detailed catch reports along with information on effort (vessel, area fished, and the quota share fished after each fishing trip. Penalties must be stiff enough to deter cheating. This would include forfeiture of quota shares for repeated violations.

In sum, experience with IFQs prove they are superior to regulations in ending the race for the fish. They can be controversial, but I hope that the above recommendations can help mitigate some of the concerns so we as a nation can move forward by allowing IFQs as a management tool to rebuild our nation's fisheries.

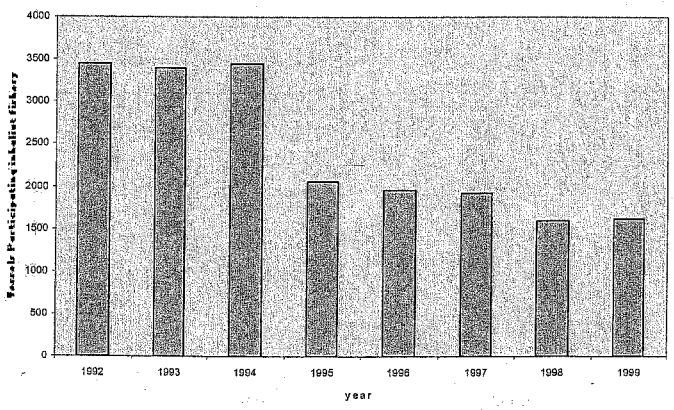
[Exhibits A and B follow:]

Exhibit A
Alaska Halibut Fishery
Percent of TAC Harvested

	Management Area			
/Period	2C	3A	3B	4A
1990	102.2	93.0	102.3	139.1
1991	117.4	86.2	135.6	132.6
1992	98.2	100.7	98.0	117.3
1993	112.9	109.8	120.9	126.8
1994	94.4	95.6	96.5	100.2
1995-ITQs	85.6	88.7	85.1	80.6
1996-ITQs	93.6	96.5	94.4	88.9
1997-ITQs	95.6	96.7	97.3	94.0
1998-ITQs	90.8	94.3	96.1	91.4

Source: Alaska Commercial Fisheries Entry Commission, 1999.

EXHIBIT B.
Fleet Consolidation in Alaska Halibut Fishery[1]



Source: NMFS, Restricted Access Management Program, Alaska Region, 2000.

[1] ITQ program began in 1995.

Mr. UNDERWOOD. Thank you, Dr. Leal. And now, we will go to Mr. Richard Gutting, Jr., is it?

STATEMENT OF RICHARD GUTTING, PRESIDENT, NATIONAL FISHERIES INSTITUTE

Mr. GUTTING. That is it. Thank you very much for the opportunity to testify today. My name is Richard Gutting, Jr. and I am the president of the National Fisheries Institute. The institute represents the U.S. fish and seafood industry. Our members grow, harvest, process, import, export and sell at retail and in restaurants all of the fish and seafood products that are produced here in the United States.

Our members operate vessels and facilities in all of the major U.S. fisheries. We are an ocean-to-table organization, if you will, very diverse.

Our organization does support the use of IFQs in fishery management. We believe that they are a very useful tool. We believe they should be available to managers to address the issues before fisheries. Like many of the previous speakers, we also believe that whether or not they should be used is a decision that is best made by the councils. Councils need flexibility to fashion particular measures for the often-unique and diverse needs of individual fisheries.

We also support the current criteria for the development of IFQs that are in the act as well as some of the recommendations of the National Academy of Sciences. In addition, I was very pleased to hear Dr. Hogarth mention today the need to amend the act so that processing and processors can be incorporated into the IFQ process. Right now, there is a legal limitation upon the councils. They really cannot bring into an IFQ or a limited access system shore-based processors. We think that this needs to be changed.

I would go slightly beyond what Dr. Hogarth said. He was not really asked a question, but we believe that it is very important that if IFQ programs are developed that there be fundamental fairness and equity between the processing sector and the harvesting sector in a particular fishery. The experience we have had is that when IFQs deal only with the fishing portion of the fishery, they can have a profound and devastating impact on shore-based processing. Shore-based processing and fishing are codependent. As fisheries develop, both sides develop. And when it comes time to rationalize the investment, rationalize labor, it is very important that both sides of the fishery be fairly treated on an equal basis.

There are many ways to do this. We do not think it would be appropriate for the act to spell out one particular way. What is important is the fundamental idea of fairness and equity be in the act. And with that, I will close.

Thank you.

[The prepared statement of Mr. Gutting follows:]

Statement of Richard E. Gutting, Jr., President, National Fisheries Institute

Chairman Gilchrest, Congressman Underwood, and members of the subcommittee, on behalf of the member companies of the National Fisheries Institute (NFI), I want to thank you for the opportunity to testify on the role of Individual Fishing Quotas (IFQs) under the Magnuson–Stevens Fishery Conservation and Management Act (MSFCMA). I am Richard E. Gutting Jr., President of the NFI.

The NFI is a trade association representing the U.S. fish and seafood industry. We are an "ocean to table" organization, representing harvesters, processors, importers, exporters, distributors, restaurants, and retail establishments. Our members operate vessels and facilities in all major U.S. fisheries, and our mission is to ensure an ample, safe, and sustainable seafood supply to consumers.

The management of our nation's fisheries is showing remarkable improvement. Overfished resources are being rebuilt, and some overcapitalized fleets are being rationalized. While there is more to do, managers and scientists are making significant progress.

To further facilitate the wise use of fishery resources, fishery managers should be authorized to establish IFQ programs and other rationalization schemes such as limited access and cooperatives. These management tools do not result in the so-called "privatization of a public resource" any more than harvesting does. In any fishery, as soon as a fish is captured it has been "privatized".

A moratorium was imposed in 1996 on the creation of additional IFQ programs that is scheduled to expire this fall, having been extended in 2000. At the same time, new requirements for IFQ programs were enacted, including:

- The establishment of a publicly-available central registry system,
- Non-compensatory revocation of IFQs by the councils and Secretary of Commerce,
- No right, title, or interest in or to any fish before the fish is harvested,
- Fees to cover the actual costs directly related to the enforcement and management of the IFQ program,
- A set-aside of up to 25% of such fees for use as financial aid for IFQ purchases by "small vessels" and first purchasers,
- Fair and equitable allocation of initial IFQs,
- Prevention of any person from acquiring an excessive share of IFQs, and
- Consideration of the allocation of a portion of the annual harvest for entry-level fishermen, small vessel owners, and crewmembers.

In addition, limited access systems must take into account:

- Present participation in the fishery,
- Historical fishing practices in, and dependence on, the fishery,
- The economics of the fishery,
- The capability of the vessels in the fishery to engage in other fisheries, and
- The cultural and social framework relevant to the fishery and any affected fishing communities.

A 1998 National Academy of Sciences (NAS) report, Sharing the Fish, recommends that Congress lift this moratorium on IFQs and:

- Encourage cost recovery and some extraction of profits (already addressed in the MSFCMA),
- Require accumulation limits (already addressed in the MSFCMA),
- Support additional study and routine data collection,
- Determine rules for foreign ownership,
- Delegate decisions about the transferability of quota shares to the councils, and
- Define the nature of the privilege (already addressed in the MSFCMA).

The NAS made no recommendations with regard to allocating shares to fish processors although Congress had asked it to analyze "mechanisms to ensure that U.S. fish and seafood processors are treated fairly and equitably in initial allocations." A National Marine Fisheries Service IFQ Advisory Panel Report, however, suggests that processor shares are an important consideration as excessive investments in processing capacity parallel investments in harvesting capacity. The NFI agrees.

The NFI supports the existing criteria for IFQs and limited access programs and the recommendations of the NAS. However, we believe the MSFCMA must be amended to ensure that primary processors are treated fairly in any new IFQ programs. Scott Matulich, a professor at Washington State University, explains why in the Pacific Fishing magazine (March 1996):

> "...the IFQ literature is founded on the fallacy that only the harvesting sector intervenes between the fish resource and the consumer. This, of course, is patently false for most fisheries; the processing sector typically is just as crucial to the utilization of fishery resources as the harvesting sector. Yet this one simplification is largely responsible for the conventional wisdom of endowing harvesters with valuable rights and leaving processors with the consequences."

When fishing fleets have been rationalized through the allocation of IFQs, vessel owners have been compensated. Primary processors have not, even though they have been left with unusable facilities and processing equipment.

This is not fair. When fisheries are rationalized, primary processors must be treated equitably and the MSFCMA needs to be amended to ensure this fairness.

How best to ensure fairness varies from fishery to fishery. One approach is to allocate 100% of the Total Allowable Catch (TAC) in harvesting shares and 100% of the TAC in processing shares under a so-called two-pie system. Alternatively, it may make sense to allocate 50% of the harvesting rights to the primary processing community, or to limit access to primary processing. It all depends on the nature of the fishery. Thus, while the law must ensure that the harvesting and primary processing sectors receive equitable treatment, it should not proscribe exactly how that should be achieved.

Mr. Chairman, IFQs are a powerful tool for rationalizing fisheries. However, without clear criteria in the MSFCMA, including a requirement for equitable treatment for primary processors, the NFI believes the moratorium on IFQ programs should continue.

Mr. UNDERWOOD. Thank you very much, Mr. Gutting.

And now, we will go to Mr. Jim Gilmore, At-Sea Processors.

STATEMENT OF JIM GILMORE, DIRECTOR, PUBLIC AFFAIRS, AT-SEA PROCESSORS ASSOCIATION

Mr. GILMORE. Thank you, Mr. Chairman, for the invitation to testify today on fish harvesting cooperatives. I am Jim Gilmore, the director of public affairs for the At-Sea Processors Association.

The catcher-processor fleet participates in the nation's largest fishery, the Bering Sea Pollock Fishery, and in the West Coast Pacific Whiting Fishery, and we have established fish harvesting cooperatives in both fisheries. In pollock and in whiting, the National Marine Fisheries Service sets a total allowable catch level on an annual basis, and in both fisheries, managers have divided the TAC among three sectors in which the catcher-processor sector is allocated a percentage of the overall TAC. The cooperatives are formed within that management structure. The cooperatives are voluntary, and they are governed through a private contract in which eligible participants in the catcher-processor sector of those fisheries agree to limit their individual catches to a specific percentage of the catcher-processor sectors apportionment of the TAC.

By agreeing to apportion the available harvest on an individual basis, fishing and processing is conducted at a deliberate and rational pace. Once the apportionment is set, the cooperatives allow for transfers of individual shares among the member companies of the cooperative. The cooperatives are not involved in matters related to pricing or marketing of fishery products. The cooperatives are feasible not only because the management system sets an overall TAC for the fisheries and because there have been discreet allocations to the catcher-processor sector there but also because fishery managers have implemented effective catch monitoring and enforcement measures in those fisheries, including requirements for comprehensive Federal fishery observer coverage, the weighing of all catch and real-time electronic catch reporting.

The cooperatives formed by the catcher-processor companies do not raise antitrust concerns, because in the pollock and the whiting fisheries, the Federal Government has regulated the output from the fisheries through TACs and has imposed effective limits on entrants into the fisheries. The cooperatives are needed, though, because fishery managers have not taken steps to stop the race for fish. The fishing cooperatives end that race for fish by setting the individual harvest caps.

There are four improvements in conservation and management of those two fisheries that we have co-ops in that I would like to cover today. The first is making more food from every pound of fish harvested. In 2001, the pollock catcher-processor fleet yielded 49 percent more products from each pound of fish harvested than we did in 1998, the last year in which we had a race for fish. Without a race for fish, we have changed our fishing operations in ways to be able to take more time to target optimal-sized fish for processing. We have made a number of revisions in our factories to get more yield from the fish rather than concentrating on processing fish as quickly as possible.

The second thing is addressing overcapitalization. The multi-vessel companies have idled a number of the vessels that are no longer needed in order to catch the available quota. One thing I would point out is the cooperatives are more ephemeral, if you will, than individual fishing quota programs. It is unlikely that any of the idled vessels will be permanently retired from the fisheries. Because cooperatives are voluntary, and the Government does not assign the individual quotas, the circumstances warranted, coop members might elect to return to a race for fish, and companies with idled vessels would likely reactivate those vessels to be competitive in that race for fish.

The third highlight of what we have done is we have complemented Federal sea lion protection measures. To ensure that pollock fishing and other groundfish fishing does not hinder the recovery of stellar sea lion populations competing for groundfish with foraging sea lions, NMFS has implemented far-reaching management measures that close areas to fishing and disperse fishing effort temporally and spatially. The cooperatives are in effect for all sectors of the pollock industry, and we have complemented those Federal rules designed to slow down and spread out the harvest.

For example, in the first year of coop fishing in 1999, the pollock catcher-processor sector reported that vessels made 45 percent fewer tows per day and caught 27 percent fewer fish per tow by eliminating the race for fish. As a consequence of that, we have extended our fishing season from around 90 days up to about 200 to take the available quota.

On a final note is reducing by-catch. The pollock and whiting fisheries are midwater fisheries. About 90 percent of what is caught is the target species. However, there is some incidental catch of salmon, which trawl fishermen are not permitted to keep and to sell. In 2001, the nine pollock catcher-processor cooperatives that govern fishing for the in-shore sector, the mother ship sector and the catcher-processor sector signed an intercooperative agreement to achieve further reductions in salmon by-catch. The 120 pollock catcher vessels and catcher-processor vessels that constitute these nine cooperatives voluntarily agreed to share salmon by-catch information on a real time basis to identify hot spots to avoid and to deny access to fishing grounds to any cooperative whose vessels exceeded agreed-upon salmon by-catch limits.

So those are our four areas that we thought were worth highlighting about cooperatives, and we are pleased to answer any questions you have.

Thank you.

[The prepared statement of Mr. Gilmore follows:]

Statement of Jim Gilmore, Director of Public Affairs, At–Sea Processors Association

Thank you, Mr. Chairman and members of the Subcommittee, for the invitation to testify today on fish harvesting cooperatives. I am Jim Gilmore, Director of Public Affairs for the At-sea Processors Association (APA). APA represents seven companies that operate 19 U.S.-flag catcher/processor vessels. The catcher/processor fleet participates in the Nation's largest fishery, the Bering Sea groundfish fishery, and in the west coast Pacific whiting fishery.

Fish Harvesting Cooperatives

APA members participate in two fish harvesting cooperatives'the Pollock Conservation Cooperative (PCC) and the Pacific Whiting Conservation Cooperative (PWCC). The pollock cooperative was formed in 1999; the Pacific whiting cooperative was initiated in 1997. Participation in the cooperatives is voluntary. Under terms of a private contract, eligible participants in the catcher/processor sector of the Bering Sea pollock fishery and the Pacific whiting fishery allocate the available harvest on an individual basis and members limit their harvests to the agreed upon amount.

The cooperatives work within the established Federal fishery management system. In the case of Bering Sea pollock and Pacific whiting, the regional councils recommend and the National Marine Fisheries Service (NMFS) implements Total Allowable Catch (TAC) level for the fisheries annually. For both fisheries, fishery managers divided the TAC among three sectors in which the catcher/processor sector is allocated a certain percentage of the TAC. Eligible participants in the catcher/processor sector operate within this framework in establishing cooperatives in which member companies agree to limit their individual catches to a specific percentage of the TAC. By agreeing to apportion the available harvest on an individual basis, fishing and processing can be conducted at a deliberate, rational pace. Once the apportionment is set, the cooperatives allow for transfers of target species among member companies. The cooperatives are not involved in matters relating to pricing or marketing of fishery products.

While participation in the cooperatives is voluntary, all of the qualified participants in the catcher/processor sector in the Bering Sea pollock fishery and Pacific whiting fishery participate in the cooperative. It is unlikely that the cooperatives could succeed without 100 percent participation of all qualified entrants in the fishery. If a single, qualified entrant continued to engage in a "race for fish," it would likely undermine collective efforts by the remaining fishing companies to rationalize fishing practices. It is instructive that both the Bering Sea pollock and Pacific whiting cooperatives include multi-vessel companies and single vessel companies. Both larger and smaller-sized companies realize benefits from cooperative fishing, although the way in which those companies benefit may differ.

Practical Considerations in Forming Fish Harvesting Cooperatives

The cooperatives formed by catcher/ processor companies are feasible because in the Bering Sea pollock and Pacific whiting fisheries the Federal Government 1) regulates output by setting annual catch limits in the fishery, 2) imposed effective limits on new entrants into the fisheries, and 3) created separate allocations for the catcher/processor sector in the pollock and Pacific whiting fisheries.

Because there is no specific legislative authority authorizing the catcher/processor cooperatives, prospective co-op members prudently requested a "business review letter" from the Justice Department's Antitrust Division evaluating the cooperatives. The Antitrust Division confirmed that because the government regulated output through TACs and limited entry into the fisheries there was no bar to qualified participants voluntarily establishing individual harvest limits. Far from expressing concerns about fish harvesting cooperatives leading to anti-competitive practices, the business review letters support the industry's view that the formation of cooperatives could be expected to benefit consumers. The Antitrust Division's letter of May 20, 1997 on the proposed Pacific whiting co-op stated, "To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Pacific whiting and or reduces the inadvertent catching of other species whose preservation is also a matter of regulatory concern, it could have pro-competitive effects."

Once a cooperative is established, there must be effective monitoring and enforcement of fishing activities to ensure compliance with terms and conditions of the cooperative contract, particularly adherence to agreed upon individual catch amounts.

Pollock catcher/processors are required to carry two Federally trained and certified fishery observers onboard at all times while fishing; catcher/processors in the Pacific whiting fishery voluntarily carry at least one fishery observer. Observers record all target and non-target species catch, relying on flow scales that weigh the catch as it moves along a conveyor from the fish hold into the factory. (Catch accounting is relatively easy in the pollock and Pacific whiting fisheries because 99 percent of the catch is the target species.)

The Federal observers report catch data electronically and on a real-time basis to the National Marine Fisheries Service (NMFS). Cooperative members authorize a private company, Sea State, Inc., to access the NMFS observer reports to calculate each individual cooperative member's catch amount. NMFS maintains the responsibility for closing a fishery when the catcher/processor sector allocation is reached. The cooperative enforces individual catch limits. The cooperative contract provides for monetary penalties should companies exceed their assigned quota, including any quota leased from other co-op members. To date, no penalties have been assessed in either cooperative.

Fishery Cooperatives Improve Fisheries Conservation and Management

The North Pacific groundfish fisheries, including Bering Sea pollock, and the Pacific whiting fishery are well-managed and sustainable fisheries. Fish stocks are healthy and abundant. NMFS' most recent report to Congress on the status of U.S. fisheries states that none of these stocks is over-fished. In the North Pacific in particular, fishery managers have adopted an ecosystem-based management approach to conserve target species and to minimize effects of fishing on other fish species, marine mammals and sea birds and sensitive habitat. This ecosystem-based management approach, which includes annual TAC levels, comprehensive observer coverage, sophisticated catch accounting practices, electronic catch reporting, among other progressive management measures, makes the cooperative a viable option. What the management system had not done, however, was to stop the "race for fish." Fishing cooperatives end the "race for fish" and, in doing so, further improve conservation and management of these important national resources.

Producing More Food From Each Pound of Fish Harvested

In 2001, the pollock catcher/processor fleet yielded 49% more products from each pound of fish harvested than in 1998, the last year of the "race for fish." (See Attachment "A.") In the past three years, vessel operators have instituted numerous changes in fishing and processing practices to achieve this dramatic improvement in the amount of products produced from the available harvest. In terms of changes in fishing practices, without a "race for fish," fishing captains can now be more discriminating and deliberate, prospecting until they locate optimal-sized fish for maximizing processing yields. Under the "race for fish" format, slowing down fishing operations meant sacrificing fishing opportunities to other vessels.

Production yields are increasing, in part, because multi-vessel fishing companies are using their most efficient catcher/processor vessels and leaving less efficient vessels tied up. Also, when the co-op shifted the emphasis from maximizing one's share of the TAC to deriving as much value as possible from a pre-determined allocation, extra processing lines onboard active catcher/processors could be replaced with equipment, such as decanters and mincing machines, that extract additional protein from fish after primary processing and before secondary processing of inedible fish parts into fish meal.

Not only is more product and value derived from each fish processed, but very little of the catch is discarded. In 2001, the discard rate for Bering Sea pollock catcher/processors was six-tenths of one percent. The average discard rate for world fisheries is about 25 percent.

Resolving Overcapitalization in the Fisheries

Ten catcher/processor vessels are licensed to catch and process Pacific whiting, and 20 catcher/processor vessels were eligible to catch and process Bering Sea pollock when the pollock cooperative was formed in 1999. Without the "race for fish," between 6 to 8 of the ten eligible catcher/processors participate annually in the Pacific whiting fishery, and 14 to 16 pollock catcher/processors participate in the Bering Sea pollock fishery each year. One pollock catcher/processor vessel has forfeited its U.S. fishing privileges, but the remaining 3 to 5 catcher/processors eligible to fish for pollock remain moored or conduct some limited fishing in the non-pollock North Pacific groundfish fisheries.

Anticipating the formation of the pollock catcher/processor cooperative, Federal law and regulations severely curtail other fishing opportunities for the fleet, avoiding the "spillover" of excess capacity to other fisheries. The Bering Sea pollock catcher/processor fleet is limited to catching somewhat less than its historical share of

non-pollock Bering Sea groundfish species, and the fleet is not permitted to operate beyond U.S. waters of the Bering Sea except for the Pacific whiting fishery. There are similar constraints placed on pollock catcher vessels that deliver to Bering Sea onshore processors and motherships, again, to prevent unused capacity from being deployed in other fisheries.

However, because of the more ephemeral nature of co-ops vis-á-vis Individual Fishing Quota (IFQ) programs, it is unlikely that idled vessels will be permanently retired from the fisheries. Cooperatives are voluntary. The government does not assign the individual quotas. If circumstances warranted, co-op members might elect to return to a "race for fish." Companies with idled vessels would likely reactivate those vessels to be more competitive in the race.

However, as long as the cooperatives continue, there is no incentive to employ harvesting and processing capacity beyond what is needed to catch and process the available harvest. Therefore, in addition to idling vessels, companies are no longer investing in equipment to increase fishing and processing capacity. Under the "race for fish" fishermen and processors engaged in "capital stuffing," enhancing vessels' harvesting capability and adding more processing lines, refrigeration equipment, etc. Harvesters and processors sought to maximize their individual share of the TAC. Because virtually all participants were making these investments, their share of the catch remained relatively unchanged. And because TAC levels remained relatively stable, the investments were not yielding additional value. This unhealthy economic situation, which led to numerous bankruptcies in the catcher/processor fleet in the 1990s, is alleviated under fishing cooperatives.

Cooperatives Complement Steller Sea Lion Protection Measures

In 1997, NMFS classified the western stock of Steller sea lions as endangered under the Endangered Species Act (ESA). Despite years of research, scientists are unable to determine the cause of the decline of Steller sea lion populations. To insure that fishing does not hinder the recovery of sea lion populations by competing for groundfish with foraging sea lions, NMFS and the North Pacific Fishery Management Council have implemented far-reaching management measures that close areas to fishing and disperse fishing effort temporally and spatially.

Cooperatives, which are in effect for all sectors of the pollock industry, complement Federal rules designed to slow down and spread out the harvest. For example, in its first year of co-op fishing in 1999, the pollock catcher/processor sector reported that vessels made 45% fewer tows per day and caught 27% fewer fish per tow by rationalizing the fishery. As a consequence of these operational changes, catcher/processors are taking over 200 days to take their quota compared with about a 90-day season in 1998. Other pollock sectors have had similar experiences. NMFS notes in its 2001 biological opinion on Steller sea lion protective measures that pollock cooperatives have "shown success in reducing the "footprint" of fisheries." The biological opinion goes on to recommend "an expansion of these types of approaches to rationalize all (North Pacific) groundfish fisheries."

Cooperatives Help Achieve Lower Discard Rates and Reduce Incidental Catches of Non–Target Species

As noted earlier in my testimony, pollock accounted for roughly 99 percent of total catch by the pollock catcher/processor fleet in 2001, and the fleet discarded just six-tenths of one percent of its total groundfish catch. Performance in the Pacific whiting fishery is similar. While these two fisheries are, perhaps, the "cleanest" fisheries in the world, the cooperatives further promote increased retention and increased utilization of non-target groundfish species. Under the "race for fish," catcher/processors, which have multiple processing lines, dedicated each line to processing as much pollock or Pacific whiting as possible as quickly as possible. Now, factories can be more flexible to accommodate processing the modest amounts of non-target groundfish species that are incidentally caught.

In the North Pacific, Federal regulations require trawl vessels to discard any herring or crab that is incidentally harvested, and halibut and salmon can be retained only if donated to food banks. (There are similar restrictions on trawl vessels in the Pacific whiting fishery.) Because the Bering Sea pollock and Pacific whiting fisheries are conducted using mid-water trawl nets, salmon is the only "prohibited species" caught in significant quantities. To complement fishery management measures that limit salmon bycatch, in 2001, the nine pollock cooperatives that govern fishing for the inshore processing sector, mothership processing sector and the catcher/processor sector signed an inter-cooperative agreement to achieve further reductions in salmon bycatch. The 120 pollock catcher and catcher/processor vessels that constitute these nine cooperatives voluntarily agreed to locate fishing away from areas of salmon concentrations. Sea State, Inc., the firm that records and monitors

individual catch levels for cooperatives members, administers the bycatch program as well, downloading NMFS observer data and alerting pollock fishing vessels of bycatch "hotspots." Each cooperative's bycatch rate is evaluated on a real-time basis and if its vessels' performance is sub-par, then vessels from that cooperative must voluntarily refrain from fishing in those identified areas.

Public Policy and Fish Harvesting Cooperatives

As is the case with IFQ programs, fish harvesting cooperatives are not practical for all fisheries. However, the success of the pollock and Pacific whiting cooperatives suggests that fisheries conservation and management could be enhanced by the formation of cooperatives in other fisheries. Cooperatives could be an attractive alternative for a number of reasons. Among other things, cooperatives could alleviate public policy concerns over the more permanent nature of government-issued quota shares under IFQ programs. Also, concerns among stakeholders that they could be disadvantaged under the initial allocation of quota shares under an IFQ program are alleviated because cooperatives give stakeholders a direct voice in the apportionment of the TAC.

The American Fisheries Act (AFA), enacted in 1998, included specific provisions for pollock cooperatives in the non-catcher/processor sectors, including considerations for pollock and non-pollock processors and non-pollock fishermen. The North Pacific Council published a draft report in October 2001 that confirmed the success of the pollock cooperatives. The Council's report to Congress stated, "Reduced bycatch, higher utilization rates, increased economic returns, and improved safety are among the direct benefits of the AFA'the cooperative management structure has shifted more of the monitoring and enforcement burden to the cooperatives and their members, which has allowed the fishery to be managed more precisely." The AFA and the Council's report could provide useful guidance to Congress in considering legislation relating to IFQ programs and cooperatives. We would particularly commend to the Subcommittee's attention the consideration for processors in the design of the inshore and mothership pollock cooperatives and the management measures that preclude "spillover" of fishing capacity between the pollock and non-pollock groundfish sectors.

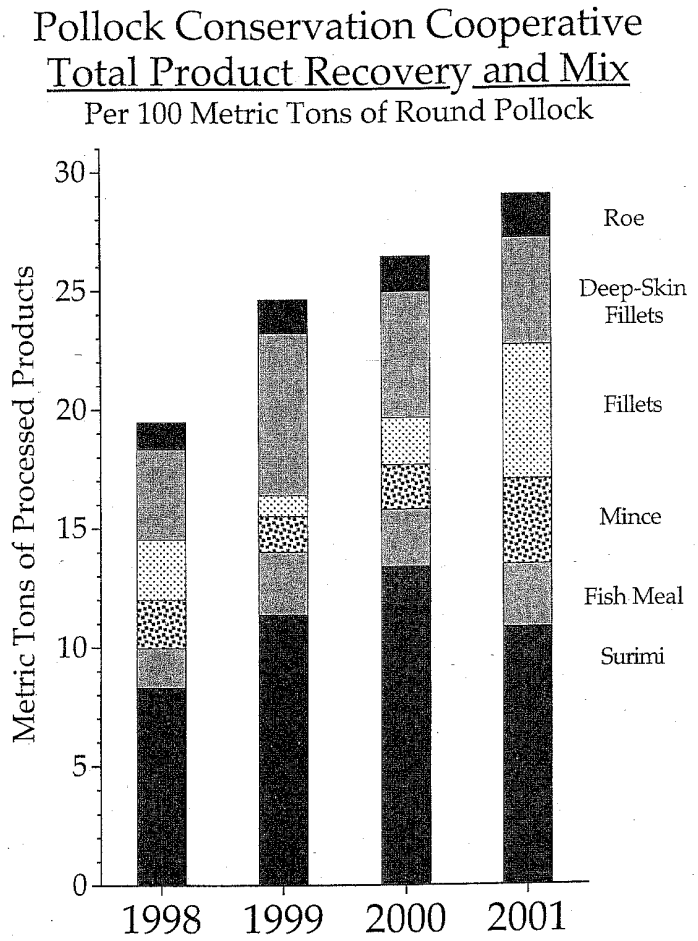
Although our experiences and the North Pacific Council's report on the AFA confirm that fishing cooperatives offer a promising approach to enhancing fisheries management and conservation, there are impediments to the formation of new cooperatives. In reauthorizing the Magnuson/Stevens Act, including considering changes to existing IFQ policies, Congress should consider the following issues related to expanding opportunities for communities of interest to form fish harvesting cooperatives.

The moratorium on new IFQ programs impedes the formation of new fish harvesting cooperatives, in part, because NOAA General Counsel interprets the existing IFQ moratorium to preclude regional fishery management councils from allocating a percentage of the TAC in a fishery to any like-minded group of fishermen interested in forming a cooperative. An opinion from the agency's lawyers contends that an allocation of a percentage of the TAC to a group violates the moratorium on issuance of quota shares. It is difficult for a fish harvesting cooperative to succeed without unanimous, or near unanimous, participation of eligible participants. By continuing to race for fish, outliers can frustrate the will of fishermen seeking to rationalize a fishery through formation of a cooperative, so allocating to fishery participants seeking to create a cooperative on the basis of an historical catch formula is important. If Congress extends the IFQ moratorium but wants to permit, or even encourage, cooperatives, some provision should be made for allowing allocations to groups.

A second issue relates to the Fishermen's Collective Marketing Act of 1934. Although formation of the catcher/processor cooperatives for pollock and Pacific whiting did not rely on any specific statutory authority, Federal law does provide for fishermen to engage in collective harvesting and marketing activities under the statutory authority of the FCMA. This Act exempts qualified fishermen from antitrust laws in allowing collective production and marketing arrangements similar to exemptions enjoyed by agricultural producers. However, because the FCMA allows for collective marketing arrangements, there is case law that might preclude processor-owned vessels from participating in a fish harvesting cooperative formed under the FCMA statute. In reviewing the success of fish harvesting cooperatives, Congress might review the FCMA to determine whether changes to the 1934 Act are warranted and would serve to facilitate cooperative formation.

That concludes my testimony, Mr. Chairman. I am pleased to answer any questions that Members of the Subcommittee might have. Thank you, again, for the opportunity to testify.

[A chart attached to Mr. Gilmore's statement follows:]



During 2001 total product recovery is estimated to have increased by 49% over the 1998 open-access "race-for-fish" baseline.

Source: SeaState, Inc. PCC and CDQ catch per haul, 1998-2001; NMFS AK Region Pacific cod and pollock products by processing mode, 1998-2001, BSAI groundfish quotas and preliminary catch in round metric tons, 1999-2001, and CDQ participation and catch by gear, 1999-2001. Note that this figure does not show individual product recovery rates, but instead the average product mix that was produced from the total amount of pollock harvested throughout the entire year.

Mr. UNDERWOOD. Thank you, Mr. Gilmore.

Now, we will go to Mr. Lee Crockett, who is executive director of the Marine Fish Conservation Network.

STATEMENT OF LEE CROCKETT, EXECUTIVE DIRECTOR, MARINE FISH CONSERVATION NETWORK

Mr. CROCKETT. Good afternoon, Mr. Chairman and members of the Subcommittee. I am Lee Crockett. I am the executive director of the Marine Fish Conservation Network. The network is a nationwide coalition of environmental groups, commercial and recreational fishing associations and aquariums. Thank you for providing us with an opportunity to express our views on individual fishing quotas.

As you know, whether to allow the establishment of IFQ programs and, if so, subject to what standards is one of the most contentious issues in fisheries management today. The Congressionally mandated moratorium on the establishment of new IFQ programs has been in place for nearly 6 years. The current moratorium is set to expire on September 30, 2002, only 7 months from now. We are very concerned that the moratorium will expire before Congress acts to establish standards. We urge you not to let that happen. Unregulated IFQs can have devastating effects on fishermen and fishing communities while providing little benefit to the marine environment.

National standards for IFQ programs are necessary for two reasons: first, IFQs are unique because they grant fishermen exclusive rights to a public resource before the fish are caught. Second, explicit legislative standards are necessary to ensure the protection of the marine environment as well as the broad interests of fishermen and fishing communities. We have developed a set of recommended standards to ensure that IFQ programs are properly designed which are included in my written testimony. I would like to briefly review the major points of the network's position:

First, should IFQs be allowed as a management tool? The Network supports continuing the IFQ moratorium unless and until Congress adopts legislation containing standards for IFQ programs that ensure such programs protect fishermen and enhance the conservation of marine fish. We have little confidence that the councils and NMFS will address the problems commonly associated with IFQ programs without legal guidance. Standards must be in place before the moratorium is lifted, because it is very difficult if not impossible to apply them retroactively.

Second, IFQs must not create compensable property rights. IFQ programs must acknowledge that fish resources are publicly owned; that IFQs are not compensable property rights and that IFQs are revocable. We recognize that the Magnuson-Stevens Act contains language stating that IFQs are not compensable property and are revocable. However, we fear that if Congress allows IFQ shares to be held for long periods of time, for example, for 5, 10, 15 years, they will obtain the attributes of property.

To address this, quota shares must be of a set duration. We recommend 5 years, after which time they may be renewed, subject to satisfying defined criteria. These limitations will make it clear that quota shares are a temporary privilege.

Third, IFQ programs and shareholders must provide additional conservation benefits to the fisheries. The Network does not believe that conservation will automatically be enhanced because an IFQ program is established; rather, we believe that IFQ programs should be required to improve conservation. To accomplish this, we recommend that all IFQ programs establish objectives to improve conservation as a result of allocating shares and that any decision to renew an IFQ share must be based on an evaluation of whether the shareholder is meeting their requirements to the IFQ program and contributing additional and substantial conservation benefits to the fishery.

Fourth, protection of individual fishermen and fishing communities: the specter of consolidation is one of the greatest fears that fishermen have of IFQ programs. Based on experience in some existing IFQ programs, they fear that corporate interests will buy up quota shares, thus forcing them to change from small businessmen to corporate employees. To guard against this, we recommend that Congress direct that IFQ programs preclude any person or entity from acquiring an excessive share of quota shares issued. We also strongly recommend that councils be specifically precluded from basing the amount of initial allocation of quota shares on the size of recent catches or catch history, because such a practice will reward the largest operators at the expense of small ones.

To ensure that IFQ-managed fisheries have broad participation, IFQ programs must ensure that a portion of each annual allocation is set aside for entry-level fishermen, small-vessel operators, crew members and others who do not hold quota shares. Finally, we urge Congress to view initial allocations as an opportunity to promote conservation by rewarding fishermen who have a demonstrated record of conservation-minded fishing.

Fifth: independent review of IFQ programs and shareholders. The Network strongly advocates a review of IFQ programs every 5 years. Decisions on whether to review the program and how to improve it should be based on the outcome of that review. Review criteria should include whether the program is providing additional and substantial conservation benefits to the fishery. In order for the 5-year limit on IFQ shares to be meaningful, the Network strongly believes that there must be a sustainable likelihood that quota shareholders would lose previously held shares if they failed to comply with the requirements of their IFQ program.

If the review becomes perfunctory, and the shares are automatically renewed, they will take on the trappings of property.

And finally, Mr. Chairman, I would like to express our strong opposition to processor quota shares. There is no public policy benefit from creating a closed market for fishermen. On the contrary, we see major economic hardships for fishermen if such systems are allowed. If processor quotas are established, fishermen will have a limited number of processors available to buy their fish, severely disadvantaging them during pricing negotiations while providing no benefit to either the economy or conservation.

Thank you again for providing the Marine Fish Conservation Network with an opportunity to present its views on IFQ programs and the need for national standards, and I would be happy to answer any questions.

[The prepared statement of Mr. Crockett follows:]

Statement of Lee R. Crockett, Executive Director, Marine Fish Conservation Network

Good morning Mr. Chairman and Members of the Subcommittee, my name is Lee Crockett. I am the Executive Director of the Marine Fish Conservation Network (Network), a nationwide coalition of more than 130 environmental organizations, commercial and recreational fishing associations, aquariums, and marine science groups dedicated to promoting conservation of marine fish and the long-term sustainability of marine fisheries. Our member organizations represent approximately 5 million people. For your information, I've attached a list of Network members to my testimony. We appreciate this opportunity to present our views on individual fishing quota (IFQ) programs.

As you know, whether to allow the establishment of IFQ programs, and if so, subject to what standards, is one of the most contentious issues in fisheries management today. In 1996, Congress placed a four-year moratorium on the establishment of new IFQ programs to allow for further analysis of these management tools and to establish a national policy with respect to IFQs. In the interim, it directed the National Research Council (NRC) to analyze IFQ programs. The NRC released its report in December 1998 and recommended that councils be allowed to use IFQ programs provided that appropriate measures were implemented to avoid adverse effects from such programs. Unfortunately, Congress was unable to address these concerns prior to the expiration of the moratorium on September 30, 2000. Congress extended the IFQ moratorium for two additional years. The Network feels that this extension was appropriate because it allows Congress adequate time to develop national standards for the design and conduct of IFQ programs.

We believe that national standards for IFQ programs are necessary for two reasons. First, IFQ programs are unique—they grant fishermen the exclusive privilege to catch ocean fish, a public resource, before the fish are caught. Second, as we have seen with implementation of the Sustainable Fisheries Act (SFA), unless Congress provides very explicit direction, regional council implementation is likely to vary widely and will likely be inadequate or incomplete. The Network strongly believes that explicit legislative standards are necessary to protect the marine environment, as well as the broad interests of fishermen and fishing communities. To facilitate this process, the Network developed a comprehensive set of recommended legislative standards to insure that IFQ programs are properly designed and thus advance the conservation of marine fish and the management of marine fisheries. For your information, I've enclosed a redline copy of our proposed legislative standards and a one-page summary.

I have organized my testimony around the major themes of our position.

Marine Fish Conservation Network's National Standards for IFQ Programs

Should IFQs be allowed as a management tool?

The Network supports continuing the IFQ moratorium, UNLESS AND UNTIL, Congress adopts legislation containing standards for the design and conduct of IFQ programs in order to ensure that these programs contribute to and enhance the conservation of our nation's marine fish. While some argue that the regional councils can address problems commonly associated with IFQ programs during development of the program, the record of SFA implementation by the councils makes us very skeptical. As we have testified before this Subcommittee previously, council implementation of the SFA varies widely and significantly lags behind what we believe Congress intended. Whether fishermen are protected and an IFQ program enhances conservation will depend on council membership and NMFS leadership. In our view, allowing councils to address potential IFQ program problems without the clear guidance of national standards is a gamble that our fish and fishermen can not afford to take given the poor condition of many of our ocean fish populations.

IFQs Must Not Create A Compensable Property Right

IFQ programs must acknowledge that fish resources are publicly owned, that IFQs are not compensable property rights, and that IFQs are revocable. We recognize that the Magnuson–Stevens Act contains language stating that IFQs are not compensable property and are revocable. However, we fear that if Congress allows IFQ shares to be held for long periods of time, e.g., 5, 10, 15 years, they will obtain the attributes of property. We see examples of this phenomenon in current requests for the government to buyback fishing permits or days at sea. To address this, quota shares must be of a set duration, not to exceed five years, after which time they

may be renewed subject to satisfying defined criteria. These limitations will make it clear that quota shares are a temporary privilege.

IFQ Programs and Shareholders Must Provide Additional Conservation Benefits to the Fishery

Advocates of IFQ programs often promote their potential to enhance conservation. The argument is that stewardship of the resource will be enhanced because the value of the quota shares will be linked to the health of the resource. Therefore, they argue, the quota shareholder will have a financial incentive to conserve the resource. The Network does not believe that conservation will automatically be enhanced because an IFQ program is established; rather we believe that IFQ programs should explicitly provide for additional conservation benefits to the fishery. To accomplish this, we recommend that all IFQ programs establish objectives for improved conservation as a result of allocating shares and that any decision to renew an IFQ share must be based on an evaluation of whether the shareholder is meeting the requirements of the IFQ program and contributing additional and substantial conservation benefits to the fishery. Additional and substantial conservation benefits are scientifically measurable improvements in avoiding bycatch, preventing highgrading, reducing overfishing, rebuilding overfished stocks, and protecting essential fish habitat.

We believe that IFQ programs, if allowed, must be subject to strict conservation requirements for the simple reason that quota shareholders are being granted exclusive access to fish resources. Simply put, a guaranteed portion of a public resource requires additional measures to ensure that the public resource is protected. The Network recommends that fisheries subject to an IFQ program, at a minimum, be required to satisfactorily meet all of the conservation requirements of the Magnuson–Stevens Act. In particular, optimum yield should be set below the maximum sustainable yield to guard against overfishing, buffer against scientific uncertainty, and protect the ecosystem. Bycatch should be reduced over time to insignificant levels, and damage to essential fish habitat should be minimized. In addition, all IFQ programs must provide additional scientifically measurable benefits to the fishery by substantially avoiding bycatch, preventing highgrading, reducing overfishing and rebuilding overfished stocks, and protecting essential fish habitat.

Protection for Individual Fishermen and Fishing Communities

To ensure that IFQ-managed fisheries have broad participation, limits must be established to prevent excessive consolidation of quota shares and the size of initial allocations of quota shares should not be based on catch history, i.e., the size of past catch levels. Preference should be provided in initial allocations to fishermen who can demonstrate a record of conservation-minded fishing, are owner-operators, and have long-term participation in the fishery. Each IFQ program must ensure that a portion of each annual-allocation is set-aside for entry-level fishermen, small vessel operators, and crew members who do not hold quota shares.

The specter of consolidation is one of the greatest fears that fishermen have of IFQ programs. Based on experience in some existing IFQ programs, they fear that corporate interests will buy up quota shares, thus forcing them to change from small businessman to corporate employees. Some fishermen members of the Network worry that IFQ programs will transform them into "sharecroppers." Substantiating these concerns is the fact that the NRC identified consolidation as a problem in the surf clam and ocean quahog fisheries in the mid–Atlantic. To address these concerns, we recommend that Congress direct that IFQ programs preclude any person or entity from acquiring an "excessive share of the individual quota shares issued." Moreover, excessive share should be defined in statute to not exceed 1% of the total quota shares. In recognition of the need for regional flexibility, councils could exceed this limit if there are a small number of participants and the increase would not be detrimental to other quota shareholders.

We strongly recommend that councils be specifically precluded from basing the amount of an initial allocation of quota shares on the size of recent catches, i.e., catch history, because such a practice will reward the largest operators at the expense of small operators. To do otherwise will likely allow the largest operators to achieve windfall profits derived from a public resource. Additionally, giving the biggest shares to the largest operators could reward those who have caused environmental problems by using non-selective, and/or habitat damaging gear. Disallowing the use of catch history will also provide a disincentive for fishermen to intensify their fishing activities in order to establish catch history when an IFQ program is in the planning stages.

Finally, we urge Congress to view initial allocations as an opportunity to promote conservation. Using initial allocations to reward fishermen who have a dem-

onstrated record of conservation-minded fishing will provide an incentive for other fishermen to switch to less damaging and more selective fishing gear.

Independent Review of IFQ Programs and Shareholders

The Network strongly advocates a review of IFQ programs every five years. Decisions on whether to renew the program and how to improve it should be based on the outcome of that review. Review criteria should include additional and substantial conservation benefits to the fishery, including avoiding bycatch, preventing highgrading, reducing overfishing and rebuilding overfished stocks, and protecting essential fish habitat.

To carry out these reviews, we recommend that the Secretary establish a National Individual Fishing Quota Review Panel. We feel that a national panel is necessary to ensure a truly independent review of how effective IFQ programs are at meeting their objectives, including conserving fish resources. The National IFQ Review Panel should consist of individuals knowledgeable about fisheries management, but with no financial interest in any fishery. A representative of each Council Individual Fishing Quota Panel should also be on the panel.

In order for the five-year limit on IFQ shares to be meaningful, the Network strongly believes that there must be a substantial likelihood that quota shareholders would not be allowed the same number of shares held in the previous period if they fail to comply with all aspects of their IFQ program. If the review were to become perfunctory and shares are automatically renewed, they would take on the trappings of property despite the Magnuson–Stevens Act language to the contrary. To carry out these reviews, each fishery management council should establish and maintain an Individual Fish Quota Review Panel, consisting of individuals with knowledge in fisheries management, but with no financial interest in an IFQ program.

Recovery of Costs

Because IFQ shareholders are granted the exclusive privilege to catch fish, we believe that IFQ programs must recover all directly related administrative costs, including costs of enforcement, observer coverage, and independent reviews of the programs. Review of IFQ programs depends on good data and adequate funds to carry out the reviews. Cost recovery will ensure that the councils and the Secretary have the funds necessary to carry out these important mandates.

Reserve a Portion of the Catch to Protect the Resource and Future Opportunities

IFQ programs must provide the opportunity for allocation of quota shares to entities that do not intend to catch the fish, but instead to reserve the quota share for conservation-banking purposes that can help ensure the continuation of healthy predator-prey relationships. Given the scientific uncertainty that characterizes many fisheries, this reserve portion would also serve as a buffer against such uncertainty.

The IFQ Act of 2001

As you know, Senators Olympia Snowe and John McCain introduced the IFQ Act of 2001, S. 637, on March 28, 2001. If enacted, this legislation would provide a legal framework for IFQ programs. On behalf of the Network, I testified before Senator Snowe and the Subcommittee on Fisheries and Oceans in general support of S. 637. The Network believes that her bill is a good start because it addresses many of our concerns regarding the impact of IFQ programs on fishermen and fishing communities. However, it requires additional language to ensure that conservation is enhanced under IFQ programs and that they are independently reviewed.

We would like to commend to you a provision from S. 637 that is not contained in the Network's proposal. The bill would require councils to conduct a referendum of eligible permit holders to determine whether an IFQ program should be developed and another to determine whether the IFQ program should go into force. A super majority is required for the council to proceed in each case. We feel that this is a fair and equitable means of insuring that an IFQ program has broad support among affected fishermen.

Processor Quota Shares

Finally Mr. Chairman, I would like to express our strong opposition to processor quota shares. There is no public policy benefit from creating a closed market for fishermen. On the contrary we can see major economic hardships for fishermen if such systems are allowed. If processor quotas were established, fishermen would have a limited number of processors available to buy their fish. Under one proposal, only those who bought fish in the past from fishermen would be allowed to buy from them in the future. Any such program would severely disadvantage fishermen

during price negotiations. There would be no public benefit to either the economy or to conservation under any such program.

The "evidence" frequently used in an attempt to justify processor quotas comes for the halibut fishery in Alaska. The Network members in Alaska, including the Alaska Marine Conservation Council and the Alaska Longline Fishermen's Association (ALFA), have a great deal of experience in this fishery and question the validity and value of this so-called "evidence." As Linda Behnken, executive director of the ALFA and former three-term member of the North Pacific Fishery Management Council, said very simply and clearly in testimony before the Senate Subcommittee on Oceans and Fisheries, "I have seen no evidence to support their claims." She went on to say that her experience with a fishermen-owned processing cooperative in Sitka, AK showed that the plant did well under the halibut IFQ program. We believe that the real evidence shows that allowing processor quotas is NOT the answer to any fishing economics or conservation problems.

Thank you again for providing the Marine Fish Conservation Network with an opportunity to presents its views on IFQ programs and the need for mandatory national legislative standards to guide implementation of such programs. I would be happy to answer any questions you or other members of the Subcommittee may have.

Mr. GILCHREST. [PRESIDING] Thank you very much, Mr. Crockett. Mr. Heasley?

STATEMENT OF NATHANIEL HEASLEY, FISHERIES PROGRAM MANAGER, TAXPAYERS FOR COMMON SENSE

Mr. HEASLEY. See if I can sneak in here a little bit.

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Nate Heasley, and I am representing Taxpayers for Common Sense.

Taxpayers for Common Sense is an independent voice for American taxpayers dedicated to cutting wasteful spending and subsidies in order to achieve a responsible and efficient Government that operates within its means. I am here today to talk specifically about what we see as a trend toward privatization of America's fisheries through the use of individual fishing quotas.

IFQs represent a major step toward privatization of the fisheries. They are a permit of a different sort than have been used traditionally in the U.S., because they grant the holder an exclusive and noncompetitive privilege to harvest fish. Previous IFQ programs, both in the U.S. and abroad, have given these vouchers for fish away for free. As a public resource, the fisheries are the property of the American people and should not be simply given away, and no property right should be vested in the recipients of any IFQ.

When IFQs are handed over for free, they also are usually handed over without any specific limit on their duration. This creeping privatization will only lead to a misperception that the recipient has a property right in the fishery.

When an IFQ program is implemented, the initial allocation is often capricious, unfairly excluding some who have participated in the fishery while giving a windfall to others. Worse yet, some who actually claim to own the IFQs do not even bother to fish. They lease the quota out to others, making a profit that rightfully belongs to the American taxpayers. This adds a new twist to an old adage: give a man a fish; he will eat for a day. Teach a man to fish, he will eat for life. Give a man an IFQ, he will never bother to fish again.

[Laughter.]

Mr. HEASLEY. Any system that does not create a level playing field for current and future generations of fishermen cannot be supported by the American people as a proper use of their resource. Those who have traditionally fished must be allowed to continue the practice, and those who would like to fish must be allowed to enter the fishery but not at the expense of the American taxpayer and for the profit of a select few corporations or individuals.

Under the current system of management, very little of the cost of maintaining the fisheries is borne by the fishermen who are benefiting. To add insult to injury, evidence indicates that IFQ programs are likely to increase costs, not reduce them. Enforcement under an IFQ system is more expensive than under other management techniques. And let us be clear about who benefits from these sorts of programs. Much like the agribusiness, fishing is increasingly a corporatized business. The romantic days of the independent fisherman on his own boat are waning as consolidation and foreign bank interests creep into America's fisheries.

A properly implemented IFQ plan could help pay for the current fisheries management costs incurred by the Federal Government. Just like any other business in America, the externalized costs of fishing must be internalized by those who benefit, particularly if the beneficiaries are getting an exclusive grant to fish America's waters. To address these problems, Taxpayers for Common Sense encourages Congress not to allow IFQs to be used as a management tool unless there are specific provisions to protect the interests of the American taxpayers' resource. To this end, we recommend that like any other public resource made available for private use, access to the oceans under an IFQ or similar program be auctioned for the greatest benefit of the American taxpayer.

If IFQs are implemented through an auction program, it is important that IFQ programs not allow consolidation of fishing interests and that the privileges be retained for the independent fisherman that feed this country every day. Time-limited IFQs are the solution to the problem of privatization and consolidation. The reason there must be time-limited auctions of an IFQ program is to ensure that America's fisheries remain the property of all Americans. Under no circumstances should the ocean become the property of a few.

It is a truly public resource that is there for all Americans to enjoy in their own way, whether that is the commercial fishing that puts food on our tables or recreational fishing that brings millions of dollars to our local communities. Taxpayers for Common Sense has proposed the idea of a competitive auction as a middle ground to the simple argument of whether or not IFQs should be allowed. We believe that a properly structured auction could ameliorate some of the problems associated with IFQs while protecting American taxpayers' interests.

We hope this Committee joins us in recommending a competitive auction that will reimburse the public for the use of their resource. Thank you for the opportunity to share our views on this subject, and we welcome any questions.

[The prepared statement of Mr. Heasley follows:]

Statement of Nathanael Heasley, Fisheries Program Director, Taxpayers for Common Sense

Introduction

Good afternoon, Mr. Chairman and members of the committee. My name is Nate Heasley, and I'm the Fisheries Program Director for Taxpayers for Common Sense. Taxpayers for Common Sense (TCS) is an independent voice for American taxpayers, dedicated to cutting wasteful spending and subsidies in order to achieve a responsible and efficient government that operates within its means.

I'm here today to talk about the trend toward privatization of America's fisheries through the use of Individual Fishing Quotas (IFQs). IFQs are a fishery management system that divides the current harvest of a particular fishery between some of the participants, and gives each an exclusive privilege to harvest a set amount of fish without competition. The privilege, expressed as a percentage of the total allowable catch (TAC) for that fishery, is then transferable to others, who purchase the privilege from the initial recipient. There are currently only four IFQ programs in place in the United States: halibut, sablefish, wreckfish and surf clam/ocean quahog.

As this committee likely knows, the Sustainable Fisheries Act of 1996 established a moratorium on new IFQ programs. Without action by Congress, that moratorium will expire with the Magnuson–Stevens reauthorization. If Congress does not enact legislation on the use of IFQs, regional councils will be able to implement unfettered IFQ programs, with potentially disastrous effects. IFQs is are a blunt tool for fishery management. Improperly implemented, they create an inflexible system that permanently puts a public resource in private hands. My comments will highlight the following issue: the give-away of a public resource, the problems of initial allocation of IFQs, and the internalization of management costs. In my conclusion, I will propose that only properly structured competitive auctions will address these problems.

Giving Away the Public Resource

As they have been implemented in the US prior to the moratorium, IFQs represent a move towards privatization of the fisheries. Taxpayers for Common Sense is very concerned by this trend. As we all know, the 200-mile coastal Exclusive Economic Zone is one of America's largest and most valuable public resources. IFQs have the potential to seriously undermine the protections that the oceans have as a public resource.

As a public resource the fisheries are the property of the American people, and should not be simply given away. If IFQ programs are allowed without significant protections, they will do just that; rob the American people of their resource and create additional costs for fisheries management on the taxpayers.

The creeping privatization of IFQs will only lead to the misperception that the recipient has property right in the fishery. Similar examples can be found in grazing privileges, which have long been allotted for far below market value. As we have seen with grazing, a failure to set up the system properly from the beginning can lead to the misperception of a property right in a public resource, which in turn gives rise to spurious lawsuits and waste of the public's resource. IFQs have the potential to be the "grazing privileges of the sea," with all of the same wastefulness as those privileges have on land.

In the few examples we have of IFQ programs, IFQs have been handed out free of charge to a select group of people in that fishery. Those IFQs represent a grant of millions of dollars worth of a public resource, and since they are typically transferable, they present a tremendous windfall to those who are lucky enough to receive them. Those who do not receive them are then barred from entering the fishery, unless they want to pay those who were handed the privilege for free.

Initial Allocation and Intergenerational Equity

When an IFQ program is implemented, the initial allocation is often capricious, unfairly excluding some who have participated in the fishery while giving a windfall to others. Those "winners" who are lucky enough to receive an IFQ can become instant millionaires, as happened with dozens of fishermen in the halibut fishery in Alaska. Other domestic IFQ programs have had similar results—the surf clam ocean quahog fishery, for instance, had similar allocation inequities that have only been made worse by consolidation of the IFQs by large corporate interests. When IFQs were introduced in the Surf Clam Ocean Quahog fishery, more than $80 million dollars worth of annual harvest was given away to a mere 180 recipients. All others, the "losers" were barred from the fishery, while those who were left had a grant that allowed them to fish at their leisure in a state-sponsored monopolized fishery. Since their introduction, those permits have been even further consolidated to even

fewer owners, and excluding all others, including future generations who may have wanted to participate.

Worse yet, some who actually "own" the IFQs don't even fish. They lease the quota out to others, making a profit that rightfully belongs to American taxpayers. This adds a new twist to an old adage; Give a man a fish, he'll eat for a day. Teach a man to fish, and he'll eat for life. Give a man an IFQ, and he'll never bother to fish again.

This cannot be allowed to happen in future IFQ programs. Those who have traditionally fished must be allowed to continue that practice, and those who would like to fish must be allowed to enter the fishery, but not at the expense of American taxpayers and for the profit of a select few corporations or individuals. Any system that does not create a level playing field for current and future generations of fishermen cannot be supported by the American people as a proper use of their resource.

Commercial fishing represents a multi-billion dollar industry in this country, and provides a living to thousands of families. The value of those fish properly belongs to the American people, and those who benefit from the resource can no longer burden the taxpayers with their externalities, while reaping the benefits of our resource.

Recouping Costs of Management

A properly implemented IFQ plan could help pay for current fisheries management costs incurred by the Federal Government. Under the current system of management, very little of the cost of maintaining the fisheries is borne by the fishermen who are benefitting. Most fisheries do not have any charges or significant fees associated with the extraction of the people's living marine resources, and even taxes that are paid by most other Americans, such as the fuel tax, are waived for fishermen.

Under an IFQ system, the lack of extraction fees amounts to outright robbery. Those who are granted the exclusive privilege and guaranteed return of millions of pounds of fish, do so without compensating the American people for all but the smallest portion of the costs. For example, in the Halibut IFQ program in Alaska, perhaps the most positive example of an IFQ program that we have, the fees are limited to only 2% of the fish's sale price. A pittance when the program management costs are taken into account.

Fishery management costs run in to hundreds of millions of dollars. The NMFS budget alone in 2003 will amount to over $600 million dollars. That money, spent on a variety of programs to ensure sustainability of America's fisheries, directly benefits fishermen. The costs of enforcement of current fishing laws amounts to over $500 million dollars per year, including Coast Guard, NMFS, and direct aid to states. Add to all of that the cost of boat buy-backs, subsidized loans, harbor improvements, and direct subsidies, and it's clear that fishermen are benefiting a great deal at the expense of American taxpayers, while returning little for the use of their resource.

Let's be clear about who benefits from these sorts of programs. Much like agribusiness, fishing is increasingly a corporate business. The romantic days of the independent fisherman on his own boat are waning as consolidation and foreign bank interests creep in to America's fisheries. Particularly with the specter of NAFTA, which could allow large foreign-owned fishing fleets to benefit from the billion dollars that America invests in its fisheries every year.

To add insult to injury, evidence indicates that IFQ programs are likely to increase costs, not reduce them. Enforcement under an IFQ system is much more expensive than under other management techniques. According to NMFS, current IFQ programs have only a 1%–2% monitoring rate at the docks, where the target is at least 20%. Where there is a lack of enforcement, there will be illegal fishing. That in turn will lead to a reduction in the long-term productivity of the fishery, and spur even greater management costs in research and other maintenance.

This must not be allowed to happen. Just like any other business in America, the externalized costs of fishing must be internalized by those who benefit, particularly if the beneficiaries are getting an exclusive grant to fish America's waters.

Conclusion

To address these problems, Taxpayers for Common Sense encourages Congress not to allow IFQs to be used as a management tool unless there are specific provisions to protect the interests of American taxpayers' resource. To this end, we recommend that, like many other public resources made available for private use, access to the oceans under an IFQ or similar program be auctioned for the greatest benefit to the American people.

An auction is the most rational way to maximize the revenue from the fisheries, provided it done in the proper way. An auction must protect to a certain degree those who have participated and made capitol investments in that fishery, without barring new entrants completely. Experienced fishermen who have capitol investments in the fishery will already be at a competitive advantage in an auction system, but it will still be important to provide protections to ensure that corporate fishing interests are not at an advantage merely because of their scale.

IFQ consolidation could have significant adverse effects on both fishing communities and the fisheries themselves. This ultimately could lead to more subsidies, more boat buy-backs, and an overall reduction in the yields from our fisheries—none of which will be good for American taxpayers. The lesson we've learned from America's farmers is an important one, and we should be wary of repeating the mistakes that have led to the degradation of the American family-owned farm. It is important that IFQ programs not allow consolidation of fishing interests, and that the privileges be retained for the independent fishermen that feed this country every day.

But even as we talk about auctions, we must remember that any IFQ program does not confer a property right, but merely a privilege to fish. Any IFQ program must be time limited, both to allow new entrants and to keep the industry competitive, but also to give those who manage the fisheries the flexibility to alter the programs as situations change, without having to go through cumbersome processes such as boat buy-backs and permit stacking.

Most importantly, the reason there must be time-limited auctions of any IFQ program is to ensure that America's fisheries remain the property of all Americans. Under no circumstances should the ocean become the property of a few—it is a truly public resource that is there for all Americans to enjoy in their own way—whether that's the commercial fishing that puts food on our tables, or recreational fishing that brings millions of dollars to local economies.

Taxpayers for Common Sense has proposed the idea of a competitive auction as a middle ground to the simple argument of whether or not IFQs should be allowed. We believe that an properly structured auction could ameliorate the problems associated with IFQs, while protecting American taxpayers' interests. We hope that this committee joins us in recommending a competitive auction that will reimburse the public for the use of their resource.

Thank you for the opportunity to share our views with this committee.

Mr. GILCHREST. Thank you very much, Mr. Heasley.

This is an interesting group—

[Laughter.]

Mr. GILCHREST. —from what I can understand, with certainly differing opinions on the issue.

Mr. Crockett, your recommendation for quota shares, limited duration of ownership of an IFQ for 5 years, no processors should own IFQs, as I understand it, or be leased IFQs. This would just be delegated to, in some manner, someone who is actually going to fish on the high seas.

Mr. CROCKETT. Well, I need to be clear. There are proposals out there, something that people call the two-pie system, which would be harvester quotas and processor quotas. And what I was referring to is we are opposed to processor quotas, so that the only place that a fisherman, someone with a harvester quota, could sell their fish is to someone with a processor quota. We do not see the public benefit in that.

There are situations where processors are vertically integrated, and they own harvester shares.

Mr. GILCHREST. Would you do anything to change that?

Mr. CROCKETT. Well, I think we would be concerned about the consolidation limits and a processor getting too great of a control over the fishery through that process, so that the consolidation limits would be a concern.

Mr. GILCHREST. So existing regulations or existing law pertaining to IFQs, you would like to see changed to adopt your rec-

ommendations. Are there any IFQs that you see out there right now that need to be changed other than limited duration being implemented, quota share, IFQs in the North Pacific or the clam and quahog industry in the Mid-Atlantic?

Mr. CROCKETT. Well, I think, as Dr. Hogarth mentioned, there is a very wide variation in how these programs have been implemented. I think some of the concerns we have about consolidation and the impacts on fishermen are clearly evident in the surf clam fishery, where your testimony earlier that 60 percent—or maybe it was you that said it—that 60 percent of the quotas are held by three corporations. I believe one of those is an accounting firm, and the other is the bank.

Mr. GILCHREST. So under your system, you would not allow that to happen.

Mr. CROCKETT. That is correct.

Mr. GILCHREST. I see.

Mr. CROCKETT. But we think there should be, you know, preference for owner-operators, and that absentee owners should not be allowed, and that there should be strict limits on consolidation. And our proposal that is attached to our testimony has a general guideline. We felt 1 percent was adequate and that it could be raised if there was a particularly small fishery—like the wreckfish fishery, for example, only has less than 20 participants, so 1 percent would not work in that situation. I mean, it would be impossible to do.

So in that fishery, I think we would like to see these retroactively applied. Our recommendations—that may not be a realistic request on our part, but we certainly think that, you know, a set of standards should apply to all of the programs. And in response to what Dr. Hogarth was saying about they do not want to see one-size-fits-all, the Magnuson Act has a set of national standards that guide fisheries management. And essentially what we are proposing here is a set of national standards for IFQ programs.

Mr. GILCHREST. To some extent, which I think is a good idea, you are trying to move away from an accounting firm or Tyson Foods or Wal-Mart basically buying at auction or leasing IFQs.

Mr. CROCKETT. I think there are real questions about whether Tyson Foods or Wal-Mart would have the conservation ethic that is supposed to be engendered through an IFQ program.

Mr. GILCHREST. I guess the followup to that is how about a well-known conservation group that wants to buy an IFQ? Would they fit that same category as an accounting firm wanting to buy an IFQ?

Mr. CROCKETT. In our proposal, we have suggested that councils, as part of their IFQ programs, should set aside a portion of the resource that could be purchased by people who do not intend to fish them and that it would be sort of a conservation setaside, if you will.

Mr. GILCHREST. I see.

Let me hold off on that just for a second. When you talk about a quota share, you mentioned the 60 percent are owned by three different corporations for the clam and quahog industry. I seemed to understand you to say that is not a good idea.

Mr. CROCKETT. Yes.

Mr. GILCHREST. In the quota share for the IFQ for a fishery, you could only own a certain percentage of that quota share.

Mr. CROCKETT. The quota share would be of a certain size, the percentage, and we are suggesting 1 percent ought to be sort of the benchmark, and there could be modifications based on—

Mr. GILCHREST. You could not own more than 1 percent?

Mr. CROCKETT. Yes, that is what we are suggesting.

Mr. GILCHREST. Oh, so 60 percent owned by three or 33 percent owned by three is sort of way out of the ball park in your opinion.

Mr. CROCKETT. Yes.

Mr. GILCHREST. Dr. Bromley, you talked about market share. In a free market with a number of provisions—you set out certain standards that had to be met or should be met before we as a Congress or the Secretary or the councils lease an IFQ. And your reference to a market economy, would you agree with Mr. Crockett on limiting ownership—if all the standards are met: the harvest levels, the quota share—well, maybe that is what you put in there, the quota share. So you would agree with Mr. Crockett that a quota share for an IFQ should be part of the standards?

Dr. BROMLEY. I would prefer to say—if this is working—I would prefer to say that it seems to me that the way to run an auction and to partition this is to set partitions ahead of time. One could partition the auction in terms of vessel size. One could partition it in terms of place, certain fishing communities, so that preference could be given.

So it would seem to me that one sets up this opportunity to have access to the wealth of ocean fisheries in some sort of a partition so that the final outcome would match, perhaps, what Mr. Crockett favored. Am I afraid of concentration in the abstract? Yes, but my sense is that with proper design at the beginning of these programs, one can deal with that.

Let me stop there.

Mr. GILCHREST. Sure; thank you very much.

Dr. BROMLEY. If that is responsive to your question.

Mr. GILCHREST. That is. I do not think it is a pervasive problem under the present regime, because we just simply do not have a lot of IFQs. But if we move forward and allow, let us say, a minimal amount of tinkering with our standards for IFQs and leave it up to the councils and the Secretary, you are saying, I think, there may be some issue of concentration out there—

Dr. BROMLEY. Yes.

Mr. GILCHREST. —that we do not foresee.

Dr. BROMLEY. Yes; may I elaborate on my answer?

Mr. GILCHREST. Yes.

Dr. BROMLEY. Briefly, I think what we are doing is having a conversation about the purpose of the oceans, you see. And in a sense, if one thinks about the purpose of the oceans in a historic sense, what we now understand is that a lot of interest groups care about the oceans; they care about ecosystems; they care about fishing communities, and if one recalibrates how they talk about the oceans, it is no longer a place from which fish will simply be extracted. It is a place that provides recreation; it is a place that provides a means of living for some people; and so on, and so, the partition of the auctions, the partition of access, in a sense, it

seems to me, is reflective of a new idea about the purpose of the ocean; rural communities; job creation; stability of the industry, if we might use those words.

So it seems to me that if one is intent on creating IFQs, it seems to me they must be predicated upon this broader concept of the purpose of the ocean. That is why I find, if I may, the Homestead metaphor really quite inapt. The Homestead Act was, in a sense, not driven by desire to produce wheat. It was driven by a desire, with all apologies to Native Americans, to fill up a continent that we presumed to be empty and to get people out there and what have you.

So the idea that this is just the Homestead Act, a wet version of the Homestead Act, it seems to me, is really quite inappropriate.

Mr. GILCHREST. I just have one other quick followup if Mr. Underwood will give me the latitude. I am not sure who up there gave the Homestead Act analogy, OK?

[Laughter.]

Dr. LEAL. I am sure.

[Laughter.]

Mr. GILCHREST. Well, then, my question will be to Dr. Leal, then—

Dr. LEAL. Good.

Mr. GILCHREST. —as a followup to what Dr. Bromley just said. And that is, Dr. Leal, what is your understanding? How would you like us to view the Magnuson Act? Is it an act that the Federal Government issues to manage the oceans for, let us say, the principal purpose of providing not only protein, an inexpensive protein source to the American people, or is it a Federal program to manage, in a very broad sense, pretty much based on what Dr. Bromley just said, to manage the fisheries for the public benefit, which would include extracting protein for people; which would include recreation; which, I think, we are beginning to understand would also include, as a public resource which provides us with, for lack of a better terminology, a significant source, given the ecosystem, for protecting the biosphere of this country?

So with that pretty much vague question, if you could just respond, and I would also like to comment, if you will, that the Magnuson Act does not say anything about rights. It refers to privileges. Would you like that to go from privileges to rights?

Dr. LEAL. In a short answer, yes. I think that, you know, my inclination is to look at it from the standpoint of this is just—the last 40 years have been an extension of the privatization of the oceans. It started, you know, with the 200-mile Exclusive Economic Zone in the sense that now, nations have the power to create these exclusive territories. Telling other nations to get out is a form of—you know, a national form of privatization. Now, we are at the next stage. We are at the stage where we have to understand that these resources are limited; that they cannot—you know, it is one thing to say we would like to have access to all fishermen, access for all recreationists, access for this and that.

But the problem is these resources are scarce. They can only produce so much, and that we started the process, the extension of the process of enclosing the oceans out to 200 miles with the limited entry system, the limited licensing that is going on off the Pa-

cific Coast and starting to begin on the East Coast. That is just another form of privatization taking place. Are we there yet? No; we probably will never be completely there, because on the recreation side, there is still a portion of the fish that they say, OK, well, this portion is going to be allocated for recreation.

But that does not mean we cannot have at least, on the recreation side, an overall quota that can be used to bargain with. Recreationists can buy quota from commercial fishermen if they feel like they want more, et cetera. Conservationists can buy quota from the commercial fishermen if they feel—

Mr. GILCHREST. So you view an IFQ as something that is—

Dr. LEAL. It is a—

Mr. GILCHREST. It is leased to somebody, and during that lease, they own that particular right, as someone leases an apartment, or they lease a building or something of this nature; they have certain, specific rights and privileges to that particular property?

Dr. LEAL. I view it as more than just a lease. I view it as, you know, a straight property right in—

Mr. GILCHREST. So you would disagree with Mr. Crockett to hold it for only 5 years.

Dr. LEAL. Right; I think that defeats one of the purposes of creating rights in resources, and that is to procure stewardship. You know, how many people damage their own car and stuff? I mean, people take care of things they own. It boils down to that. You know, how well taken care of are our national forests, our national parks? We are constantly struggling with that whole venue, because those are the resources that seem to always struggle in the sense of being taken care of. I want the fisheries to have that same stewardship ethic in that sense.

So I would say that this process—I would like to law changed, to boil down. I would like to see an IFQ a property right.

Mr. GILCHREST. I see.

Dr. LEAL. Revocable only on violation, you know, if the rightholder violates—cheats on quota or something like that, repeated cheater, then, he loses it.

Mr. GILCHREST. I understand. Thank you. I am well past my time.

Dr. LEAL. OK.

Mr. GILCHREST. I yield now to Mr. Underwood. Thank you very much, Dr. Leal.

Mr. UNDERWOOD. I would like to thank the panel for a very illuminating discussion about all of the various dimensions regarding the IFQs, and it seems that we are at the horns of a philosophical dilemma at some level, and that is the attitude toward what is essentially a public resource. I am finding it curious, Dr. Leal, your characterization that there is some kind of privatization ethic in that process from going from an EEZ to privatization, and I understand the assumption; I understand the assumption that you are only going to behave responsibly with something that you directly own and manage. That is an assumption about these what are essentially public resources.

I guess the problem that I am having is that they are, in fact, public resources, and I guess the bottom line is that they are public resources. I just have a hard time thinking that they can be owned.

Certainly, people are given permits to use public resources, and we try to manage that in a way that responds to the public interest. Your point is, in large measure, philosophical to the same extent that Dr. Bromley's point is philosophical, perhaps, in the opposite direction, and I guess it calls for some assessment on the part of the Committee not so much as to declare which philosophy is the winner but I guess which approach would work best given the assumption that they are public resources, and I think that is why it is important to, I think, keep that definition intact.

There are some issues that were brought up about transferability and auction, the idea of auctioning these off, and I would like to pose the question to Mr. Crockett and Mr. Gilmore and Mr. Gutting what their attitudes are and what their sense is about auctioning off IFQs and transferability. Why don't we start with you, Mr. Crockett?

Mr. CROCKETT. OK; our organization does not have a position on either of those, and we—

Mr. UNDERWOOD. Pardon me, on—

Mr. CROCKETT. On auctioning or transferability. I intend to bring it up to my board at our next meeting in March, so hopefully, I will have a position by then, but to date, I do not.

Mr. UNDERWOOD. Mr. Gilmore?

Mr. GILMORE. Yes; our association has not taken a position on auctioning. I would just offer as maybe my last day on the job a personal observation.

[Laughter.]

Mr. GILMORE. But, I mean, I think in terms of moving to quota systems, by and large, a big part of doing that is trying to provide some economic and social stability in fisheries that are overcapitalized, that have a race for fish going on. And so, I think a big part of management councils' responsibility in moving into these types of programs, be it a general limited entry program or an IFQ program, is to consider the effect on the current participants in the fishery, and by and large, if you are moving to these types of programs, probably these fisheries, if they are biologically or environmentally healthy, probably are not economically or socially healthy.

I know that the pollock fishery, we have had a very healthy fishery since the U.S. took over management of it, but our vessels, half of our vessels went through bankruptcy in the 1990's as a result of the race for fish, although the quotas remained over a million metric tons. So I think in moving into auctions, you just get into what are your social goals in moving into these programs and that it might not be appropriate to move toward an auction at that point but to recognize people that already have investments.

And I could follow up with my letter of resignation and the honest views of our association.

[Laughter.]

Mr. GILMORE. On transferability, it has worked for us in the cooperative. I am not quite sure what—we have sort of done it on two levels, and one is that when the cooperative was formed, we had eight-member companies, and now, there are seven-member companies; one vessel elected to forfeit its U.S. fishing privileges and leave U.S. fisheries and will not be able to come back, and they sold their share of the quota. I am not exactly sure what it is that

they sold if the Government changes the sectoral allocations, the way pollock is allocated.

But all the people who purchased the Endurance's quota share under the coop recognized that risk and I presume took that into account in the offer that they made. So it did help us take some additional capital out of the fishery while compensating the people that left.

We also do leases. I do not believe any of the remaining coop members have sold any of their quota, but we do engage in leasing throughout the year, and it has worked well for us in that companies with less efficient vessels have tended to lease some of their surplus quota to more efficient operators. But where we really use it is toward the end of the year. Rather than having three or four or five vessels still out on the grounds, somebody will say, well, I am just going to go do shipyard work and lease out the remainder of their quota. We end up in a situation where we might have one or two vessels out on the grounds at the end of the season rather than 19 vessels racing to catch that last fish. So it has worked to rationalize our fishery.

Mr. UNDERWOOD. Very good. Thank you.

Mr. GUTTING. Our organization has not considered the precise two questions you asked, whether or not we would support an auction system and with respect to transferability. I would offer these comments: as Jim Gilmore just mentioned, one of the very useful aspects of IFQs is that it can be part of an effort on the part of the council to rationalize a fishery. Oftentimes, they are considered in the context of an overcapitalized fishery, where you are trying to encourage more efficient use of capital, and you are dealing with fishermen who would like to exit the fishery; would appreciate very much an opportunity to cash out, as it were.

IFQs have been a very useful mechanism to accomplish naturalization. I think that is a legitimate purpose of IFQs, and if you were to institute an auction system and ask people who do not have money to bid, you might run at cross purposes to what you are trying to accomplish for a fishery.

With regard to transferability, many of the benefits of IFQs can only be achieved through some kind of transfer, whether permanent or temporary. And these are the kinds of issues that really are best left to the councils.

The Chairman was asking some profound questions: why are we managing these fisheries? Well, if you go to the act, the answer is to achieve an overall benefit. And it is not a particular benefit. It can be local employment; it can be protecting communities; it could be recreation; it could be food.

All of these goals are perfectly appropriate within the context, of course, of always of conserving the stocks. I think it would be a mistake for us here in Washington, D.C., through legislation to try to, through rigid numbers, answer all of these questions. The fisheries are diverse. The people who are dependent upon these resources have different needs. I think there was a profound wisdom when this act was enacted to leave it up to the councils to look at the particular factual circumstances and apply them against the general standards in the act. If we get too specific and start decid-

ing how to manage fisheries, we are going to get ourselves in trouble.

Mr. UNDERWOOD. Thank you, yes, and the Chairman is a profound guy.

[Laughter.]

Mr. GILCHREST. Yes; I am profound to my teenage daughter. She is confused all the time with my comments.

[Laughter.]

Mr. GILCHREST. I would agree with you, Mr. Gutting, on just about everything you have said. But I do think, as Dr. Hogarth has stated, the council system has worked fairly well and that the Magnuson Act has pursued a very difficult, complex mission with multiple players, multiple interests. But I do think it is incumbent upon us as Members of Congress, the Government or whoever, to ensure again with the collective wisdom that is out there to assume that we are trying to acquire that and then use our judgment as to the next direction that we want to pursue or go in. Because certainly, 25, 26, 27 years ago, however long the Magnuson Act has been put in place, the science is better now. The specific purpose for a Magnuson Act has been accomplished, which is to preserve the fisheries for American interests.

And now, what are the American interests based on what we now know and based on the health of the fishery and the oceans and the marine ecosystem? So that is what we are wrestling with with all of these issues.

And I do not want to be here until midnight, because I know a lot of people want to spend some time visiting museums or walking around Washington, but Mr. Gutting, I think you may agree with Mr. Gilmore, and the both of you, I suppose, might disagree with Mr. Crockett to some extent as far as processors leasing or owning quota shares or IFQs. Am I correct in that?

Mr. GUTTING. Yes; I am not sure I fully understand Mr. Crockett's position, but I suspect if I did, I would disagree with it.

[Laughter.]

Mr. GUTTING. I would like to elaborate somewhat on our position. Dr. Hogarth mentioned during his testimony that there needs to be a change in the act to allow for the councils to consider processors when they address limited access systems including IFQ systems. And we agree with Dr. Hogarth's observation that the law as presently worded does not allow for processing and shore-based processors to be considered when these systems are taken up. And so, we would agree with Dr. Hogarth on that. There is a need for change.

I do want to add one additional measure, and that is when processors are considered, and I believe they should be, in council deliberations, it is very important, Mr. Chairman, very important that if an IFQ program is adopted that the shore-based community, the processors, are treated fairly; that there is equity with the harvesting sector.

You are going to have some witnesses later today who can tell you what happens when that does not take place. There can be tremendous economic loss and dislocation, and we think it is important that we learn from these lessons and not make the same mistakes in the future. So what we are asking is that please include

processors in the consideration of these programs and be sure that they are treated fairly and equally. There are many, many ways to do that. We are not saying you should sit here and write out exactly how that is to be done, but there has to be a general principle here of fairness if we are to avoid the mistakes we have made in the past.

Mr. GILCHREST. Big job ahead.

Mr. Gilmore, were you going to make a comment?

Mr. GILMORE. I would just say that we are on record as supporting processor quota shares. It is a little bit of a freebie for us since we catch our own fish and process our own fish. We will be considered under IFQ programs either for our harvesting or processing or both, but we do believe that—

Mr. GILCHREST. But you would not turn down that freebie.

Mr. GILMORE. Well, I think we would not get double credit.

[Laughter.]

Mr. GILMORE. I will take a wild guess on that; but I would say that we recognize that—and we have made investments in harvesting and processing. We just happen to put it all on one vessel. Processors in the North Pacific, you know, they have made their own investments.

Mr. GILCHREST. Would you agree with Mr. Gutting—I understand your position on IFQs, but would you agree with Mr. Gutting as far as shore-based processors are concerned and entry into IFQs?

Mr. GILMORE. Yes, we would.

Mr. GILCHREST. You would?

Gentlemen, thank you very much. We have a big job ahead. Thanks for your testimony.

Mr. GILCHREST. Our next panel is panel three: Mr. Pete Jensen, Wallace and Associates; Mr. Peter Emerson, senior economist, Environmental Defense; Mr. Robert Spaeth, Southern Offshore Fishing Association.

I want to thank the panel for coming today and offering your testimony. We appreciate the information that we are receiving from all of you, and Mr. Pete Jensen, a gentleman from Maryland with a wide range of experiences with the ocean side and the Chesapeake Bay; Mr. Jensen, you may begin.

STATEMENT OF PETE JENSEN, WALLACE AND ASSOCIATES

Mr. JENSEN. Thank you, Mr. Chairman; greetings from back home.

Mr. GILCHREST. Thank you.

Mr. JENSEN. Thank you for inviting Wallace and Associates to this hearing. I am Pete Jensen, an associate with Wallace and Associates.

The issue of whether to allow individual fishing quotas or individual transferable quotas in the management of our nation's fisheries does not exist in isolation. A large number and variations of individual fishing quotas have been utilized in virtually every fishery in the United States. They are all intended to limit the total catch and allocate the catch among participants. But they have not been effective in dealing with the overcapacity and excess fishing power that exists in many of our fisheries. The result is an

ever-changing, often complicated, frequently controversial mixture of control and allocation of fishing privileges which is expensive and complex to administer.

To date, the available management measures being utilized are not achieving the full intent of the Magnuson Act. The idea for individual transferable quotas emanates from the well-known and documented management problems of insufficient fish stocks to support the capacity of recreational and commercial fisheries to catch fish. So the question is what objective can be achieved through the use of individual transferable quotas, and are there current and future fishery management objectives which are and will be frustrated by the problems of overcapacity and too many fishermen that cannot be effectively and efficiently achieved without some form of individual transferable quotas?

We believe so. Individual transferable quotas are necessary in some fisheries to deal with overcapacity and overcapitalization. Participants in individual transferable quota regimes are able to determine the level and investment and capitalization appropriate to the available catch quotas. However, it is clear that each one must be tailored to the circumstances of the fishery. There is no one size fits all. The major debate seems to be centered around concerns over unknown or anticipated undesirable effects such as the consolidation and control of individual transferable quotas, foreign and absentee ownership, fair and equitable allocation and access, especially by individual fishermen and small businesses and processors.

Community impacts and who will benefit? At a minimum, we believe Congress should remove the moratorium on individual transferable quotas along with whatever criteria are necessary to deal with the extant concerns but not deny the management councils and the National Marine Fisheries Service the ability to employ individual transferable quotas in appropriate situations. We would counsel against attempting to define the utilization of individual transferable quotas in extensive detail other than to protect against identified, unwanted results. To attempt narrow definitions and guidelines would, in our view, stifle the innovation and ideas that we believe will emerge from the councils, the fishing industry and the public.

Certainly, everyone who has had full opportunity during the moratorium to consider the pros and cons of individual transferable quotas and should now be prepared to engage in a public discourse on the specific applications. In some fisheries, they will not be workable, but we believe these will become obvious. Because Wallace and Associates has been closely and substantively involved in the successful development and implementation of individual transferable quotas for surf clams and ocean quahog, we believe that they will work in other fisheries as well as they have worked in the clam fishery.

When the clam fishery was on a limited access time allocation system because the clam stocks had been reduced due to fishing and environmental events, fishermen raced to fish. When clams were in short supply, each vessel was allocated to fish 96 hours per week, 52 weeks a year to catch a fixed quota. By the time the stocks recovered, each vessel was fishing 6 hours every other week.

None of the participants were making any money; the vessels were not being properly maintained; crews were having to work on as many as four vessels just to earn a living, and vessels were being lost to such an extent the clam fishery was considered the most dangerous fishery in the U.S.

The surplus fishing capacity left the fishery; the best fishers remained; the crews are fully employed. This industry can now plan on a reliable basis and is considered one of the best-managed. It is a fishery that is largely self-regulated with minimum regulatory costs. In particular, we would point out that even there were some consolidations when the management plan was first implemented that might have been undesirable, the open market for allocations has resulted in a wide variety of quota holders, most of which are small businesses, individuals and families that have been in the fishery since before there were regulations.

Unfortunately, it is the fishermen who have raised the price for the resulting complex and expensive form of management that results when you do not have individual quotas. We believe individual transferable quotas can assist the Congress and the management agencies in achieving better management and better outcomes for our fisheries. We have no specific guidelines to suggest today; however, we would be pleased to submit suggestions at the invitation of the Subcommittee.

Thank you.

[The prepared statement of Mr. Jensen follows:]

Statement of W. Peter Jensen, Wallace & Associates, Cambridge, Maryland, on behalf of the North Atlantic Clam Association

Mr. Chairman and Members of the Subcommittee, thank you for inviting Wallace and Associates to this hearing on Individual Fishing Quotas (IFQ's). I am W.P. Jensen, an associate of Wallace and Associates.

The issue of whether to allow Individual Fishing Quotas or Individual Transferable Quotas in the management of our nation's fisheries does not exist in isolation. A large number and variations of Individual Fishing Quotas have been utilized in virtually every fishery in the United States and in some international management regimes. Some examples are daily catch limits, size limits, trip limits, limited entry permits, time limits, and gear specifications. They are all intended to limit the total catch and allocate the catch among participants while achieving the objectives of sustainable fisheries but they have not been effective in dealing with over capacity and excess fishing power that exists in many fisheries. The result is an ever changing, often complicated, and frequently controversial mixture of allocation of and control of fishing privileges, which is expensive and complex to administer. To date, the available management measures being utilized are not achieving the full intent of the Magnuson–Stevens Conservation and Management Act.

The idea for Individual Transferable Quotas emanates from the well-known and documented management problems of insufficient fish stocks to support the capacity of recreational and commercial fisheries to catch fish and the difficulty in achieving biological stability of the fish stocks and economic stability of the fisheries. So the questions are; "What is the objective to be achieved through the implementation of another form of Individual Fishing Quotas or Individual Transferable Quotas that cannot be achieved with the traditional forms of allocation and control of fishing privileges? Are there current and future fishery management objectives which are and will be frustrated by the problems of over-capacity and too many fishermen that cannot be effectively and efficiently achieved without some new form of Individual Transferable Quotas?

We believe so. Individual Transferable Quotas are necessary in some fisheries to deal with over capacity and over capitalization. Participants in an Individual Transferable Quota regime are able to determine the level of investment and capitalization appropriate to the available catch quotas. However, it is clear that each application of Individual Transferable Quotas must be specifically tailored to the circumstances of the fishery being managed and the specific objectives to be achieved

for that fishery (including the fish stocks involved). There is no "one size fits all" Individual Transferable Quota recipe.

Unless we have misunderstood the debate and concerns that surround Individual Transferable Quotas there is limited debate that there have been desirable benefits achieved from the implementation of Individual Transferable Quotas for surf clams/ocean quahogs, halibut, and wreckfish. The major debate seems to be centered around concerns over unknown or anticipated undesirable effects such as consolidation/control of Individual Transferable Quotas, foreign and absentee ownership, fair and equitable allocation and access (especially by individual fishermen who would be considered small businesses, and processors), community impacts, and who will benefit by recovery of over fished stocks.

At a minimum Congress should remove the moratorium on Individual Transferable Quotas along with whatever criteria is felt necessary to deal with the extant concerns but not deny the Management Councils and the National Marine Fisheries Service the ability to employ Individual Transferable Quotas in appropriate situations. We would counsel against attempting to define the utilization of Individual Transferable Quotas in extensive detail other than to protect against identified unwanted results, some of which have been identified. To attempt narrow definitions and guidelines would, in our view, stifle the innovation and ideas that we believe will emerge from the Councils, the fishing industry and the public. Certainly, everyone has had full opportunity during the moratorium to consider the pros and cons of Individual Transferable Quotas and should now be prepared to engage in a public discourse on the specific applications. In some fisheries Individual Transferable Quotas may not be workable, but we believe that those will be obvious as the Councils, industry, and the public debate options and proposals.

Because Wallace and Associates has been closely and substantively involved in the successful development and implementation of the Individual Transferable Quota system for surf clams and ocean quahogs we believe that Individual Transferable Quotas can work in other fisheries as well as they have worked in the clam fishery.

When the clam fishery was on a limited access time allocation system, because the clam stocks had been reduced due to fishing and environmental events, fishermen raced to fish. When clams were in short supply each vessel was allowed to fish 96 hours per week, 52 weeks per year to catch a fixed quota. By the time clam stocks recovered each vessel was fishing six hours every other week. None of the participants were making any money when the regulations required them to fish on a given day and time regardless of the weather. The vessels were not being properly maintained, crews were having to work on as many as four vessels just to earn a living and vessels were being lost to such an extent the clam fishery was considered the most dangerous fishery in the U.S. Compared to the safety record before the Individual Transferable Quota system went into effect, the clam fishery is much safer today. The surplus fishing capacity left the fishery, the best vessels remained, and the crews are fully employed. Enforcement is not a big issue because few rules are necessary and most rules can be enforced at the dock or in the processing plants. This industry can now plan on a reliable basis and is considered one of the best-managed fisheries in the U.S. It is a fishery that is largely self-regulated with minimal regulatory process and enforcement costs, and clearly sustainable.

In particular, we would point out that even though there were some consolidations of allocations when the management plan was first implemented that might have been considered an unwanted effect, the open market for allocations has resulted in a wide variety of quota holders, most of which are small businesses, individuals, and families who have been in the fishery since before there were regulations.

The choices on how to regulate and control fishing pressure on fish stocks that are limited are difficult. But, the choices that are being made in the absence of the availability of a full array of management tools are no less difficult and in some cases unsuccessful or ineffective. Unfortunately, it is the fishermen who pay the price for the resulting complex and expensive form of management that results. Individual Transferable Quotas can assist the Congress and management agencies in achieving better management and better outcomes for our fisheries.

We believe that the Councils should have Individual Transferable Quotas in their arsenal of management tools to help solve some of the problems in fishery management if they deem them appropriate for a given fishery.

We have no specific wording for guidelines to suggest today, however, we would be pleased to submit suggestions at the invitation of the Subcommittee.

Thank you for the opportunity to testify and offer our views on Individual Fishing Quotas.

Mr. GILCHREST. Thank you, Mr. Jensen.
Mr. Emerson?

STATEMENT OF PETER EMERSON, SENIOR ECONOMIST, ENVIRONMENTAL DEFENSE

Mr. EMERSON. Chairman Gilchrest, members of the Subcommittee, my name is Pete Emerson. I work for Environmental Defense in Austin, Texas. I appreciate this opportunity to offer my perspective on individual fishing quotas and the Gulf of Mexico Red Snapper Fishery. Much of what I know about this fishery, I learned from Captain Felix Cox, a veteran fisherman who works the 52-foot Mattie Grace out of Aransas Pass, Texas. Captain Cox, a winner of the National Fisherman's Highliner Award, is not happy with the way things are. He is locked in an all-out race for fish that is driving him to financial ruin and, in his own words, causing me to waste more fish than I can count.

This sad story is shared by many snapper fishermen. Government regulations set up to help fish stocks instead caused discards of fish to skyrocket; market supply gluts to push prices down; harvesting costs to rise; and fishermen to go to sea under dangerous conditions. These are certainly not the outcomes that Congress promised in adopting the fishery conservation and management goal found in the Magnuson-Stevens Act.

To make matters worse, when our regional managers and Gulf fishermen tried to solve their problems, Congress cut them off with a moratorium on new IFQ programs. It is time to remove this roadblock. I encourage you to strengthen the act by lifting the moratorium. We need regulations that will support sensible year-round fishing; help reduce excess capacity and rebuild overfished stocks and certainly promote safety at sea.

Resource economists recently found that replacing the existing limited entry program in this red snapper fishery with a transferable IFQ program would increase annual red snapper dockside revenue by 46 percent simply by eliminating market supply gluts and reduce annual fleet harvesting costs by 56 percent by eliminating per-trip catch limits and excess fishing capacity.

Mark Frudenberg, owner of Captain Mark's Seafood, a processing and wholesaling business in Freeport, Texas, thinks the results on the revenue side could be even better. With year-round fishing, he is looking to creating new marketing opportunities for fresh, high quality red snapper. For certain, potential economic returns of this magnitude justify consideration of IFQs in this fishery. But there are more good reasons for fishermen and conservationists to take note: it turns out that ending the race for fish; avoiding long, closed seasons; reducing excess capacity; getting rid of minimum size limits really would save fish.

While the evidence is incomplete, available data suggest that at least 1.8 million red snapper a year currently thrown overboard because they are too small or caught out of season could be saved. That is a nice gain for a long-overfished fishery. Conservation would get another boost under a comprehensive IFQ program if it reduced effort-switching to related fisheries like amberjack and vermillion snapper that are already in trouble.

Of course, we all know that IFQs generate concerns. Gulf of Mexico fisheries are no exception. Congress should respond by developing a sound national policy on IFQs. Such a policy would provide maximum flexibility to the regional councils but foster a deliberate strategy capable of introducing IFQ programs and, at the same time, addressing objectives for conservation, fishing businesses and communities. It would encourage broad stakeholder participation in setting goals and in reaching agreement on measurable performance targets.

A national policy on IFQs would start with provisions already in the Magnuson-Stevens Act and then add to them. The act states that an IFQ is a Federal permit; that it can be revoked or revised based on future conservation and management goals. To strengthen the stewardship incentive, Congress should allow IFQ owners to bring civil actions against private entities that unlawfully harm the value of quota shares. Fishermen need to have assurances that their quota shares are secure and defensible from damage. Otherwise, a positive incentive to conserve stocks is reduced.

To help IFQ programs achieve their objectives, Congress should remove the 3 percent cap on fees collected from fishermen to cover the costs of monitoring and enforcement. Because successful management benefits fishermen, it makes sense that fishermen should help pay these costs. Such a cost recovery requirement is a bitter pill for red snapper fishermen harmed by derby fishing, but it might be phased in as IFQs give them a chance to escape low prices and depressed earnings.

Whatever you do, I respectfully urge that you do not make it too complicated. The Gulf's red snapper fishery; the controversy here is going to be in getting to the details of a program; the program design and in putting together a deal to make the transition from one management strategy to the next. It will require a substantial amount of work at the regional level. Congress has written national standards, conservation and management goals that enjoy broad public support. With IFQs back in the fishery management tool box, it should hold the Gulf Council and Federal managers responsible for identifying and improving regulations that are working and eliminating harmful ones and for getting a fair return on the taxpayers' dollar.

Mr. Chairman, that concludes my testimony. Thank you for the opportunity to testify.

[The prepared statement of Mr. Emerson follows:]

Statement of Peter M. Emerson, Senior Economist, Environmental Defense

Thank you for the opportunity to testify today on reauthorization of the Magnuson–Stevens Act, and individual fishing quotas (IFQs)[1] in particular. I work for Environmental Defense in Austin, Texas. We are a public interest group dedicated to protecting the rights of all people to clean air and water, healthy food and flourishing ecosystems. We have more than 300,000 members worldwide, including 38,000 members living in states bordering the Gulf of Mexico.

I will use this opportunity to urge you to strengthen the Act by lifting the moratorium on implementation of new IFQ programs. Putting IFQs back in the Federal fishery management tool box, so that they can be fairly considered and adopted where appropriate, is an important step in achieving the nation's fishery conservation and management goals.

I will support my recommendation by using experiences from the Gulf of Mexico reef fish fishery to demonstrate the need for IFQs and suggest ways of addressing legitimate concerns.

Introducing a system of secure and tradable IFQs in the reef fish fishery could deliver substantial economic returns. Conservative estimates point to higher dockside prices producing additional revenues of 46 percent for red snapper, and fleet harvest cost savings of 55 percent. By altering fishing practices and reducing bycatch waste, IFQs could also "save" 1.8 million fish each year to speed rebuilding of an overfished stock. These potential outcomes demonstrate that good fishery management really does benefit the economy and the environment.

End the legislative paradox

The Magnuson–Stevens Act holds the Federal Government, and eight regional councils, responsible for the conservation and management of publicly-owned fish stocks found in the Exclusive Economic Zone.

Major objectives of the Act—such as preventing overfishing, encouraging efficient use of resources, minimizing bycatch mortality, promoting safety at sea, and increasing benefits to the nation—have been set forth by the Congress in ten National Standards. The National Standards commit Federal managers and regional councils to use the best scientific information available to achieve these and other broadly-accepted fishery conservation and management goals on behalf of all U.S. citizens.

Unfortunately, Federal managers' efforts to satisfy the National Standards are impeded by a four-year moratorium that Congress placed on the adoption of new IFQ programs starting in 1996,[2] and subsequently extended to October 1, 2002.[3] Without this important management tool, fishermen are forced to make decisions—often prompted by fishery regulations themselves—that exacerbate overfishing and bycatch waste and inevitably lead to inefficiency and financial hardship, increase risks at sea, and create inequities among fishermen and coastal communities in direct violation of the National Standards.

It is past time to end this legislative paradox. By lifting the moratorium, Congress will allow Federal managers and regional councils to once again have the option of using IFQs in comprehensive fishery management plans designed to achieve the National Standards. Introducing new IFQ programs where they are needed, but are now prohibited, will contribute to the conservation and sustainable use of ocean fisheries. It will also provide fishermen and managers in these fisheries opportunities equal to those in three Federal fisheries successfully using IFQ programs.

Finally, it is significant that the eight regional fishery management councils have each recommended to Congress that the IFQ moratorium be lifted;[4] that the National Research Council, in its report on IFQs mandated by Congress, concluded that IFQs should be allowed as a fishery management option;[5] and that President Bush while serving as Governor of Texas, asked Senator Hutchison and Congressman Ortiz to ensure that the moratorium expires. (Governor Bush's letter on this matter is attached to my testimony.) Recently, the President's fiscal year 2003 budget proposes that reauthorization of the Magnuson–Stevens Act include authority to establish transferable fishing quota systems.

Provide help where it is needed

The Gulf of Mexico reef fish fishery is a prime candidate for an IFQ program.

There is general consensus that a limited-entry program (based on vessel permits and licenses, annual quotas, long season closures, per-trip catch limits, and minimum size limits) has failed to achieve the goal of rebuilding depleted reef fish stocks and has created conflicts among fishermen, unfair conditions and economic hardship, and intractable problems for Federal managers.

The Gulf of Mexico reef fish fishery is a complex of bottom-dwelling species consisting of snappers, groupers, triggerfish, amberjacks, and a host of others. Red snapper, the highest-value reef fish in the Gulf, were designated as overfished in 1988. Since then, Federal authorities have listed six other reef fish species as overfished and/or undergoing overfishing.[6]

In recent years, commercial fishermen have landed about 4.7 million pounds of red snapper annually producing $10.2 million in dockside revenue in 2000. About 430 commercial vessels participate in the red snapper fishery, but it is estimated that only one-fourth of the vessels accounts for 90% of the catch. Red snapper are also very popular with sport fishermen, who take more than 20 million trips each year and take home about 4.5 million pounds.

The Gulf of Mexico Reef Fish Management Plan, adopted in 1984, relies heavily on an annual total allowable catch (allocated 51% to the commercial sector and 49% to the recreational sector) and season closures. Season closures create a destructive race-for-fish and market supply gluts that have cost commercial red snapper fishermen millions of dollars due to depressed prices. As profits fall, fishermen have few alternatives but to intensify the race which causes even the most experienced captain to inadvertently waste fish. Others are forced to lobby the Gulf Council and

Federal managers to boost the annual catch, even though they recognize that stocks are overfished.

The threat of shorter seasons and worsening market gluts caused fishery managers to implement ever-more complex rules—such as per-trip catch limits and 10-day mini-seasons during spring and fall months—to slow the race. But, instead, these rules have encouraged excess effort, which has driven up fleet harvesting costs and damaged fish stocks. In the recreational sector, rising minimum size limits used to extend the fishing season cause sportsmen to waste fish, while season closures during the lucrative winter months hurt coastal businesses that serve fishermen and families. Gulf fishery managers, succumbing to mounting pressure among dissatisfied commercial and recreational fishermen, have maintained a total allowable catch significantly higher than a biologically safe level recommended by scientists.

Captain Felix Cox, a 20-year veteran of the red snapper fishery, summarizes his experience in the derby—"This all-out race is driving me to financial ruin, and causing me to waste more fish than I can count." In a few words, Captain Cox has described "a race to the bottom" driven by flawed regulations.

Loss of vessels and at-sea rescues of fishermen in hazardous weather are also linked to derby fishing and season closures. On April 2, 2001, the fishing vessel Wayne's Pain sank in bad weather, 85 miles off Marsh Island, Louisiana. Captain Wayne Werner and his crew spent nine hours adrift in a life raft in ten-foot seas before being rescued. According to Captain Werner, "I wouldn't have been out there, except the derby was on."

Fishermen, Federal managers, and others recognize that the current limited-entry program has had dire economic and environmental consequences. The Gulf Council tried to respond. It proposed, and Federal regulators approved, a transferable IFQ program for the commercial red snapper fishery to begin on April 1, 1996.[7] However, this action was blocked when Congress imposed the moratorium on new IFQ programs. Since adoption of the moratorium, management problems caused by the race-for-fish and excess capacity have worsened for red snapper and similar problems have developed in other reef fish fisheries.

Economic benefits. Research by Drs. Quinn Weninger and James Waters, using 1993 data, finds that replacing the existing limited-entry program in the red snapper fishery with a transferable IFQ program would have increased annual red snapper revenue by $3.1 million (i.e., by eliminating market gluts caused by periodic season closures) and reduced annual fleet harvesting cost by $3.2 million (i.e., by eliminating per trip catch limits and periodic season closures).[8] These estimates imply a 46 percent gain in red snapper dockside revenue and a 56 percent reduction in fleet harvesting cost in 1993. The researchers conclude that revenue gains and cost savings of this magnitude were likely available throughout the duration of the limited entry program if fishermen had been granted IFQs.

Since derby management began in 1992, commercial fishermen have landed 36.1 million pounds of red snapper worth $70.3 million. If an IFQ program had been used to allow fishermen to land their catch more evenly throughout the year, it is likely they could have earned additional revenues of at least $38 million over the 10-year period.

Considering changes that have occurred in Pacific Northwest halibut and other IFQ fisheries managed with transferable fishing permits, these economic estimates are judged to be conservative because they do not account for new marketing and harvesting practices that will emerge under slower-paced fishing. Yet, they clearly support the claim that IFQ management deserves serious consideration in the Gulf of Mexico reef fish fishery.

Conservation benefits. Although generally thought of as an economic policy tool, transferable IFQs can also deliver important conservation benefits. Such benefits are tied to setting a sustainable total allowable catch, ending the race-for-fish, reducing excess fishing capacity, eliminating minimum size limits, and creating a positive stewardship incentive.

Ending the race-for-fish, extending fishing seasons, and eliminating minimum size limits can reduce the bycatch waste that occurs when red snapper are caught out-of-season or below the legal size limit. Current derby restrictions force fishermen to throw overboard huge numbers of fish even though a high proportion die as a result of being brought to the surface from great depths. National Marine Fisheries Service data conclude that about 50% of the recreational and 30% of the commercial red snapper caught (by number) have been released annually in recent years because they are below the minimum size limit. This means that the number of red snapper thrown overboard each year because they are too small could drop by 1.5 million fish or more under IFQ management. In addition, another 0.3 million red snapper that Federal scientists estimate are thrown overboard annually during long closed seasons by recreational fishermen could be saved if seasons were extended.[9]

Closed seasons and excess fishing capacity places additional fishing pressure on other reef fish species. For example, greater amberjack have been driven to an overfished condition and vermillion snapper are headed in the same direction. Under IFQ management, ending long season closures will eliminate the incentive to apply intense pressure on other reef fish stocks when target species are off limits. Furthermore, with IFQs back in the toolbox, fishery managers can find ways to manage closely related reef fish species under a comprehensive quota-based program and avoid being forced to adopt regulations for individual stocks that will result in yet another race-for-fish.

Finally, a total allowable catch based on sound science is a strong conservation tool. A transferable IFQ program may strengthen the stewardship ethic of fishermen if they believe the value of their quota shares will rise as fish stocks recover. Thus, fishermen may support conservation measures including lowering the total allowable catch in the short-run if they anticipate long-run gains in the form of larger stocks and greater profits from fishing.

IFQ advisory panel. In an appropriations bill rider passed in December 2000, Congress gave the Gulf of Mexico Fishery Management Council the opportunity to "develop a biological, economic and social profile of any fishery under its jurisdiction that may be considered for management under a quota management system, including the benefits and consequences of the quota management system considered." Responding to this opportunity, the Gulf Council appointed a special ad hoc IFQ advisory panel for the reef fish fishery, and a first meeting of the panel is scheduled for March 18th. Motivated by a continuous decline in their fishery, several fishermen have already prepared a working paper on IFQ issues and options [10] and requested that an expert IFQ consultant be hired by the Gulf Council to assist the panel. [11]

Certainly, the panel will benefit from taking advantage of the work expended in developing the 1996 IFQ program for the commercial red snapper fishery. A lot of effort went into structuring a program—decisions were made on eligibility requirements, initial allocation of quota, transferability, duration of the program, and record-keeping—based on information obtained before the commercial fishery was distorted by extreme derby conditions. Capitalizing on this experience will help jump-start a new IFQ proposal, but this time it will need to be extended to other reef fish to avoid redirecting fishing effort and creating new derbies and perhaps to party and charter boats in the recreational fishery.

Respond to legitimate concerns

The legislative paradox discussed at the beginning of my testimony reflects the fact that IFQs—and other types of limited entry programs—evoke considerable concern due to the privileges they create, the possibility of providing windfall benefits to recipients, and the potential for decreasing employment and changing prevailing economic relationships with buyers and processors, input suppliers, and fishing communities.

In response to these concerns, Congress needs to develop a sound national policy on IFQs. Such a policy would provide maximum flexibility for the regional councils, but foster a deliberate strategy capable of introducing IFQ programs (to regulate fishing effort) and simultaneously addressing objectives for conservation, fishing businesses and communities, and a region's culture.

Fortunately, work on a national policy for IFQs is already well underway. The 1996 amendments to the Magnuson–Stevens Act provide a statutory definition stating that an IFQ is a Federal permit and if it is revoked, or revised, such action will not give rise to a valid taking claim under the U.S. Constitution. This means that Federal managers can consider and adopt a full range of conservation and management options without triggering a financial burden. It also preserves important characteristics of "property" that enables IFQs to be transferred and used as collateral. The Act also requires programs to ensure a fair initial allocation of quota, to prevent excessive consolidation of quota shares, and encourages regional councils to ensure that entry-level fishermen, small vessel owners and crew members have an opportunity to purchase quota shares.

Congress should take the next step and complete the work on setting a national policy that will assure that new IFQ programs achieve the fishery conservation and management objectives in the National Standards. Amending the Magnuson–Stevens Act in three ways could do this.

First, to strengthen the stewardship incentive, Congress should allow IFQ holders to bring civil action against private individuals whose unlawful actions harm the value of quota shares. Fishermen need to have assurances that their quota shares are secure and defensible from damage by individuals. Otherwise, a positive incentive to conserve stocks and manage the asset value of the fishery is undermined.

Second, to help IFQ programs achieve their objectives, Congress should remove the three percent cap on fees collected from fishermen to help cover the costs of monitoring and enforcement. Under an effective IFQ program, fishermen can realize greater returns from fishing, but good enforcement and data collection are necessary for successful management. For example, the Gulf Council estimated that net economic benefits of its 1996 IFQ program for red snapper would be 22 percent higher under a "high enforcement" versus a "minimum enforcement" scenario. In addition, high quality biological, economic, and social data help managers make better decisions and ensure that stocks achieve their optimum yield. Because enforcement and data collection are key components of successful management, it makes sense that fishermen should help cover these costs. Such a cost recovery requirement might be phased-in as IFQs give fishermen a chance to escape the low prices and depressed earnings of derby fishing.

Third, to make sure that IFQ programs (and all other management programs) are achieving their objectives, Congress should require regional councils to regularly review and evaluate the benefits and costs of their programs. This will provide information needed to identify and improve regulations that are working and eliminate harmful ones. In addition, Congress should also require a periodic review and rigorous evaluation of council programs by an independent body.

After watching the derby develop in the red snapper fishery, the Gulf Council devoted three years to sponsoring workshops, developing options papers, and holding public hearings before ultimately submitting an IFQ program to the Secretary of Commerce for approval and implementation. The experience gained debating and drafting the program leads many people to believe that most concerns related to IFQs (and other fishery management tools) are best addressed at the fishery and regional level and with broad regional stakeholder participation. Here in the Gulf of Mexico, there is a hope that Congress will continue to support decentralized planning and decision-making, giving the regional councils and Federal managers the authority and flexibility needed to do the job.

[Attachments to Mr. Emerson's statement follow:]

Endnotes

[1] IFQs are a fishery management tool that allocates a certain portion of the total allowable catch to individual fishermen, vessels, or other eligible recipients based on initial qualifying criteria.

[2] Section 303(d)(1)(A) states that: "A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program."

[3] P.L. 106-554, Appropriations Act of 2001.

[4] See recommendations from the council chair's meeting on Magnuon-Stevens Fishery Conservation and Management Act Reauthorization Issues, Key West, FL, May 22-23, 2001. As a highest priority issue, the council chairs unanimously recommended "rescinding the Congressional prohibitions on IFQs and ITQs."

[5] National Research Council, Sharing the Fish: Toward a National Policy on Individual Fishing Quotas (National Academy Press, Washington, D.C. 1999), p. 5.

[6] Additional Gulf of Mexico reef fish classified by the National Marine Fisheries Service as "overfished" are red grouper, Nassau grouper, Goliath grouper, and greater amberjack. Vermilion snapper and gag grouper are classified as "undergoing overfishing." According to the National Standards, "overfished" means that the stock size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. And, "overfishing" indicates the stock is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock to produce the maximum sustainable yield on a continuing basis.

[7] See Amendment 8 to the Gulf of Mexico Reef Fish Management Plan.

[8] Weninger, Q. and J.R. Waters. *Economic Benefits of Management Reform in the Northern Gulf of Mexico Reef Fish Fishery*, submitted to the Journal of Environmental Economics and Management. (December 2001).

[9] Federal scientists do not have an estimate of red snapper releases and discards in the commercial sector during the nine to ten month closed season each year.

[10] A copy of the working paper can be obtained from Captain Felix Cox, 2211 A-1 Hill Road, Aransas Pass, Texas 78336.

[11] Letter to Dr. William Hogarth, Assistant Administrator for Fisheries, from Captains Wayne Werner, Felix Cox, and Mark Friudenberg regarding the Gulf of Mexico ad hoc red snapper ITQ advisory panel, January 4, 2002.

Attachment

Letter of the Honorable George W. Bush, Governor, State of Texas, to the Honorable Kay Bailey Hutchison, U.S. Senate, and the Honorable Solomon Ortiz, U.S. House of Representatives, April 28, 2000.

Follow-up Address

Peter M. Emerson
Environmental Defense
44 East Avenue, Suite 304
Austin, TX 78701
(512) 478-5161

STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH
GOVERNOR

April 28, 2000

The Honorable Kay Bailey Hutchison
United States Senate
Washington, D.C. 20510

Dear Senator Hutchison:

As you and members of the Senate Committee on Environment and Public Works consider reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, I urge you to strengthen the Act and ensure that the Act's current moratorium on individual transferable quotas (ITQs) expires so that they may be considered for use in the Gulf of Mexico.

A healthy Gulf Coast ecosystem is critical to Texas, and appropriate management of red snapper and other reef fish is needed to protect against overfishing. To provide such protection, Congress should consider the use of market-based management approaches, including ITQs.

This innovative mechanism grants the owner the right to harvest a certain amount of fish in a given year. If a fisherman wants to catch more red snapper, he can purchase allowances from another fisherman. Importantly, this tool vests fishermen with an incentive to conserve the fishery, eliminates such bureaucratic restrictions as minimum size limits and season closings, and reduces dangerous operating conditions for fishermen caused by the current race to catch fish. ITQs have been successfully introduced and refined by several countries around the world, particularly New Zealand.

I join the Coastal Conservation Association, commercial fishermen, local government officials, Environmental Defense and others in Texas in requesting that the Act's moratorium be lifted so that ITQs can be fairly considered as a tool in ensuring a healthy Gulf of Mexico.

Sincerely,

GEORGE W. BUSH

GWB:jh

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512) 463-2000 (VOICE)/(512) 475-3165 (TDD)

STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH
GOVERNOR

April 28, 2000

The Honorable Solomon Ortiz
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Ortiz:

As you and members of the House Committee on Resources consider reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, I urge you to ensure that the Act's current moratorium on individual transferable quotas (ITQs) expires so that they may be considered for use in the Gulf of Mexico.

A healthy Gulf Coast ecosystem is critical to Texas, and appropriate management of red snapper and other reef fish is needed to protect against overfishing. To provide such protection, Congress should consider the use of market-based management approaches, including ITQs.

This innovative mechanism grants the owner the right to harvest a certain amount of fish in a given year. If a fisherman wants to catch more red snapper, he can purchase allowances from another fisherman. Importantly, this tool vests fishermen with an incentive to conserve the fishery, can eliminate such bureaucratic restrictions as minimum size limits and season closings, and reduce dangerous operating conditions for fishermen caused by the current race to catch fish. ITQs have been successfully introduced and refined by several countries around the world, particularly New Zealand.

I join the Coastal Conservation Association, commercial fishermen, local government officials, Environmental Defense and others in Texas in requesting that the Act's moratorium be lifted so that ITQs can be fairly considered as a tool in ensuring a healthy Gulf of Mexico.

Sincerely,

GEORGE W. BUSH

GWB:jlh

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512) 463-2000 (VOICE)/(512) 475-3165 (TDD)

Mr. GILCHREST. Thank you, Mr. Emerson.
Mr. Spaeth?

STATEMENT OF ROBERT SPAETH, SOUTHERN OFFSHORE FISHING ASSOCIATION.

Mr. SPAETH. Good morning, Mr. Chairman. Thank you for inviting me to testify today. My name is Robert Spaeth. I am the executive director of the Southern Offshore Fishing Association. I represent almost 100 offshore vessels.

If it OK, Mr. Chairman, I am going to use the term ITQ, for unless the individual fishing quotas are transferable, there will be no support for this concept from our industry. I am also making the assumption that ITQs will only be available to commercial fishermen who can prove historical participation in the fisheries and that ITQs could never be purchased or owned by somebody who would not use them.

ITQs could be workable in fisheries with adequate scientific, economical and social information available. On its face, it sounds reasonable to assign a quota to a fisherman or a fishing vessel and then let the person decide when the best time to go fishing. The fisherman would not have to go out in bad weather, and he could set his dates where the markets were the highest and become more financially secure.

But there are some major problems. It is not necessarily the first step to stopping the overcapitalization. The ITQs need to be predisposed by a license limitation system and then give the people a time to create a history that are going to be in the fishery. ITQs have been proposed for the red snapper fishery. I was a member of the Gulf of Mexico Fishery Management Council's refish advisory panel at that time. We went through a long and arduous process to evaluate the proposed program. Most fishermen were against ITQs at the time, and many of them still are.

The main problems were that fishermen and dealers did not know what an ITQ really was, how they worked or what effect it would have on their small businesses. There was still mistrust of NMFS and the fishery management councils because the membership of the council is oriented toward recreational fishermen. The commercial fishermen knew that they could not get a fair shake from the council or NMFS during that period. The Gulf Council membership category is still imbalanced and as bad as it has ever been since the council was created in 1976.

In a 2001 NMFS study, there were seven recreational and four commercial. It is worse in 2002, with the breakdown being eight recreational and three commercial. The fishing industry would be foolhardy to trust its future to a council that is unbalanced.

The first step that we would suggest in developing ITQs would be to ask the industry or the particular participants affected whether they want it; let them participate in the development of it, and when it is completed, to ratify it and then put it into action. The red snapper industry appears to be ready for an ITQ system. They have had limited entry for awhile, and they have had time to develop their histories.

The cost: the cost of paying for an ITQ system from the industry could be a problem. No. 1, almost two-thirds of the vessels cannot

afford insurance. The complex regulations and low wages added a loss to many qualified skippers and crew members. The Government cost of implementing and enforcing an ITQ program given time should not be any greater than the current system and may actually be less. Existing technology is sufficient for timely accounting of harvest as the number of entries involved in the fishery decreases due to consolidation of shares among the professional fishermen. Compliance will increase, thus reducing the need for greater enforcement costs.

The duration of an ITQ program should continue for perpetuity and only cease by the Federal Government through the purchase of existing shares. If the research suggests such a risk of collapse that the quotas would be reduced to zero, then the direct harvest would cease. If the cessation of fishing existed long enough, say, after 5 years, the Government felt that no fishing should be allowed in the foreseeable future, the existing shares should be purchased at a reasonable price.

Many of the fishermen do not really want to go to ITQs, but due to the overbearing regulations, derby-style fishing and low prices caused by these regulations, they see an ITQ as a way to survive. The people who do not qualify for the ITQ permits would not support the program.

Individual impacts on communities: and I think in the short-term, there will be some consolidation of jobs and participation, but in the long run, I think that the benefits will be great.

In conclusion, Mr. Chairman, this is a legitimate discussion that should take place on setting up an ITQ program for red snapper but not until a balance of the membership, which should include an environment spot, can be obtained.

I will be glad to answer any questions.

[The prepared statement of Mr. Spaeth follows:]

Statement of Robert A. Spaeth, Executive Director, Southern Offshore Fishing Association

Good Morning, Mr. Chairman:

Thank you for inviting me to testify today.

My name is Robert Spaeth. I am executive director of the Southern Offshore Fishing Association (SOFA), a 501 (c) (6) non-profit organization representing almost 100 offshore fishing vessels. Neither I nor the organization I represent have ever received a government grant in the 25 years of SOFA's existence.

If it's okay Mr. Chairman I am going to use the term ITQ's for unless the individual fishing quotas are transferable there will no support for the concept. I am also making the assumption that ITQ's will only be available to commercial fishermen who can prove historical participation in a fishery and that ITQ's could never be purchased or owned in any form by a recreational fisherman.

ITQ's could be workable in fisheries with adequate scientific, economic and social information available. On its face it sounds reasonable to assign a quota to a fisherman or fishing vessel and then let that person decide when is the best time to go fishing. The fisherman would not have to go out in bad weather because the opening of the season is set on a specific date. The fisherman could also wait for markets to firm before bringing his allotted fish to shore. The fisherman might be more financially secure than in open access as long as the resource was sustainable. But there are major problems.

Given the recent history of single species management that has resulted in a virtual dismantling of once thriving multi-species industries, ITQs should not be used, necessarily, as the first step in addressing overcapacity. If may be more prudent to first put a moratorium on new entrants into a particular fishery, followed by a license limitation program and establish a harvest threshold that could into an ITQ program after a period of stabilization within the fishery.

ITQ's have been proposed for the red snapper fishery. I was a member of the Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel at the time. We went through a long, arduous process to evaluate the proposed program. Most fishermen were against ITQ's at that time and many of them still are.

The main problems were the fishermen and dealers didn't know what an ITQ really was; how they worked or what affect they would have on their small businesses. There was and still is mistrust of NMFS and the Fishery Management Council because the membership of the Gulf Council is oriented toward recreational fishing. The commercial fishermen knew they could not get a fair shake from the Council or NMFS during that time period. The Gulf Council membership category is still unbalanced and is as bad as it has ever been since the Council was created in 1976.

In a 2001 NMFS study there were 7 recreational and 4 commercial. It is worse in 2002, with the breakdown being 8 recreational to 3 commercial. We thought Congress had mandated a balance but it just isn't working in our region. Therefore, our major concern is who is going to be the lead agency in an ITQ program? The Gulf of Mexico Fishery Management Council would be the logical choice but the industry couldn't recommend that until the imbalance of membership issue is resolved. The fishing industry would be foolhardy to trust its future to Council members who are trying to ban as much commercial fishing as possible during each Council meeting.

Red snapper and grouper fisheries are too volatile to even bring the users together at this time. I know the Committee doesn't wish to listen to regional horror stories but the way the management process is being manipulated to ban one segment of the commercial red grouper fishery is nothing short of vindictive and vicious. If the red grouper longline fishermen are banned from fishing litigation is sure to follow.

At present the red snapper total allowable catch is almost equally divided among the recreational and commercial sectors. All red snapper are caught with hook and line so there are not any gear conflicts within the commercial sector. However, in the recreational sector, the for hire charter boats now take over 65% of the allowable recreational red snapper quota which keeps squeezing the season to fewer and fewer months. This restriction will last as long as the bag limit remains at 5 red snapper per person for recreational fishermen.

The first step in developing ITQ's would be to meet with and ask the industry if they think it is the right management tool for their fishery? Then a working group could develop a program and present it to the industry for approval. If it was approved then action should be taken. I have no problem with that.

The reason I make this statement is red snapper appears ready to try ITQ's. The number of permits was reduced years ago so the red snapper fishermen have had time to build individual historical records on their catches. This historical record must be the basis for transferable individual quotas. Other Gulf fisheries have been regulated dramatically pushing fishermen back and forth on different species. This puts those fishermen at a disadvantage and they would not be in the same position as the red snapper fishermen at this time so those fisheries would probably want to wait.

Example: Many fishermen who were fishing for grouper were urged by NMFS to fish for sharks. NMFS helped develop a shark fishery and then had a policy shift. Now NMFS has already cut the shark quota by 50% and some of the more active folks in NMFS want to cut even more. Those fishermen who started shark fishing and had to return to grouper lost some of the historical landings they would have had.

An ITQ program for grouper might work if you limit the permits and give a reasonable amount of time to those left to develop a history. There are 1200 reef fish permits issued by NMFS in the Gulf of Mexico. Over 500 of these permits have no landings at all. If a 5,000-pound annual catch threshold was required for a permit there would only be approximately 300 vessels left in the fishery. This one action would decrease latent harvest potential to near zero.

Initial Allocations: Historical landings remain the most objective and fairest means for allocating initial quotas. An upper limit on the percent of the total shares a single entity can own might be helpful to prevent over-consolidation and to protect the social structure of the fishery. A minimum quota share could be given to historical fishermen without recent landing or to those that have recently entered the fishery and have no history of landings. The devil is certainly in the details.

Windfall profits: This may occur in some fisheries where the volume and profits are high but in a fishery that lands $ 2.20 a pound fish and the average profit is 20 to 30 thousand dollars a year if you don't carry boat insurance, would there really be a windfall profit if the quota was close to what had been produced in the past? I think that the value of the ITQ will be determined by what you can earn under

a fishing system that is not classified as a "derby" fishery. The existing fishermen have invested heavily into developing the fishery resources that have provided a significant contribution to the nation's economy. These investments have been done at great risks and with little rewards, largely because the government has waited to such a late date to begin direct effort management. Economic theory clearly teaches us that the existing fisheries are operating at a net zero profit margin. Such a "windfall" profit to existing fishermen is nothing more than a barely adequate and belated return on their initial investment efforts. "Windfall" profits would be of concern if the initial allocations were made to non-traditional fishermen. We feel that this is a non-issue in most Gulf of Mexico fisheries. What is wrong with people seeing a profit from hard work and investment in the fishery? Concern over the "windfall" profits that may accrue to initial recipients is misplaced

Impacts on conservation: This is the same as quota management and the results will be the same. It will cap the harvest level and if a further reduction or increase is required it should be done as a percentage across the board. It would be expected that eventually, the majority of the shares would be held by the more professional, conservation minded individuals in the fishery. ITQs are not a panacea for preventing overfishing but they broaden the scope of tools available to managers and may be helpful in directly resolving overcapacity concerns.

Costs: This is a touchy subject with the fishermen. In some fisheries the people and business are on the edge financially. An assessment of the industries ability to pay must be considered. I would like to make a point here, The fishing industry in the gulf of Mexico is in big trouble as over 2/3 of the vessels cannot afford insurance. The complex regulations and low wages have added to the loss of many qualified skippers and crewmembers. To hire a captain for my boats, I have to find someone who can identify 50 species of fish, know what size is allowed, where they can fish, when and how many fish you are allowed per species. If you make a mistake the fines are unbearable. To make a long story short if you add up the Coast Guard and fisheries regulations coupled with seamanship and knowing how to fish this person is going to make more money staying home. We suggest that someone help determine the state of our seafood harvesters and help us in training new fishermen.

The governmental costs of implementing and enforcing an IFQ program, given time, should not be any greater than the current system and may actually be less. Existing technology is sufficient for timely accounting of harvests. As the number of entities involved in the fishery decreases due to consolidation of shares among the more professional fishermen, compliance will increase, thus reducing the need for greater enforcement resources.

If the industry is to be taxed at some future date when the ITQ program is viable to cover some of the management costs, then a better co-management system needs to be developed between industry and the government. First of all, the monies should be held in trust funds targeted toward management and research of the ITQ fishery. Secondly, an improved co-management structure is needed to empower the industry to set appropriate management objectives and to have the government more accountable to the industry with regard to expenditure of industry funds and the setting of management and research agendas. The present system of advisory panels to the Councils is inadequate for the needed purposes.

The duration of an ITQ program should continue for perpetuity and only be ceased by the Federal Government through the purchase of existing shares. If a resource were at such risk of collapse that the quota was to be reduced to zero then direct harvest would cease. If the cessation of fishing existed long enough, say after five years, and the government felt that no fishing should be allowed in the foreseeable future then the existing shares should be purchased from the fishermen at a reasonable market price.

Many of the fishermen don't really want to go to ITQ's but due to the overbearing regulations, derby style fishing seasons and low prices caused by these regulations, they see ITQ's as a way to survive. The people that cannot qualify for and ITQ permit would not support the program.

Should processors receive quota shares? We do not have processor type vessels in the Gulf of Mexico fisheries and so processors should be not given initial quota shares. The bigger question is whether processors, or other non-fishermen, should be allowed to own and fish quota shares. Shares could be limited to vessel owners, captains, and crew to assure that traditional fishermen are provided priority in participating in the fishery. We would not want to encourage the ownership of quota shares by entities that are neither fishermen nor fishing vessel owners.

Impacts on individuals and communities who do not receive ITQs. The impacts on individuals who do not receive initial ITQs depend on how the initial allocation is conducted. If the initial allocation were based on historical landings with a cer-

tain level of guaranteed allocation for all participants the initial impact would be minimal. Any allocation method that does not use historical landings or participation in a fishery would have immediate negative impacts on both individuals and communities. The overall impact of ITQs on communities could be negative in the short-term if dockside businesses were forced to consolidate due to reductions in the number of fishing vessels but in the long-term the community impact should be positive as fishing firms become more profitable and increase their local business transactions. Greater unemployment could occur in some coastal communities as employment in the fishery is reduced, depending on the magnitude of share transactions. However, it is hard to imagine that ITQs would have substantial negative impacts on most of the Gulf's coastal communities because these same communities have already had their traditional commercial fishing social structure severely disrupted by the various state regulations restricting the traditional inshore net fishing businesses.

In conclusion Mr. Chairman, there is legitimate discussions that should take place on setting up and ITQ program for red snapper but not until the balance of membership, which should include an environmental spot, can be attained.

I will be glad to answer any questions.

Mr. GILCHREST. Gentlemen, they just called for another vote, so I could get started with the questions and then have to leave and then come back. I think what I will do is I will run over; I will run back; we will take a 10-minute break. I will try to get here in 10 or 11 minutes. You can time me.

[Laughter.]

Mr. GILCHREST. So we will take a short recess. I will be right back.

[Recess.]

Mr. GILCHREST. The Subcommittee will come to order. At least later on in the afternoon, there are more seats.

Let us see. Mr. Jensen, I think we will start with the council's role in IFQs. Dr. Hogarth seemed to imply, and Mr. Emerson and Mr. Spaeth, feel free to comment on this question as well. Dr. Hogarth seemed to imply that the IFQs work well in certain areas and may not work in other areas and that the councils probably are in the best position to develop the IFQ system for that fishery. And Pete, I would just like to know how you feel on that; how much tinkering should be done; should we set standards with a broad parameter so that if—and when October comes around, and the moratorium lapses, and let us say the Senate does not act on a Magnuson Act, and we have not reauthorized it; would you like the moratorium to continue or for the moratorium to lapse?

Mr. JENSEN. Well, I do believe that Congress has to set forward the broad policy and the broad standards, because there are going to be a lot of variations in the different regions of the country, simply because the fisheries have developed in many, many different ways. You are also going to have a pretty complex situation, where if there is a large recreational fishery; if there is a multispecies fishery; if there is by-catch involved, all of those things are going to add to the complexity and the individuality of the kind of regimes that are going to have to be set up. And I think the councils are certainly the best forum for that.

Thinking in the alternative as to what other forum is out there, and I do not think there is another one, because they do involve the fishermen. And having been a council member, I know that council members try very hard and work very hard to work out solutions to some sometimes impossible tasks, but they do get the job

done and in many cases in association with the commissions, because there very often are fisheries that exist both inside and outside the three miles.

And so, I believe councils, commissions are the appropriate forum to work out IFQs.

Mr. GILCHREST. Mr. Emerson, Mr. Spaeth?

Mr. EMERSON. Thanks.

Mr. Chairman, I certainly agree that this job has to be done at the council level. I think that you are in a position to design, and you have already started building in the Magnuson-Stevens Act, you have already started building a national policy to guide the use of individual fishing quotas. You can do a few straightforward things and get this job done. And definitely, I think they should be available after October 1. Just thinking back to this example that I gave you from the red snapper fishery, withholding and not allowing us to go forward there, look at the penalty that you are imposing upon fishermen in terms of the lost income. Look at the environmental damage that is coming down the road as a result of not getting started with this tool.

So definitely, we need to make progress.

Mr. GILCHREST. Mr. Emerson, some of us have the impression that the moratorium on IFQs is as a result of the red snapper fishery. Is that true, and if it is true, could you tell us what happened?

Mr. EMERSON. I would actually like to defer that question to Bob Spaeth if he takes it, the reason being that Bob was on the Gulf Council at that time.

Is that fair, Bob?

Mr. SPAETH. I can—

Mr. GILCHREST. Yes, sir?

Mr. SPAETH. —give you my opinion. I do not have any facts but—

[Laughter.]

Mr. SPAETH. But it was only hearsay in the back room.

Mr. GILCHREST. Then you are acting like a Member of Congress.

[Laughter.]

Mr. SPAETH. The question you wanted to know was if the red snapper was a result of the moratorium on the ITQ. I believe it was.

Mr. GILCHREST. Yes.

Mr. SPAETH. I think it was the only thing going. I think that a number of people from different Gulf Coast states got involved with the Congress, and what resulted was the moratorium. And that was to stop the ITQ system on red snapper.

Mr. GILCHREST. At the time, were you in favor of the moratorium?

Mr. SPAETH. Yes.

Mr. GILCHREST. Would you be in favor of a further moratorium if we do not reauthorize the Magnuson Act, or would you like to see it lapse?

Mr. SPAETH. I think that what I would like to see is the Congress, when you reauthorize, put some general rules for an ITQ and then drop the moratorium. I just think dropping it without first putting some guidelines in there might not be too good.

Mr. GILCHREST. I see.

Mr. SPAETH. And on the other issue that you asked about was whether the regional councils should be the one to do the ITQs. I absolutely think that they should, because, No. 1, they have had a lot of experience dealing with those particular fishes in those fisheries, and they understand a lot of the regional differences, but as in my testimony, I said what my big fear is is that the balance of the councils have to be there before we can undertake this, or we are not going to get the results.

Mr. GILCHREST. And you do not feel the council is balanced in the Gulf?

Mr. SPAETH. No, and there is a NMFS report by NMFS itself that states those numbers I gave you: three out of seven; seven recreational, three commercial is the imbalance right now.

Mr. GILCHREST. So you are saying in the reauthorization, there should be some specific language dealing with the makeup of the council?

Mr. SPAETH. There is some language in there now, I believe, that says that the councils are supposed to be balanced, and nobody is doing that. It is just going—the example is the Gulf Council, and it has been going on for years.

Mr. GILCHREST. Getting back to the IFQs, Mr. Spaeth, would you recommend that when we reauthorize the Magnuson Act, and we end the moratorium on IFQs, and we set the parameters and standards for IFQs to be flexible enough to meet the needs of the different fisheries, would you recommend that the participants in that particular fishery be allowed, through a referendum, to vote before the council proceeded with an IFQ, and then, once they had an IFQ, would you suggest that those participants vote to accept or reject the IFQ that the council made up?

Mr. SPAETH. Yes, yes, I do. I put that into my testimony. I think that is a real important item, that the people who have to live under it decide, because if their fishery is right for it, they would have more of an idea. And to participate in the makeup of it, and then, when they get done, I would feel that when it came out right, that you would not have any problem ratifying it. And I think snapper will be a good one to work with.

Mr. GILCHREST. Mr. Emerson, would you like to comment on that? The idea of a referendum?

Mr. EMERSON. Mr. Chairman, you know, in 1996 or in the case of red snapper, there is a provision in the statute now that requires the two referenda and defines something like a base period that would determine your weighted vote. Your catch during that base period would determine your weighted vote. So the Congress has been, as you were suggesting earlier, pretty heavily involved in guiding the red snapper fishery with these kinds of things.

I completely agree with Bob's point that fishermen should be indicating their will on this. I wonder if it would not be possible to have too many votes. I like the idea of getting a good program designed and then having people vote on something that they can really see. I am not sure we are disagreeing.

Mr. GILCHREST. Pete, would you like to see the idea of a referendum in other fisheries other than red snapper, a referendum for an IFQ or an ITQ? Mr. Jensen?

Mr. JENSEN. I am sorry. I thought you were continuing with the questions with—

Mr. GILCHREST. Oh, two Petes. We have two Petes here. I am sorry.

[Laughter.]

Mr. JENSEN. I am sorry. I am going to assume that when you say a referendum, you mean among the licensed fishermen—

Mr. GILCHREST. Yes.

Mr. JENSEN. —in that fishery. In some cases, that may not even include council members, and of course, I guess they would vote on their own. I do not know if I like the idea of a formal referendum, simply because I am not sure at this point whether you are going to be able to include all of the people that are going to be impacted by it: processors, communities, associations. So in general, I agree that you probably ought to try to get a consensus out of the industry that this is the right process for them, but I am not sure a referendum with votes is the appropriate way to do it and feel assured that you have everybody's input.

Mr. GILCHREST. The last panel, Mr. Crockett made a recommendation for a 5-year limit on an IFQ before it is reauctioned again and re-evaluated. Do you have any comment on a 5-year limit?

Mr. JENSEN. I guess I would start out by telling you that at the time the ocean quahog quotas were implemented, I had my own concerns about that, but as I have seen how it has played out and recognizing what I think an ITQ, in particular, transferable quota must be, once they are given, they have value. And they become collateral for business deals, for the banks, for making a business sustainable. And I think that is what the Magnuson Act is all about, and that is sustainable commercial fisheries or commercial businesses.

So I think that probably would impede or diminish the value of ITQs if, after 5 years, they essentially lost their value, and they may or may not be renewed. And so, I do not think that a specific time limit is the way to go. I believe there does have to be a mechanism for people to trade them in, to allow other people to get into the fishery other than through a simple private deal.

I do not know what that mechanism is, and we would be glad to think about it and respond if you would like.

Mr. GILCHREST. Thank you.

Mr. Emerson, any comment on a 5-year limit or a limit at all? A 10-year limit, any kind of a limit?

Mr. EMERSON. I think a 5-year sunset limit is not a good conservation idea.

Mr. GILCHREST. Mr. Spaeth?

Mr. SPAETH. I do not think it is either.

Mr. GILCHREST. Mr. Spaeth, do you have any comment on at-sea processors or shore side processors having ITQs?

Mr. SPAETH. In our region—it is different in other regions—I have not—I happen to own part of a processing facility also, and I do not see any need for us as processors to participate in that. I think the fishermen—because the way it works with us, and I think somebody else mentioned it—that we put out a price for the fish. We have a service. We sell them ice, bait and fuel, and if we

do a good job, they will sell the fish to us. So I do not see where the advantage for having a processor ITQ would work as long as there is enough out in the industry.

Mr. GILCHREST. Should that be left up to the councils to make that decision for shore-side processors or at-sea processors to participate in an ITQ, or should we say from a regulatory standpoint or from a reauthorization standpoint of the Magnuson Act, we would say no to processors. Or should we leave it up to the councils?

Mr. SPAETH. I think that you should leave it up to council because of the different regions.

Mr. GILCHREST. OK.

Mr. Emerson, any comment on shore processors?

Mr. EMERSON. Mr. Chairman, if you just remember from my rapid oral testimony, I talked about Mark Frudenberg, who is a processor, buyer, wholesaler of fish. The only thing he is asking for is year-round fishing. He feels that if we could have, in the case of our red snapper fishery, if he could have a year-round supply of fresh, high-quality fish, he could make more money. So he is not asking for that. I think, you know, we came here talking about IFQs because of the race for fish and the excess capacity problem, and that is where it should be.

Mr. GILCHREST. Thank you. Well, those are two areas that we continue to keep in mind: the safety aspect and conservation aspect of it.

Just a couple more questions: Pete, and then, I am going to ask Mr. Spaeth to comment. The commercial versus the recreational fishing industry, IFQs. Should we allow the councils to determine in that particular fishery whether or not the recreational fishery can participate in IFQs or what percentage can participate in IFQs? And also if you are a commercial fisherman; and you have an ITQ, can you transfer that to a recreational charter boat?

Mr. EMERSON. The first thing that is going to have to happen, of course, if you have a total allowable catch is the council is going to have to make an allocation decision between the two fisheries, recreational and commercial. And in some cases, they will probably make allocations between different elements of the fishery. For example, if there is a trawl component and a hook and line component, then I would guess that the councils probably are going to have to make different decisions based on the type of fishing that is going on. And in some cases, I think there may even be a good argument for an allocation to the charter or for-hire sector if it is a large component of the fishery.

My view is that once they have been given this privilege, whoever they are, they have the right to enter into a private contract with anyone of legal standing. And so, if that, you know, if a conservation fund has the legal standing and has the willingness and the money to buy up an allocation, then, I do not see how you can prevent that.

Mr. GILCHREST. Thank you.

Mr. Spaeth?

Mr. SPAETH. Mr. Chairman, I think that we need to have some guidelines on that in the Magnuson Act, because one of our fears is that some kind of organization, let us say PETA came up and

decided they did not want to have any grouper harvested; they would buy up all the ITQs and let them sit in the box. That would not be right for the consumers, losing his access to that fish. Also, if the recreational sector is allowed to buy those ITQs, I think we come up with the health problem. We just have a new fishery health law. And I think you might run into some health aspects by letting them go just wherever.

Mr. JENSEN. Mr. Chairman, one added thought on that, and this is based on my experience in Maryland. And I think someone mentioned in their testimony, and that is one way you protect against that is to require that those who own them fish them or contract with—or join with someone else who fishes them. In other words, if you have an allocation, you use it. You are not an absentee owner, which is what the situation you just described I think would be an absentee owner that chose not to fish. And so, that is one way that we protected against that in Maryland.

Mr. GILCHREST. Would that be acceptable, Mr. Spaeth? Let us say PETA bought up an ITQ, but then, that allocation would have to be fished.

Mr. SPAETH. Yes, as long as—I think the main thing is to keep fishermen fishermen, and those fish that we are supposed to harvest under the Magnuson Act get into the marketplace. And Pete, sounds like a, you know, use it or lose it may be some kind of provision to put in there.

Mr. GILCHREST. Mr. Emerson, who would you say should pay for the cost of the administration of the ITQs?

Mr. EMERSON. I think, as I said in my testimony, that once the program is delivering results in terms of higher prices and higher earnings to the fishermen that the fishermen who are beneficiaries of the program should definitely pay a portion of the costs. I think, as I tried to say in my oral testimony, right now, in the red snapper fishery, for example, where I have my best knowledge, people have been hit hard financially living with this derby situation since 1992.

Mr. GILCHREST. So we should not remove the 3 percent cap?

Mr. EMERSON. No, I think you should remove the cap, and I think that there should be some guidance presented to the councils on how they go forward and administer this policy.

Mr. GILCHREST. I see.

One of today's witnesses suggested an auction should be used to allocate share to harvesters and the proceeds be used to compensate those who may have been economically harmed by the initial allocation: crewmen, communities, processors, et cetera. Do any one of you want to comment on that?

Mr. SPAETH. Mr. Chairman, I would—the problem we have in some of the fisheries in the Gulf is that they are small. They do not have the economic basis to pay for the ITQ program. Red grouper harvests 5 million pounds; $2 a pound; $10 million. Back, as I remember, when we looked at the snapper ITQ, we talked about a $2.5 million cost of administering. Whether that is right or not today, I do not know.

But if you take and put that burden on the fishery, they could not handle it. And then, an auction situation, I do not know where

we would find the money to participate in the auction, because this industry is in very dire shape financially.

Mr. GILCHREST. Now, Mr. Spaeth, I would assume that you do not want the auction. How would you administer an IFQ, ITQ in the Gulf for red snapper. Would shares then to be given to the fishermen, to the boat, based on the history?

Mr. SPAETH. The allocation of the initial quota shares were based on historical catch.

Mr. GILCHREST. Historical catch.

Mr. SPAETH. Calculated from a base period, yes.

Mr. GILCHREST. And then, they would have been given—a fisherman would have been given that—was it an IFQ, an ITQ?

Mr. EMERSON. It was an ITQ.

Mr. GILCHREST. ITQ. There was no cost to the fisherman for that ITQ?

Mr. EMERSON. No; it was an allocation. It was a historical allocation.

Mr. GILCHREST. How long was the allocation to last?

Mr. EMERSON. The program was to be reviewed after 5 years; is that right, Bob?

Mr. SPAETH. I believe that. It has been a long time.

Mr. EMERSON. But it was not a hard sunset kind of idea.

Mr. SPAETH. No, it did not sunset.

Mr. EMERSON. We have a refish management plan within which that program would be like any other management tool, and it should be evaluated like any other management tool. The whole plan is aimed at meeting national standards that you already have in place. And so, that is how it would be—

Mr. GILCHREST. And so, would this ITQ system that almost went into play and is likely to go into place once we reauthorize the act, there was no problem down there of one or two or three or four entities, corporations or individuals owning the majority of the allocation? It was not a fear of consolidation?

Mr. SPAETH. No, there was not. I think there was a provision in there that no one group could own over 10 percent of the quotas.

Mr. GILCHREST. So under the system for red snapper, the ITQ would have been allocated to an individual fisherman for an indeterminate period of time, but because they could sell, transfer those quotas, no one entity could own more than the entire—than 10 percent of the entire quota.

Mr. SPAETH. That is correct.

Mr. GILCHREST. Interesting.

Just one last question and a brief comment, I guess, unless you do not want to comment. The allocation, the quota, the ITQs, the IFQs—let us be specific about ITQs. You are allocated an ITQ. Is that a property right or a privilege? Or is there a difference?

Mr. JENSEN. Well, I think there is a difference, but I am not sure I can define it. And the way I would say it is that if you were given a privilege to have a certain percentage of an annual quota, what goes with it is the right to transfer that. And so, whether there is a cap or not, individual members can sign private contracts or individual holders of allocations or agreements, which is exactly what has happened in the surf clam industry. There are over 160 individual allocations, and several statements have been made that

might be perhaps not entirely clear that three people own 60 percent.

That is not entirely true. What they might do is control it, but it is a voluntary thing, because processors and harvesters and harvesters and harvesters have entered into voluntary agreements, long-term contracts, for example, just to make sure that, one, they have a place to sell their clams at some given price and can plan their harvesting business, and the processors can have a guaranteed supply of clams in order to go make their contracts with the people who get the intermediate product that they produce in order to go into soups and chowders and all the other things that go into the marketplace.

So those kind of things, I think, are going to happen in any industry where you have ITQs. People are going to join together to further their own individual interests and make the best business out of it that they can.

Mr. GILCHREST. I would possibly think—and Mr. Spaeth can correct me if I am wrong—that he may not want that type of consolidation in the snapper industry, where three entities may not own but they control about 60 percent of that fishery.

Mr. SPAETH. That is correct; I would not want any one entity I do not think would be right to control 60 percent of it.

Mr. GILCHREST. Or 30 percent.

Mr. SPAETH. Or 30 or whatever, whatever percentage, you know. I think there is a reasonable percentage a company can own, and I do not think any company here at the present time owns over 10 percent in the Gulf.

And the other thing about property rights: I feel that the people that invested to go out; took the risk, the chance; invested their money in these vessels to go harvest these fish have shown their ability and their want to go out there, and since they have the investment, I believe that they should have—maybe not own it, but they should have strong property rights.

Mr. GILCHREST. Thank you.

Mr. Emerson, leave it there?

Mr. EMERSON. Yes; we are fine. I mean, the act is very clear that the IFQ would be a Federal permit, a Federal permit that can be revoked or revised and so on and so on.

Mr. GILCHREST. All right; gentlemen, thank you very much. You are all appreciated.

Mr. EMERSON. Thank you, Mr. Chairman.

Mr. GILCHREST. Our fourth panel will be Mr. Ralph Hoard, executive vice-president, Icicle Seafoods; Mr. Paul Seaton, commercial fisherman; Mr. Jay Stinson, commercial fisherman; Mr. Fred Christiansen, Chairman of the board, Gulf of Alaska Coastal Communities Coalition; Dr. Scott Matulich, professor, Washington State University; Dr. Robert Halvorsen, professor, Department of Economics, University of Washington.

Gentlemen, thank you very much for coming this afternoon, and we appreciate your patience through the duration of the day and the interruptions.

Mr. Hoard, you may begin, sir.

STATEMENT OF RALPH HOARD, EXECUTIVE VICE-PRESIDENT, ICICLE SEAFOODS

Mr. HOARD. Mr. Chairman, my name is Ralph Hoard, and I am executive vice-president of Icicle Seafoods Corporation, headquartered in Seattle, Washington.

Thank you for the opportunity to testify regarding individual fishing quota moratorium and Magnuson Act reauthorization. Icicle Seafoods is an Alaska corporation founded in 1965. We started with a single salmon cannery in Petersburg, Alaska, and have expanded over the years with multiple locations, including Petersburg, Seward, Beaver Inlet, Bristol Bay, Dutch Harbor, Adak and St. Paul that process salmon, crab, herring, halibut, sablefish, cod and pollock.

In addition to Alaska, we have two processing plants in the State of Washington and jointly own the canned salmon labeling warehouse in Astoria, Oregon. Although we do own a small number of catcher vessels, of the 230 million pounds plus of fish that we purchased and processed in 2001, over 85 percent of the ex-vessel value was purchased from independent fishermen throughout Alaska.

In order to give you a clear picture of the current halibut-sablefish IFQ program, it is appropriate to give a brief history of the fishery and how we got where we are today. From 1975 to 1978, I was the plant manager of our Seward facility, where it was not uncommon for the fleet to deliver their catch simultaneously within a three- to 4-day period. Many days, we would wake up in the morning to find 3 million to 4 million pounds of halibut waiting to be delivered.

To accommodate this volume, we added freezers, cold storage capacity, processing lines, dock hoists, icemaking, mess halls, bunkhouses, et cetera. And as a result, the Seward plant was very efficient and continued to attract boats, because they not only knew that their catches would get unloaded quickly, but all the other amenities that they needed, like bait, ice, supplies, fuel, mechanical help, spare parts, coordination, et cetera, crucial to their ability to catch fish were not only available but in a quality way.

This capability to quickly unload one's catch close to the fishing grounds, which Seward was, and get back fishing as soon as possible helped our fleet's catch records, which became the basis to establish their quota share in the current IFQ program. With the rapid expansion of independent salmon fleets throughout Alaska, many new small local vessels began to fish halibut. In order to accommodate this growing number of fishermen, we continued to expand our capacity, including purchasing a small plant in Homer, Alaska, and building a larger freezing cold storage facility there and by providing large pickup vessels for remote fishing grounds of Alaska that our fleets otherwise would not be able to access.

The sablefish fishery had a totally different history but ended up in the same situation. Back in the mid 1970's, Icicle was purchasing 70 to 80 percent of the USA-caught Alaska sablefish. Although this was a very high percent, the vast majority of the sablefish harvested in Alaska during this period was still being caught and processed by foreign fishing fleets. This was a very trying and difficult time for both our fishermen and ourselves, as it was

difficult to get a reasonable price for our product, since it was primarily a Japanese market, and they were securing most of their product needs from their directed fishing efforts in Alaska.

In 1984, the North Pacific Fishery Management Council told fishermen and processors that they would give them until September of that year to catch and process the quota, or it would revert to foreign fleets, as it had for decades. That year, 100 percent of the fish was caught by USA fishermen; purchased, processed and sold by USA processors. Market prices increased dramatically, providing a new, profitable and viable fishery for both fishermen and Alaska processors.

Once Americanized like halibut, many new participants in both the fishing and processing side entered the fishery. Seasons that once lasted three or 4 months began to last only two or 3 weeks. In addition to our strategically located shore plants in the Gulf of Alaska, we invested in processing equipment and icemaking capacity on our floating processors, which we located in remote areas of Alaska, providing additional markets for our fishermen and securing fish that both of us otherwise would not have had access to.

We also modified our operations to make fishermen more efficient by accepting ondress fish and refrigerated seawater, again allowing our fishermen to build more catching history that eventually became their IFQ basis.

Rationalization of the processing sector through processor quotas would give processors the same broad set of economic options that halibut-sablefish harvesters employ. Some examples are a marginal processor could decide to retire from the fishery; sell his quota to another processor or to another fisherman that wanted to process and obtain some return on his capital investment. A processor could consolidate facilities to make more efficient use of his equipment while cutting costs. A processor can continue to operate but with greater efficiency because of longer seasons and a predictable supply of fish. And last, a fisherman could slow down production—a processor could slow down production and process more value-added products, possibly resulting in greater margins.

Many fisheries in Alaska are overcapitalized, resulting in efficiency losses to the industry. In those fisheries, too many boats are chasing the fish; excess processing facilities are being operated, and communities have invested in more infrastructure than is needed. The result is a fishing industry that can catch, process, distribute finished products in a short period of time, leaving all of the capital facilities idle for many months.

In conclusion, I encourage you to continue to work on legislation that will provide the additional economic benefits from rationalization of overcapitalized fisheries, while ensuring that the opportunity to share in that additional economic value is available to processors as well as harvesters. Unless future rationalization programs provide equal benefits to all sectors, we would prefer the status quo.

[The prepared statement of Mr. Hoard follows:]

Statement of Ralph G. Hoard, Executive Vice President, Icicle Seafoods, Inc.

My name is Ralph Hoard and I am the Executive Vice President of Icicle Seafoods, Inc., an Alaska corporation, headquartered in Seattle, Washington. Thank

you for the opportunity to testify regarding the Individual Fishing Quota moratorium and Magnuson Act Re-authorization.

Icicle Seafoods is an Alaska corporation founded in 1965. We started with a single salmon cannery in Petersburg, Alaska and have expanded over the years with multiple locations throughout Alaska that process salmon, crab, herring, halibut, sablefish, cod and pollock. We have processing operations throughout Alaska, including Petersburg, Seward, Beaver Inlet, Bristol Bay, Dutch Harbor, St. Paul and Adak. In addition to Alaska, we have two processing plants in the State of Washington and jointly own a canned salmon labeling warehouse in Astoria, Oregon. Although we do own a small number of catcher vessels, of the 230,000,000 pounds plus of fish we purchased and processed in 2001, over 87% of the ex-vessel value was purchased from independent fishermen throughout Alaska.

I would like to preface my comments by stating that we are not opposed to rationalization. There are certainly many compelling reasons why various fisheries could be rationalized. Quota based fisheries can provide many benefits to any particular fishery, however those benefits should be enjoyed by all participants in the fishery including fishermen, processors and those communities dependent on the particular fishery. The most common justification to rationalize any fishery is a result of overcapitalization. It is impossible to have an overcapitalized fishing fleet unless the processing sector overcapitalized with the fishing fleet in that particular fishery. It is very unlikely, especially in remote parts of Alaska, that the processing sector was able to overcapitalize without community investment in ports, docks, harbors and infrastructure. In other words, everyone got to the same place totally dependent on each other. If the fishery is to be rationalized whether it is with IFQs, cooperatives or any other method, the benefits of the rationalization should be enjoyed by everyone that has a vested stake in the fishery.

In Alaska, we do have an IFQ program for halibut and sablefish in place that has completed its 7th year. While my comments today are on why that program is not working for the processing sector and why any new programs should not be similar to the existing halibut/sablefish IFQ program, I am not suggesting that it should be revisited. In fact, too much quota and money has already changed hands to reasonably try to change that program now. However, I hope my comments will help avoid making the same mistakes when future programs are contemplated. In order to give you a clear picture of the current halibut/sablefish IFQ program, it is appropriate to give a brief history of the fishery and how we got to where we are today. Although the program was instituted for both halibut and sablefish, the development of each fishery was different.

THE HALIBUT FISHERY

The halibut fishery, as recently as the mid 1970's, was a long, drawn out fishery that was mostly fished, in Alaska, by both American and Canadian fishermen. Those fishermen basically fished throughout the spring, summer, and early fall. They had an informal system where for every day they fished they would lay-up for half a day to help spread the season out. In other words, if they made a 14-day trip, they would tie up for 7 days. In those days our company was the major buyer of halibut in Alaska, some years purchasing almost 50% of the catch. The first expansion of our company from Petersburg was purchasing the Seward plant in order to provide a market in the Gulf of Alaska for our fishermen to the south that were having trouble selling fish. In a few short years after a major expansion of freezers, ice making capacity, docks and cold storage, our Seward plant became the largest single facility halibut buyer in the world.

[A side note here: From 1975 to 1978, I was the plant manager of this facility where it was not uncommon for the fleet to deliver their catch simultaneously within a 3 to 4 day period. Many times we would wake up in the morning to find 3 to 4 million pounds of halibut waiting to be delivered by both USA and Canadian vessels. To accommodate this volume we added: freezers, cold storage capacity, processing lines, dock hoists, ice making, mess halls, bunkhouses, van service for fishermen to Anchorage, etc. As a result, the Seward plant was very efficient and continued to attract boats because they not only knew their catches would get unloaded quickly, but that all the other amenities like: bait, ice, supplies, fuel, mechanical help, spare parts coordination, etc., crucial to their ability to catch fish were not only available, but in a quality way. This capability to quickly unload one's catch, close to the fishing grounds which Seward was, and get back fishing as soon as possible helped our fleet's catch records, which became the basis to establish their quota share in the current IFQ program.]

With the rapid expansion of the small boat salmon fleets throughout Alaska many new smaller local Alaskan fishermen began to fish halibut. Also, in 1980 the Canadian fleet was eliminated from USA waters and the halibut seasons became increas-

ingly shorter. In order to accommodate this growing number of fishermen, we continued to expand our capacity including purchasing a plant in Homer, Alaska, and building a larger freezer and cold storage facility there. Eventually the seasons were measured in a few short 24- or 48-hour openings. We were still the largest buyer of halibut during this period as millions of pounds of fish had to be handled in a few short days. Since we grew with the fleet, we maintained our market share. During the last few years of the pre–IFQ fishery, we were even supplying our fishing fleets with large pick up vessels so they could fish in some of the remote areas of Alaska. This allowed small vessels to harvest fish in the best areas that otherwise would not have been available to them.

THE SABLEFISH FISHERY

The sablefish fishery had a totally different history, but ended up in the same situation. Back in the mid 1970's, Icicle was purchasing 70%–80% of the U.S. caught Alaskan sablefish. Although this was a very high percentage, the vast majority of the sablefish harvested in Alaska during this period was still being caught and processed by foreign fishing fleets. This was a very trying and difficult time for both our fishermen and our company as it was difficult to get a reasonable price for our product since it was primarily a Japanese market and they were securing most of their product needs from their directed fishing efforts in Alaska. (I might also add that during this period there was virtually no market in Japan for halibut, as their directed fleets also filled this void with by-catch from the sablefish fishery.) In the early 1980's, Icicle Seafoods and other companies, along with fishermen, petitioned the North Pacific Fishery Management Council (NPFMC) to eliminate the directed foreign fishing in order to allow U.S. fishermen and processors to access 100% of this fishery. Although most fishermen were supportive of this effort, there were some that proposed to let the U.S. fishermen harvest the fish, but sell directly to foreign factory ships. Their concern was that the Alaskan processing sector did not have the intent to buy, the capacity to process, and the access to the market that the foreign companies had. During years of debate, the NPFMC prodded the U.S processing side to develop the capacity to process, and the necessary infrastructure needed for 100% U.S. utilization. In 1984, the NPFMC told fishermen and processors that they would give them until September of that year to catch and process the quota or it would revert to the foreign fleets as it had been for decades. That year, 100% of the fish was caught by USA fishermen, purchased, processed and sold by USA processors who spent substantial sums of money to gear up their plants to meet the imposed deadline. Market prices increased dramatically, providing a new, profitable and viable fishery for both fishermen and Alaskan processors.

Once Americanized like halibut, many new participants in both the fishing and processing side entered the fishery. Seasons that once lasted 3 or 4 months began to last only 2 or 3 weeks. Again, the capacity and philosophy to serve fishermen we initiated to prosecute these fisheries worked well. In addition to our strategically located shore plants in the Gulf of Alaska, we invested in processing equipment and ice-making capacity on our floating processors which we located in remote parts of Alaska, providing markets for our fishermen and accessing fish that both of us otherwise would not have had access to. As new Alaskan fishermen entered the fishery and as seasons became shorter, we continued to work to make both ourselves and those fishermen working with us more efficient. We modified our operation and began to allow fishermen to deliver whole fish, in refrigerated seawater. This allowed fishermen, who once had to dress all the sablefish on the vessel, to become more efficient in their fishing operation as we took over the duties of dressing their product. A lot of the traditional vessels continued to dress fish, but delivering round, refrigerated fish became more common. Again, this allowed our fishermen to build more catching history that eventually became their IFQ basis.

CURRENT HALIBUT/SABLEFISH PROGRAM

Although not quite on similar courses, both the halibut and sablefish fisheries got into the same overcapitalized situation, which resulted in the current IFQ program we have today. Once the IFQ program was put in place, 100% of the efficiencies, economies of scale, and added value of the fishery was given to the harvesting sector. All of our investment, that not only allowed us to maintain but even grow our business, became irrelevant and was immediately devalued. Fishermen, once awarded IFQs on the other hand, were immediately able to consolidate and spread their fishing over eight months. Those that wanted out, sold. Those that wanted more, bought. It was and is still today a happy story for those fishermen that were awarded IFQs, whether they still fish or left the fishery. Today the quality of fish being delivered is far superior to the pre–IFQ fishery. The added value of the catch in the market is a lot higher. Unfortunately, 100% of that value has gone to the harvesting

sector. The processing sector, by being left out of the rationalization process, was left with assets that are no longer needed. The choice for the processing sector was very clear, either continue to try to survive with assets that are not conducive to a controlled IFQ fishery, or exit. That is exactly what has happened. Although we have been able to survive only because we were diversified in other fisheries and other areas, our business in the locations that were dependent on the halibut and sablefish has deteriorated. This is not only a problem for us, but it's a problem for the fishermen that fish other fisheries in those areas. Their fisheries now have to carry 100% of the burden on assets that were once getting reasonable contribution from halibut and sablefish. Our gross profit margin on halibut and sablefish during the first 6 years of the IFQ program is $20,000,000 less than it was the 6 years previous to the IFQ program. Not only are we feeling the pain, but every non–IFQ fisherman that delivers other product to these facilities now has to carry a bigger burden of the costs and overhead of these facilities.

As tough as it has been, we are one of the fortunate processors as we have been able to survive. Many took the second option, which was to just quit with no compensation for their investments. Some will say that's just too bad, but when they left they also left many non–IFQ fishermen without markets and many communities without a viable processing sector. Many in Alaska feel that one of our biggest challenges is dealing with our salmon business with the worldwide competition of farmed fish. That very well could be the case, but as one of the largest salmon processors in Alaska, I can assure you our biggest challenge has been adapting to the realities of the halibut/sablefish IFQs and the economic affect that has had on our salmon business. Not only is our salmon industry (fishermen, processors and dependent communities) fighting the challenges of the world farmed fish explosion, but we are having to jointly foot the bill for the lost opportunities in the halibut and sablefish business.

Although there are some communities that have benefitted from the IFQ program because of their close proximity to good air freight service to access the fresh halibut market, there are just as many communities that also lost out and no longer have a viable seafood industry resulting in economic hardships to not only the community but the other non–IFQ fishermen that try to operate out of those communities.

It is too late and not practical to change the existing halibut/sablefish program; however, we need to learn from it and make sure that any future programs allow all the stakeholders (fishermen, processors and dependent communities) to enjoy the benefits of a rationalized fishery. The benefits should be enjoyed by all and not come at the expense of some. [The State of Alaska has just released a study that examines, "The North Pacific Halibut and Sablefish IFQ Policy Impacts on Processors", that this Committee may find relevant to these deliberations.]

RATIONALIZATION BENEFITS TO THE QUOTA HOLDERS

Rationalization of overcapitalized fisheries provides benefits to the participants who receive IFQs and to the nation. Many fisheries in Alaska are overcapitalized, resulting in efficiency losses to the industry. In those fisheries, too many boats are chasing the fish, excess processing facilities are being operated, and communities have invested in more infrastructure than is needed. Most fisheries in Alaska are open access fisheries, with a race for fish being the primary factor in determining the structure of and investment in the industry. In an open access fishery, more and more boats are added to the fleet in a hunt for profits, resulting in shorter seasons. When the influx of new boats stops, the fleet will upgrade engines for more power, use larger nets or set more pots and longlines, and increase their hold capacity as they catch and land fish more quickly.

In the processing sector, more facilities are needed to process the fish as the catch is landed more quickly and in a shorter period of time. Processors upgrade their facilities with more processing lines, increased freezing capacity, and larger cold storages.

Finally, communities and support industries upgrade the infrastructure which supports the fishing industry, building more dock space, providing more housing, and increasing the capacity of utilities such as water, electricity, and sewage disposal.

The result is a fishing industry that can catch, process, and distribute the fish and fish products in a shorter period of time, leaving all of the capital facilities idle for many months. For the fishermen in the halibut and sablefish fisheries in Alaska, rationalization through the IFQ system provided each quota holder with a broad range of economic options: (1) a marginal fisherman, or one that wanted to retire, could decide to sell his quota to obtain a return on his investment and exit the fishery; (2) a fisherman who owned multiple boats could consolidate his quota onto a smaller number of boats and increase his efficiency, resulting in increased eco-

nomic return; (3) a fisherman could use his quota to operate while avoiding bad weather, to catch fish in response to market demand, and to operate his boat at the highest level of efficiency (crew size, fishing grounds choices, fuel utilization, etc.); or, (4) a fisherman could expand his catch total by purchasing more quota shares and leveraging the cost with what he received initially for nothing.

Rationalization of an overcapitalized fishery provides increased economic value to the quota holders above the economic return from the open access fishery. The nation benefits from the productivity gains of the fishing side and from products with higher quality and greater variety.

BENEFITS OF PROCESSOR RATIONALIZATION

An ITQ system with all the value going to the fishermen provides no benefits to the processors that supported those harvesters in the open access fishery. The processors receive none of the additional economic value resulting from rationalization of the harvesting sector, and will lose their capital investment in the excess facilities that were needed to support the open access fishery. Processors will have only negative options available: (1) retire from the fishery and write off the capital investment; or (2) continue to operate at a lower level of facility utilization and smaller margins.

Rationalization of the processing sector through processor quotas, processor-harvester cooperatives, or some other system will give to the processors the same broad set of economic options available to the rationalized harvesters: (1) a marginal processor could decide to retire from the fishery, sell his quota to another processor or fishermen that want to process, and obtain some return on his capital investment; (2) a processor could consolidate facilities to make more efficient use of his equipment while cutting costs; (3) a processor can continue to operate, but with greater efficiency through decreased costs resulting from longer seasons and more predictable supply of fish; and, (4) a processor could slow down production and process more value added products once the delivery time and quantity of fish was a known entity to coordinate with the proper markets. Rationalization of the processing sector does not change the economic options for the fishermen. They can still exit the fishery, consolidate on fewer boats, or operate with better efficiency and safety. The only difference resulting from rationalizing both the harvesting and processing sectors is that the additional economic value from the fishery will be shared by the two sectors. The processing sector in Alaska has made significant investments in each fishery, as has the harvesting sector. Both sectors should receive benefits from those investments when a fishery is rationalized.

In conclusion, I encourage you to continue to work on legislation that will provide the additional economic benefits from rationalization of overcapitalized fisheries while ensuring that the opportunity to share in that additional economic value is available to processors as well as harvesters. Unless future rationalization programs provide equal benefits to all sectors, we would prefer the status quo.

Mr. GILCHREST. Thank you, Mr. Hoard.

Mr. Seaton?

STATEMENT OF PAUL SEATON, COMMERCIAL FISHERMAN

Mr. SEATON. I thank the Committee and the Chairman for the opportunity to testify. I am Paul Seaton, a fisherman from Homer, Alaska. I participate in numerous fisheries in the Gulf of Alaska, including halibut, Pacific cod and tanner crab. Individual fishing quotas stimulate heated debate because there is so much money at stake. Halibut and sablefish IFQs alone represented over $800 million given to selected people.

Two areas I wish to cover: first, why specific, mandatory Congressional standards are absolutely necessary; and two, three standards that would take much of the controversy out of the implementation of IFQs. Firstly, individual fishing quotas are different from other fishery management plans. The regional councils were originally created to contain fishery expertise by exempting public members from all Federal conflict of interest laws. The

councils were advisory, and the Secretary performed the oversight function and could modify plans before approval.

Later, Congress created the category of limited access plans, which the Secretary is excluded from creating or from modifying. The Secretary can only accept or reject a submitted plan in its entirety. IFQs form a special challenge for the management council, because these shares or percentages of the future harvest are based exclusively on past catch history. Therefore, the concern of a council member who does not have a catch history of that species is negated.

An IFQ plan can only be challenged by suing the Secretary. Judicial deference is given to the Secretary, specifically based on the assumption that he is a disinterested party. The council would never qualify as a disinterested party but under the law cannot be challenged, and the Secretary does not have the authority to create or modify the plan. I explain this not to ask that the Secretary design the plans but to underscore the necessity for mandatory standards to ensure that plans from the council meet your national goals, because there is no other remedy.

Second, in the time remaining, I wish to share with you three standards that will take the main controversy out of IFQ plans. First, expected conservation gains shall be incorporated into any new IFQ plan in a way that ensures their attainment. Second, any new IFQ plan shall recognize the existing crew and vessel percentages as the basis for initial quota share allocation. And third, the councils can allocate only harvesting quota.

First, the conservation expectation is in my written testimony. National standard No. 4 requires that fishery management plans be fair and equitable to all fishermen. In the halibut and sablefish IFQ plan lawsuit, the Ninth Circuit Court of Appeals specifically found that the plan violated national standard No. 4. However, a plan is just required to be consistent with the national standards, and the court found that the council had weighed and favored economic efficiency standards. Therefore, the consistency with national standards provision of the Magnuson-Stevens Act provides no security for the requirements of IFQ plans.

The main objection to the halibut and sablefish IFQ plan was the granting of all of the quota shares to vessel owners. Neither captain nor crew received any shares as fishermen. This inherent unfairness to the men and women who invested their talent and lives to generate the catch history basis of initial issuance will plague all IFQ programs. Recognizing the specific crew share provisions that Congress and the IRS has allowed as the basis of fisherman compensation can easily remedy this. Crew share arrangements are required to be in a written contract. Those contracts establish the equitable compensation for investment or for labor that each vessel owner and his crew have found fair.

An IFQ standard could be as simple as any new IFQ plan shall recognize existing crew and vessel percentages as the basis for initial quota share allocation.

Third, processing quota share. The National Research Council found no compelling reason to establish a separate processor quota system, the so-called two-pie system. They suggested alternative ways of compensating processors if such a circumstance would exist

without the "concomitant increase in the complexity of the IFQ program." The two-pie option is ripe for anticompetitive activities and antitrust violations. It would be a drag on innovation and new market development, and it would be a severe constraint on fishermen delivering product over an expanded season. An IFQ standard here could be councils can allocate only harvesting quota.

In summary, to secure the benefits to the Nation enumerated in the Magnuson-Stevens Fishery Conservation and Management Act, Congress will need mandatory requirements for inclusion of specific standards for any new IFQ plan.

Thank you.

[The prepared statement of Mr. Seaton follows:]

Statement of Paul K. Seaton, Alaskan Fisherman

I am Paul Seaton, a fisherman from Homer, Alaska. I participate in numerous fisheries in the Gulf of Alaska including Halibut, Pacific cod, Tanner crab, and tender salmon and herring.

I was a member of the Alliance Against IFQs for Halibut and Sablefish, was a West Coast Advisory Panel member for the National Resources Council congressionally requested IFQ Study, was a board member of the Alaska Marine Conservation Council, and am a resident of a coastal fishing town. Although I am testifying as an individual fisherman, I combine some of the concerns of all these forums about the specifics of IFQ and their impacts.

Whenever Individual Fishing Quotas are considered, you will be bombarded with lots of competing economics and self-enrichment lobbying. This is because there is a lot of money on the table—halibut and sablefish IFQs alone represent over 800 million dollars given to selected people. I am going to ask you to apply your own common sense to this radical departure from the way all public resources are generally treated.

If you gave your child a car, a logger an exclusive use of a forest, or a fisherman a perpetual exclusive harvest share and later told them you wanted to put restrictions on the use of the gift, you would meet considerable resistance. If, however, you said to any of them, I will give you this property or privilege with certain restrictions, they would say THANK YOU.

This is the common sense I hope you will see in mandating that any new IFQ plan incorporate factors that advance the national goals for our fisheries and oceans.

Two areas I wish to cover:

1) Why specific mandatory Congressional standards are absolutely necessary, and

2) Three standards that will take much of the controversy out of implementation of IFQs.

1) Individual Fishing Quotas are a different animal from other Fishery Management Plans the Regional Councils handle. The Councils were originally created to contain fishery expertise by exempting public members from all Federal conflict of interest laws. The Councils were advisory to the Secretary of Commerce and the intent was to provide a balanced, knowledgeable forum where each industry segment would battle for access to their share of the fish. The Secretary performed the full oversight function. However, a later Congress created the category of Limited Access Plans, which the Secretary is excluding from creating. In fact, the Secretary cannot even modify a Limited Access Plan but can only accept or reject a submitted Plan in its entirety. Within this limited access plan category, IFQs form a special challenge for the Management Council. Those shares, pounds, or percentages of the future harvests are based exclusively on past catch history. Therefore the "concern" of the Council members who did not have a catch history of that species is negated. In fact, this leads to the vote trading exemplified by one NPFMC member's public statement that he disagreed with the halibut IFQ design but would support it as long as the longliners on the Council let him design the IFQ program for his trawl fleet.

A further problem for the public is that an IFQ plan or element can only be challenged by suing the Secretary. Judicial deference is given to the Secretary and Agency specifically based on the assumption that the expert agency was a "disinterested party", while in reality the Secretary did not even have the authority to create or modify the plan. The Council would never qualify as a "disinterested party" but cannot be challenged for the Plan.

I explain this not to ask that the Secretary design the plans, but to underscore the necessity for mandatory standards to ensure plans from the Councils meet your national goals, because there is no other remedy.

2) Standards that will take the controversy out of IFQ Plans:

(A) Conservation expectations must be incorporated into the Plan.

IFQs allow a longer period of harvest and give the fishermen to conduct their endeavors in a noncompetitive fashion. One of the chief benefits touted for IFQs is this allowance for more targeted fishing to reduce waste, bycatch and impact on the habitat. However, if these expected gains are not incorporated into the plan (such as reduction in allowed bycatch or use of only off-bottom trawls), fishermen may well opt to optimize other personal advantages. For example, crucifiers—mechanisms which allow bycatch or small fish to be striped off the line at the rail by breaking the unwanted fishes jaw while ripping out the hook—had been outlawed for years in the halibut fishery, but were made legal upon implementation of IFQs. This made the job easier for a boat to operate with fewer crew even though the expanded season gave plenty of time for careful fishing.

An IFQ standard could be: EXPECTED CONSERVATION GAINS SHALL BE INCORPORATED INTO ANY NEW IFQ PLAN IN A WAY THAT ENSURES THEIR ATTAINMENT.

(B) Fair and Equitable to all fishermen:

The Act has National Standard number 4 requiring fishery management plans to be fair and equitable to all fishermen. In the Halibut and Sablefish IFQ plan lawsuit, the Ninth Circuit Court of Appeals specifically found that the Plan did NOT meet that Standard. However, a plan is just required to be "consistent" with the National Standards and the Court found that the Council had weighed and favored the Economic Efficiency Standard. Thus, the Consistency with the National Standards provision provides no security for inclusion of requirements in IFQ plans.

The main objection to the Halibut/Sablefish IFQ plan was the fact the Council gave all the Quota Shares to vessel owners based on the theory that their investment was all that mattered. Neither captain, nor crew received any Shares as a fisherman. This inherent unfairness to the men and women who have invested their talent and lives to generate the catch history basis for the initial issuance will plague all IFQ programs. Congress should mandate that "fair and equitable" provision be incorporated in any new plan. Recognizing the specific "crew share" provisions that Congress and the IRS has allowed as the basis for fishermen compensation can easily do this. Congress has also mandated for years that those crew share arrangements be in a written contract before the vessel leaves port. Those contracts have established the equitable business arrangements that each vessel owner and crew have found fair. If a vessel owner has always agreed that 35, or 50, or 60 percent of the gross catch was adequate compensation for his investment in vessel and gear in an ongoing fishery business, why should the vessel owner get 100 percent of the fish shares with IFQs? The real answer is that Fishery Management Councils are controlled by the vessel owners who have the time to participate and the money to hire lobbyists some of who are the Council Members themselves. Initial issuance based on agreed shares would mean that each participating entity would have something to bring back to the operation, and it would be equal to their historically agreed value.

The IFQ Standard could be as simple as ANY NEW IFQ PLAN WILL RECOGNIZE EXISTING CREW AND VESSEL PERCENTAGES AS THE BASIS FOR INITIAL QUOTA SHARE ALLOCATION.

(C) Processor Quota Share

The National Research Council found "no compelling reason" for inclusion or exclusion of processors from receipt of initial harvesting quota shares. However, it found NO compelling reason to establish a separate processor quota system—the so-called two-pie system. They suggested alternate ways of compensating processors if such a circumstance would exist without the "concomitant increase in complexity of the IFQ program."

The "two-pie" option is ripe for anti-competitive activities and antitrust violations. It would be a drag on innovation and new market development as the existing processors would be assured an unending future of fish for their current product. It would be a severe constraint on fishermen delivering product over the expanded season if the processor was busy with other species.

If upstream quotas are such a good idea, why have the processors not incorporated a quota for wholesalers—requiring the processors to sell the same fixed percentages of their processed fish to their historic wholesalers? Of course we all can see that such an anti-competitive program would be detrimental to the industry, just like two-pie processor quota would be detrimental. Ask yourself what the effect

would be if you required all farmers to sell their future production only to the processor they sold to last year.

An IFQ standard could be; THE COUNCILS CAN ALLOCATE ONLY HARVESTING QUOTA.

In summary, to secure the benefits to the Nation enumerated in the Magnuson/Stevens Fishery Conservation and Management Act, Congress will need mandatory requirements for inclusion of those benefits in any new IFQ Plan. The Regional Fishery Management Councils receive huge pressures to emphasize other benefits and no check and balance system is in place other than congressional mandated IFQ standards.

Important standards would include:

EXPECTED CONSERVATION GAINS SHALL BE INCORPORATED INTO ANY NEW IFQ PLAN IN A WAY THAT ENSURES THEIR ATTAINMENT.

ANY NEW IFQ PLAN WILL RECOGNIZE EXISTING CREW AND VESSEL PERCENTAGES AS THE BASIS FOR INITIAL QUOTA SHARE ALLOCATION.

THE COUNCILS CAN ALLOCATE ONLY HARVESTING QUOTA.

Mr. GILCHREST. Thank you very much, Mr. Seaton.

Mr. Young, do you want to make a comment before we continue?

Mr. YOUNG. No.

Mr. GILCHREST. OK; the next witness, Mr. Stinson.

STATEMENT OF JAY STINSON, COMMERCIAL FISHERMAN

Mr. STINSON. Mr. Chairman and the member of the Committee present, I guess, I am Jay Stinson, the owner-operator of the fishing vessel Alaskan, a 73-foot commercial fishing trawler that was built in 1968. I also own halibut IFQs. I also serve as president of the Alaska Draggers' Association, board member of Alaska Seafood Marketing Institute and a member of the University of Alaska School of Fisheries and Ocean Science Advisory Committee.

Fisheries resource management has undergone a substantial evolution during the past several decades. Despite this positive transformation, traditional management tools do not address issues of overcapitalization or community stability. The general objective of fisheries management is to conserve marine resources and to maximize sustainable benefits to the nation. But oftentimes, this process leads to a race for fish. The situation inherent in many of our fisheries does not allow fishermen or managers to effectively deal with minimizing by-catch and discards; understanding the true impacts of fishing practices on habitat and the identification of possible mitigation strategies; disproportional impacts of protected species management; safety at sea; or economic and cultural stability of coastal communities.

IFQs would allow a broader suite of tools to reconcile these issues. For fisheries to remain viable and sustainable, they need to be attractive to long-term investment. Currently, many of our fisheries are not, but not for the reasons you may think. The state-managed wild Alaska salmon industry is on the ropes, not for a lack of fish but because it is less efficient than foreign and domestic farmed operations. The Bering Sea co-ops and the halibut-sablefish IFQ program are very successful in meeting their intended fisheries management objectives, but they are economically marginalizing the Gulf of Alaska groundfish fisheries.

Litigation is driving the National Marine Fisheries Service to fast-track severe management restrictions on Alaska fishermen. The environmental industry's legal challenges under ESA, NEPA and Essential Fish Habitat, not to mention the potential impacts

of the marine protected areas are creating an extremely unstable regulatory environment for fishermen in Alaska's fishing-dependent coastal communities. IFQs should be a fisheries management tool suited to the particular needs of a specific fishery in a given region. Admittedly, Alaska may be somewhat unique in that we already have implemented several fisheries rationalization programs dealing with different management objectives.

Successful examples include the halibut-sablefish IFQ program and the American Fisheries Act cooperative structure that recognizes both harvesters and processors. The difficulty in developing national standards for rights-based fisheries lies in the fact that one size does not fit all. Alaska is different geographically, culturally and ecologically from New England, the mid-Atlantic or the Western Pacific. We need regional programs that best fit local needs, and the regional councils are ideally suited to develop and tailor those programs.

My immediate and overwhelming concern is for the continued health and sustainability of our fisheries resources and the sustained vitality of Alaska's fishery-dependent communities. In light of the effects of farmed salmon on Alaska's wild salmon industry, increasing litigation and the impacts of AFA on the Gulf of Alaska's groundfish industry, it is necessary to look at management options such as IFQs that could include consideration of processor shares.

Mr. Chairman, I will end by summarizing three important points: Federal fisheries in the Gulf of Alaska are being economically marginalized by entities with more efficient market structure combined with the cumulative effects of severe environmental regulation that constrains our ability to operate. Rights-based management programs must be designed and implemented with full industry participation tailored to meet local needs and implemented at the regional council.

IFQs, co-ops or other forms of rights-based management will encourage harvesters, processors and fishing-dependent coastal communities to invest in the long-term vision of sustainable fisheries in Alaska to the overall benefit of the nation.

Mr. Chairman, thank you and the members for your time. Please accept my written testimony for the record.

[The prepared statement of Mr. Stinson follows:]

Statement of Jay Stinson, Captain, F/V Alaskan, and President, Alaska Draggers Association

IFQs are not the silver bullet for all of the fishing industry's current challenges; however they have been demonstrated to be an effective tool to deal with many of the challenges faced by certain segments of the fishing industry.

Fisheries resource management has seen substantial evolution over the last several decades. Traditional management tools and input controls such as License Limitation Programs, gear and vessel restrictions, time and area closures all act to restrict fishing effort. They do not address issues of overcapitalization, community stability, improving the overall economic value of the resource or the biological sustainability of the resource. The general objective of fisheries management is to conserve marine resources and maximize sustainable benefits to the nation. Management Plans that encourage or result in the "Race for Fish" detract from this objective.

For fisheries to remain viable and sustainable, they need to be attractive to investment. Currently many of our fisheries are not. The Alaska salmon industry is on the ropes; not for a lack of fish, but because it is being out competed by more efficient foreign and domestic farmed fish operations. The Bering Sea coops and the

Halibut/Sablefish IFQ program are marginalizing the Gulf of Alaska (GOA) groundfish fisheries. The RPAs developed as mitigating measures for Steller Sea Lions pursuant to Greenpeace and American Oceans Campaign lawsuit against NMFS have created large closures of productive historic fishing areas in Alaska. The Gulf of Alaska groundfish fishermen need rights based management tools such as IFQs or coop structures that will allow us to meet conservation and regulatory mandates and still compete on a global scale.

The GOA suffers from a loss of access to the resource due to environmental concerns that are causing economic harm to the communities of coastal Alaska. The fishing industry requires enough economic margin to invest in product development, gear designs and technologies that reduce by-catch, can adjust to changing harvest levels and mitigate impacts on benthic habitat while supporting sustainable fisheries.

• Whether and When IFQs should be used as a management tool.

IFQs should be used as a fisheries management tool in regions and fisheries that are suited to their particular needs. They have been successfully implemented in several programs in the North Pacific for differing management objectives.

These rights based programs include:

* Individual Vessel Quota (IVQ) program For Halibut in British Columbia
* Individual Transferable Quota (ITQ) Fisheries for Groundfish Trawl and Sablefish in British Columbia.
* Individual Fishing Quota (IFQ) program for Halibut and Sablefish program in Alaska first implemented in 1995.
* AFA created fishing cooperatives in the Bering Sea for the majority of the participants of the largest single specie fishery in the United States.
* The developing Commercial Charter IFQ program now before the North Pacific Council.

• Criteria for Considering IFQ Management

For a fishery to be a good candidate for IFQ management, it should be evaluated for such threshold criteria as:

* Is the acute race for fish and overcapitalization driving one fishery toward unsafe, uneconomic and non-sustainable fishing?
* Is it being impacted and marginalized by other regional rationalization programs?
* Are the current or foreseen problems in the fishery serious enough to justify the accounting and enforcement costs associated with IFQ management?
* Is the fishery managed to a TAC?
* Are observers utilized to validate accounting at the vessel level?
* Are alternative methods available such as Vessel Monitoring Systems to assure accurate accounting of vessel location and total mortality (not just retained catch)?

The question of "when" to initiate an IFQ program is dependant on the intended consequence of the management program and what legal, biological, economic, community, or management concerns need to be addressed.

To a very large degree, litigation is currently driving the NMFS to implement more stringent fishery management restrictions on Alaskan fishermen. The Environmental Industry's legal challenges of ESA, NEPA, and EFH—not to mention the potential impact of MPAs are rapidly creating an extremely unstable regulatory and management environment that is unworkable for fisherman and the fishing dependent coastal communities of Alaska. NMFS reaction to this litigation is fast tracking new regulations with projected implementation schedules ranging from 2 to 4 years for some of these programs in Alaska.

The current race for fish inherent in many of our fisheries does not allow fishermen and managers to effectively deal with:

* Mandates of bycatch reduction (MSFCMA).
* Improved retention and utilization of fisheries resources (NPFMC).
* Minimizing discards.
* Understanding of potential impacts on benthic habitat and possible mitigation (EFH).
* Disproportional impacts of Steller Sea Lion RPAs (ESA).
* Developing and Implementing Ecosystem Based Management Structures.
* Making more efficient and effective use of fisheries resources.
* Concerns for Safety at Sea.
* Coastal community stability.

IFQs would allow fishermen a broader suite of tools to meet these objectives.

Alaska halibut fishermen were economically marginalized after Canada's implementation of IVQs in their halibut fishery in 1990. The Canadian product was first

to arrive in the market place, the quality was better, the consumer acceptance was higher, and Alaska fishermen were at an economic disadvantage until we were able to implement our IFQ program in 1995. Much the same circumstance exists now that AFA is implemented in the Bering Sea. The Gulf of Alaska trawl harvesters and their supportive processors are operating at a significant economic efficiency disadvantage. Certain sectors of the Pollock Co–Ops have improved their product recovery by as much as 48% since 1998.

In general, AFA Co-ops are enjoying a greater economic efficiency than non–AFA trawl fleets. For some fisheries, including the Gulf of Alaska shore based harvesters and Head and Gut fleet, implementation of a rights based management program should occur as quickly as possible. Other areas of the country may not feel the requirement for the development of this type of management structure.

• Initial allocation of quota shares among different sectors of the fleet and individual participants:

The primary purpose of an IFQ program is to allocate the TAC to those currently harvesting a particular fishery quota. The simplest allocation would be to deviate as little as possible from the current status quo distribution at the time of qualification. It would suggest a snapshot of a relatively recent catch history period as a basis for distributing the quota shares amongst harvesters, including vessel owners, captains, and crews.

Having said that, there may be reasons for deviating from it, such as,

* Managers may want to consider reducing relative differential economic impacts of one sector of the fleet by another that has already been rationalized.
* Fisheries managers may want to consider local and regional community concerns.
* Managers may want to award certain participants that may not have historical participation, or others with long standing historic participation and dependence.
* Managers may want to consider fisheries' cultural and economic continuity.
* Certain sectors of the fishery may not want to participate in an IFQ program, or an IFQ structure might be problematic to their participation, i.e. observer requirements on small boats.
* Concern for allowing for new entrants into the fishery.
* Allowing a range of flexibility to recognize ecological regime shifts and other biological dynamics.

There is no one single model that meets these criteria at the national level. Alaska is different geographically, culturally, and ecologically from New England, the Gulf Coast, or the Western Pacific. Councils, States, local fleets and associated support industries need regionally based programs that best fit local needs. Regional councils are best suited to develop programs tailored to specific local needs.

• The question of whether processors should receive quota shares:

My immediate and overwhelming concern is for the continued health and sustainability of our fisheries resources, and the sustained viability of Alaska's fisheries dependent communities. In light of the effects of farmed fish on Alaska's salmon industry and the differential impacts of AFA on the Gulf of Alaska's groundfish industry, it is necessary to look at management options that will allow for the long-term economic health of our industry. This would include consideration of processor shares. As a fisherman, I am apprehensive about processors consolidating excessive market shares. As a coastal resident being negatively impacted by larger, vertically integrated, and more economically efficient industry sectors, I feel that we should not rule out limited processor shares for certain fisheries. In developing rights based management programs, Councils should tailor a regional program to consider such things as regional processor restrictions or implementing processor share caps in the development of rights based fisheries management programs.

• The impacts of IFQs on conservation and management of fisheries resources:

Rights-based management, whether they be IFQs, Co-operative fishing agreements or some other alternative structure are being demonstrated as paramount in slowing the "race for fish". By enfranchising individual fishermen with the responsibility of ownership, harvesters are more inclined to be stewards of their portion of the resource. Waste and by-catch are reduced. Inefficiencies, such as excessively large engines or overly large vessels and gear become excess investment costs not financially conducive to the long-term economic viability of an individual business. The industry as a whole becomes more sustainable and able to be more competitive in the increasingly globalized market.

By eliminating the race for fish, fishermen become disinclined to overcapitalize their investments. Instead of trying to out compete each other on derby style

fisheries, they take a more long-term perspective of business management. This includes concern and responsibility for the long-term health and sustainability of our nations marine resources.

One of the most demonstrable changes to occur under the Halibut IFQ program is the increase in length of the season. Prior to the implementation of the Alaska Halibut IFQ system in 1995, fishermen were operating in a derby fishery that was limited to two, twenty-four hour openings a year. Processing plants were swamped with product, quality was compromised, and concern for safety was disregarded. Since then, all halibut fisheries are open from March 15 to November 15. Product availability, quality and price have all increased substantially. Fishery discards and over harvesting have been greatly reduced. Halibut IFQs have created a more economically sound fishery, which is good for the resource, the fishermen and market.

• The costs of implementing and enforcing these programs:

One of the criteria for considering an IFQ program should be whether the long-term economic benefits out weigh the costs of implementation, management and enforcement of that program. That decision of whether to initiate such a program needs to be made by the participants of that particular fishery.

The Halibut and Sablefish fisheries are taxed or assessed a users fee that offsets management costs of the program. The AFA co-ops of the Bering Sea manage their own programs and are accountable to the NPFMC. Small groundfish vessels operate at higher relative observer cost than larger vessels or plants. I would like to see an industry supported, agency administered observer program developed that would be more equitable to the economic considerations of small vessels and smaller processing sectors as part of future rights based management programs.

• The impacts on individuals and communities who do not receive quota:

Most of the coastal communities of Alaska are dependent on landing taxes to help support schools, essential services, and community infrastructure. IFQs have been shown to increase the value of the resource, promote the management and health of the resource and increase the overall sustainability of the fishery.

• The windfall profits that accrue to initial recipients:

As a consequence of their design, IFQs create winners and losers. IFQs are intended to reduce overcapitalization, limit access, and create a more economically efficient fisheries management model. Concern for windfall profits needs to be put in perspective of the overall benefit to the nation and the objectives of fisheries management. The duration of rights determines "windfall rent capture". Management consequences need to be analyzed and administered at the regional level.

In regions where limited entry or license limitation programs result in "the race for fish", a closed universe of catcher vessels usually already exists. There is a cost of entry that is reflected in the market value of the License Limitation endorsement.

• The question of limiting the duration of permits:

Existing IFQ programs should be grand fathered as currently provided under the MSFCMA. Existing banking and business investments should be disrupted to the least extent possible in consideration of any new rights-based program.

Future programs should consider environmental and dynamic economic concerns, program sunsets or periodic program reviews. The intent of an IFQ program is to create long-term economic and biological stability. Caution should be given to the degree of "social engineering" that might be written into any future fisheries management plan.

• Other limited access systems (such as cooperative fishing agreements)

Future rights based fishery management plans should include: fishery cooperatives, two-pie rationalization plans (i.e. including both harvesters and processors) and other management structures protect the histories of both harvester and processors. By considering both harvesters and processors impacts to communities would be minimized and long-term stability ensured.

• Similar issues which might be associated with the implementation of these other limited access systems:

Transitional Phase: Design a certain amount of economic inefficiencies into new programs. This allows stakeholders such as crewmembers, new entrants, and small boat owners and support industry an opportunity to adjust to any new program. IFQ programs designed to fit large commercial scales with a finite universe of historic participants can be structured with a more defined process and shorter implementation period than one involving more participants with shorter histories.

Summary:

The sustainability of Federal fisheries in the Gulf of Alaska is currently being undermined by the economic marginalization of our industry by those entities that enjoy a more efficient market structure and the cumulative effects of overly stringent environmental regulation that would constrain our sector of the industry to op-

erate. It may be the case that we in Alaska will have the healthiest Groundfish fisheries resources in the world and Alaska fishermen will not be able to harvest them. IFQs, co-ops or some other form of rights based management structure would encourage harvesters, processors, and fishing dependant coast communities to invest into the long term vision of sustainable fisheries in Alaska to the overall benefit of the nation.

APPENDIX

ACRONYMS AND GLOSSARY

AFA: American Fisheries Act, enabling co-op management structures in the Bering Sea Pollock fishery including both processors and harvesters
EFH: Essential Fish Habitat, as used in Magnuson–Stevens Fishery Conservation and Management Act language
ESA: Endangered Species Act
GOA: Gulf of Alaska
IFQ: Individual Fishing Quota, is "a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person" (MSFCMA, Sec. 3 (21))
ITQ: Individual Transferable Quota
IVQ: Individual Vessel Quota
MPA: Marine Protected Areas
MSFCMA: Magnuson–Stevens Fishery Conservation and Management Act
NEPA: National Environmental Policies Act
NMFS: National Marine Fisheries Service
RPAs: Reasonable and Prudent Alternatives
TAC: Total Allowable Catch

Mr. GILCHREST. Thank you, Mr. Seaton; without objection.

Mr. STINSON. Stinson, sir.

Mr. GILCHREST. Mr. Stinson. My glasses are not working. Who just spoke? Mr. Stinson just spoke?

Mr. STINSON. Yes.

Mr. GILCHREST. Now, we have Mr. Seaton? Mr. Christiansen. So the next gentleman is Mr. Christiansen. Thank you.

STATEMENT OF FRED CHRISTIANSEN, CHAIRMAN OF THE BOARD, GULF OF ALASKA COASTAL COMMUNITIES COALITION

Mr. CHRISTIANSEN. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present my statement to your Subcommittee this afternoon regarding the reauthorization of the Magnuson-Stevens Act relative to the individual fishing quota program.

My name is Fred Christiansen. I am a commercial fisherman and business owner from Malt Harbor, Alaska and Kodiak Island. I also am the Chairman of the Gulf of Alaska Coastal Communities Coalition, and I am representing that coalition here today.

The GOAC-3 is a coalition of coastal communities in the Gulf of Alaska dedicated to protecting the ability of small Gulf of Alaska fishery-dependent communities to retain or regain access to sustainable marine resources for commercial subsistence and recreational use. Our Gulf of Alaska coastal communities are entirely fishery-dependent. Our membership is concerned that our small coastal communities will not have long-term viability unless some creative strategies are employed to rebuild sustainable economics based on healthy, sustainable fisheries.

We are alarmed at the accelerating rate at which we are losing marine access, jobs, infrastructure and population. The coalition

developed a response to adverse impacts from halibut and sablefish IFQ programs. We have proposed that qualifying communities would be a new class of buyers for halibut and sablefish quota shares in the Gulf of Alaska. By allowing a community nonprofit to purchase quota shares that could then be leased to community residents, our community would be able to keep a certain level of halibut and sablefish quota shares within the community in perpetuity.

This should make a significant contribution to stabilizing coastal community economies. Our proposal is currently before the North Pacific Fishery Management Council. The council's analysis will be soon released for public comment. They have a set time for final action. For small, rural fishery dependent coastal communities in Alaska, access and opportunities related to fisheries are absolutely vital to the ability of our communities to remain viable into the future. If they do not remain viable, it would forever change the very character of what is now rural Alaska to say nothing of their current roles in the economies of larger cities in Alaska who supply provisions to rural Alaska.

Because of our experiences, the Gulf of Alaska Coastal Community Coalition urges the Subcommittee to consider the following recommendations: No. 1, strengthen the current National Standard 8 under Magnuson-Stevens Act by incorporating as a policy statement—

Mr. GILCHREST. Mr. Christiansen, I apologize for interrupting you, but I have a little less than 5 minutes to make it to the Capitol. So we will pick it up when I come back at that point.

Mr. CHRISTIANSEN. OK.

Mr. GILCHREST. Thank you.

Mr. CHRISTIANSEN. Thank you.

[Recess.]

Mr. GILCHREST. The sound of the microphone. I think maybe people with infants should install that in their house. Just that sound has that effect on human beings.

Well, thank you again for your patience, and Mr. Christiansen, I apologize to you for breaking up your testimony, and I guess if you just backed up one paragraph, we could pick up where you left off. You were about to give us some of your pieces of insight on IFQs.

Mr. CHRISTIANSEN. OK; thank you—

Mr. GILCHREST. Recommendations.

Mr. CHRISTIANSEN. —Mr. Chairman.

Because of our experiences, the Gulf of Alaska Coastal Communities Coalition urges the Subcommittee to consider the following recommendations: No. 1, strengthen the current National Standard 8 under Magnuson-Stevens Act by incorporating a policy statement. The National Research Council's recommendation to allocate initial quota shares to communities, taking into account the importance of fishery resources to fishing communities to provide for sustained participation of such communities and a mechanism for communities to buy shares; No. 2, if new IFQ programs involve issuance of processing quota shares, Magnuson-Stevens Act should specify that fishery-dependent coastal communities' economic interests be protected. Under such a regime, a certain percentage of the

community processing quota shares should be kept with the group of coastal communities in perpetuity.

No. 3, steps should be taken to ensure that oceans and their interdependent biological resources are healthy so that they sustain viable fisheries and the communities that are dependent on them.

No. 4, Magnuson-Stevens Act should require meaningful socioeconomic considerations, including field research of potential impacts from any rationalization of fisheries. We need to seriously analyze the implications of known models.

Thank you again for this opportunity to present the views of the Gulf of Alaska Coastal Community Coalition to the Subcommittee today. Our more detailed statement has been submitted for the record. We deeply appreciate your consideration of these views in subsequent actions your Subcommittee may take on these matters.

Thank you.

[The prepared statement of Mr. Christiansen follows:]

Statement of Fred Christiansen, Chairman, Gulf of Alaska Coastal Communities Coalition

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present my statement to your Subcommittee this afternoon regarding the re-authorization of the Magnuson–Stevens Act relative to the Individual Fishing Quota Program. My name is Fred Christiansen. I am a commercial fisherman and business owner from Old Harbor on Kodiak Island, Alaska. I am also the Chairman of the Gulf of Alaska Coastal Communities Coalition (GOAC3) and I am representing that group here today.

The GOAC3 is a coalition of coastal communities in the Gulf of Alaska dedicated to protecting the ability of small Gulf of Alaska (GOA) fisheries-dependent communities to retain or regain specific access to sustainable marine resources for commercial, subsistence and recreational users.

Our communities are entirely fisheries-dependent. Our membership is concerned that our communities will not have long-term, viability unless some creative strategies are employed to rebuild a sustainable economic base. We are alarmed at the accelerating rate we are losing marine access, jobs, infrastructure and population. We are working toward reversing and /or mitigating regulatory and other changes, which have had negative impacts on the ability of our communities to make their living from the sea while recognizing that healthy ecosystems are essential to sustainable fisheries.

For small rural fisheries-dependent coastal communities in Alaska, access and opportunities related to fisheries are absolutely vital to the ability of our communities to remain viable into the future. Without such access and opportunity, a key part of the economy—a mainstay of the livelihoods—of our regions within the Gulf of Alaska will not survive. If such communities cannot remain viable, they will wither and lose population, and in many cases cease to exist. If this happens, it will forever change the very character of what is now rural coastal Gulf of Alaska, which will, in turn have very negative consequences for the larger cities of Alaska who supply provisions to these communities.

The very successful Community Development Quota (CDQ) program instituted in Western Alaska as authorized by Congress and provided by the 1991 re-authorization of the Magnuson Act greatly increased fishing access and opportunity for those member communities. At the same time, however, the fishing opportunities and incomes in our small Gulf of Alaska communities were declining. This continuing loss is the result of a variety of reasons, including the unintended consequences of regulatory actions.

One of the most significant regulatory actions was the 1995 implementation of the IFQ (Individual Fishing Quota) program for halibut and sablefish. As noted in the North Pacific Fishery Management Council, January 14, 2002, Environmental Assessment / Regulatory Impact Review (EA/RIR) for Amendment 66 to the existing halibut and sablefish IFQ program, communities under 2000 in population have shown a consistent out-migration of quota share since 1995 with subsequent loss of revenue and employment opportunities. While some people predicted the concentra-

tion of quota share outside small coastal communities, no one could have foreseen how soon or how dramatic that change would be.

The GOAC3 developed a response to the adverse impacts from the halibut and sablefish IFQ program. We have proposed that qualifying communities would be a new class of buyer for halibut and sablefish quota shares in the Gulf of Alaska. By allowing a community non-profit to purchase quota shares that could then be leased to community residents, our communities would be able to keep a certain level of halibut and sablefish quota shares within the community in perpetuity. This should make a significant contribution to stabilizing coastal community economics. Our proposal is currently before the North Pacific Fishery Management Council. The Council's analysis will soon be released for public comment and they have set a timetable for final action.

It would have been much easier, of course, to have instituted this type of mechanism during the initial implementation of the program rather than with a separate proposal now seven years after the program's implementation. Nevertheless, we are attempting to address the problem with the amendment and want to be sure that future programs consider community needs to insure their continued participation in rationalized fisheries.

This, then, has been a substantial part of our experience with the existing halibut and sablefish IFQ program. It has made us realize that IFQ programs need built-in safeguards for rural fisheries-dependent coastal communities.

In January of 1999 the National Research Council (NRC) released their paper "Sharing the Fish." This report supported the concept of community ownership of a certain amount of quota share under any IFQ program.[1] The NRC's concern about coastal communities is a principal recommendation in their report and provides an objective basis for our recommendations that small rural fisheries-dependent coastal communities be considered in the initial issuance of IFQs.

We would note rural fisheries-dependent communities have been disadvantaged by initial distribution of quota shares based on "historical participation." Throughout the past century, diversification and participation in several fisheries has been the basis for our fishermen's survival. Fishermen often emphasize the fisheries that have the best economic returns for their efforts. When halibut and sablefish IFQs were issued, this imperative worked against many community members who had not recently focused on halibut and sablefish. Many of our fishermen only qualified for a few shares of IFQs. Consequently, as herring and salmon values declined over the past seven years, these fishermen have been unable to return to fishing halibut and sablefish. This has further resulted in loss of skipper and crew jobs and infrastructure for small coastal communities.

And, finally, some coastal communities of Alaska are already experiencing severe economic loss from regulatory actions relative to Steller sea lion and seabird avoidance restrictive measures. We are concerned about the potential future impacts of essential fish habitat (EFH), habitat areas of particular concern (HAPC), and marine protected area (MPA) regulatory implementation if there is not enough consideration of subsequent intended or unintended socio-economic consequences.

Because of these experiences, the Gulf of Alaska Coastal Communities Coalition urges the Subcommittee to consider the following recommendations:

1. Strengthen the current National Standard 8[2] under MSA by incorporating, as a policy statement, the National Research Council's recommendation to allocate initial quota share to communities, taking into account the importance of fishery resources to fishing communities to provide for sustained participation of such communities.
2. Incorporate into MSA a mechanism for the allocation of initial quota shares under any new IFQ program to fisheries-dependant rural coastal communities.
3. MSA should have clarifying language that rural fisheries-dependant coastal communities be qualified as buyers of quota shares for any new IFQ programs.
4. Should new IFQ programs consider issuance of "processing quota shares." MSA should specify that fisheries-dependant coastal communities' economic interests be protected. First, a certain percentage of community processing quota shares should be kept within a group of coastal communities in per-

[1] Page 10 and throughout the document

[2] "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of over-fishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts in such communities." (Added in 1996.)

petuity. Second, undeveloped or underdeveloped communities should have the opportunity to develop processing capabilities.

5. MSA should focus attention and actions on ways to ensure that the ocean and its interdependent biological resources are healthy so that they can help sustain viable fisheries and the communities that are dependent on them.
6. MSA should have language to address better strategies for dealing with species protections that balances protective regulations with the fisheries dependency of rural coastal communities and their small boat fleets.
7. MSA should give regional councils, such as the North Pacific Fisheries Management Council, flexibility in considering unique programs that can protect access to harvesting and processing of marine resources in proximity to rural fisheries-dependant coastal communities.
8. MSA should require meaningful socio-economic considerations, including field research, of potential impacts from any "rationalization" of fisheries. We need detailed socio-economic analysis of known models—such as Individual Fishing Quotas (IFQ), Individual Transferable Quotas (ITQ), Individual Processing Quotas (IPQ) and co-operative models (American Fisheries Act)—- before approval of a rationalization program.
9. MSA should provide for mechanisms that will encourage co-management of marine resources between state and Federal agencies and rural fisheries dependant coastal communities adjacent to these resources.
10. MSA should encourage the use of Local Area Management Plans (LAMPs) as a process by which unique local problems can be addressed and localized solutions crafted.

The Magnuson–Stevens Fishery Conservation and Management Act has allowed the North Pacific and the rest of the country to manage fishery resources through the regional fishery management councils. This has been an educational and evolutionary process for all but it is a system that, in our experience, has worked for the benefit of the resource and the public. Fisheries-dependent rural coastal communities, however, have not fared as well in the council process. Like the fishery management plans (FMPs) the Act requires, the Council process needs periodic revisiting with changes and refinements. Despite these needs, it is our belief that the Magnuson–Stevens Act remains the best instrument for maintaining marine resources and for addressing regional differences and community needs in overall fisheries management.

Thank you again for this opportunity to present the views of the Gulf of Alaska Coastal Communities Coalition to the Subcommittee today. We will deeply appreciate your consideration of these views in subsequent action by the Subcommittee.

REFERENCES:

1. Environmental Assessment / Regulatory Impact Review / Initial Regulatory Flexibility Analysis for proposed Amendment 66 to the Fishery Management Plan for Gulf of Alaska Groundfish to all allow eligible Gulf of Alaska communities to hold commercial halibut and sablefish quota share for lease to community residents, North Pacific Fishery Management Council, Anchorage, Alaska, January 14, 2002.
2. "Sharing the Fish: Toward A National Policy on Individual Fishing Quotas" Committee to Review Individual Fishing Quota, Oceans Studies Board, Commission on Geoscience, Environment and Resources, National Research Council, National Academy Press, Washington DC, 1999.
3. Final Rule, Magnuson–Stevens Act Provisions: Essential Fish Habitat (EFH) Federal Register, Vol. 67, No. 12, Thursday, January 17, 2002, Rules and Regulations.

Mr. GILCHREST. Thank you, Mr. Christiansen.

Doctor—is it Matulich?

Dr. MATULICH. Close; Matulich.

Mr. GILCHREST. Matulich.

STATEMENT OF SCOTT MATULICH, PROFESSOR, WASHINGTON STATE UNIVERSITY

Dr. MATULICH. Thank you, Mr. Chairman.

For the record, my name is Scott Matulich. I am a professor at Washington State University in the Department of Agricultural Ec-

onomics. I am here today to give you a very brief overview of a research project that was just completed, funded by the State of Alaska and the Alaska Department of Fish and Game. I asked Mr. Whaley earlier to present to you a report to all of the Committee members and also to present to you a single graph, which is a color graphic that I believe you have. But I would like to talk to you to give you the bottom line from the study.

It is a complicated study. The entire report was given to you, I believe, so we are going only to the very bottom line, and we can explore anything you would like about the conclusions as you ask questions. Do you have the graphic?

[Pause.]

Dr. MATULICH. It is two graphics. They are gold cylinders. That is correct. Thank you, sir.

I would like to direct your attention to the top graphic first. It represents what happened pre- and post-IFQ in the halibut fishery in the North Pacific. First of all, it is important to note that 82 percent—this is based on a survey that covered probably 56 to 60 percent of all of the fish processed in the North Pacific, a survey of the processors, of course. Eighty-two percent of the halibut processors in terms of raw fish weight were left absolutely worse off, i.e., were damaged by the initial allocation design of the IFQ program. In 1992-93, the value of the fishery was approximately $79.3 million. That is the ex-wholesale value, first point of wholesale.

Processors retained, at that point in time, processors retained 19.6 percent or $15.5 million. That was revenues in excess of their variable costs. It is their gross operating margin. The IFQ fishery liberated the marketplace. It allowed fish that was trapped into about 83 percent frozen product form and was diverted into a fresh market, a much higher-valued fresh market after the IFQ. It doubled the value of the fishery, from $79 million to $155.5 million. Processors were left with a 56 percent loss in the value they had earned prior to that. I.e., prior to the IFQs, processors retained $15.5 million. After IFQs, the processing sector retained $6.8 million on a doubling of the value of the fishery.

The sablefish fishery was a slightly different story. Actually, it is the same story. It is a different type of product form. It stayed in a frozen product form.

Mr. GILCHREST. Just so I understand—I guess we can go through the questions later, but I do not want to get lost.

Dr. MATULICH. Fine.

Mr. GILCHREST. The processors lost out after IFQs were implemented.

Dr. MATULICH. That is correct. They lost 56 percent of their prior wealth.

Sablefish, 97 percent of the processors lost prior wealth, 97 percent. The value of the fishery was $83 million in 1992-93. Now, the graphic that you have shows that the value of the fishery was the same. That is not quite correct. It was not the same. It turns out that in the sablefish fishery, there was a stock collapse that went from 29 million pounds down to 16 to 17 million pounds. The price rose from $2.84 a pound up to $4.15 a pound. None of this had anything to do with the IFQ program, so in terms of welfare

theoretics—I am an economist at a university—I had to remove that supply effect.

But the bottom line is the processors lost 75 percent of their prior wealth. They retained—in 1992-93, they retained approximately $20.2 million. In 1999-2000, they retained just $5.1 million.

Mr. Chairman, as you can see from this, this was not win-win policy. This was win-lose policy, and it is a consequence of the initial allocation design of the harvester-only individual fishing quota system, and it is the design—it is the outcome that you will find in all IFQ programs where there is nonmalleable capital involved, nonmalleable meaning you cannot just go do something else with your capital.

And that is all I have to say. Thank you, Mr. Chairman.

[The prepared statement of Dr. Matulich follows:]

Statement of Scott C. Matulich, Professor, Department of Agricultural Economics, Washington State University

Mr. Chairman, committee members, my name is Scott Matulich. I am a Professor of Agricultural Economics at Washington State University. I am here today to provide a brief overview of a recently completed research project funded by the Alaska Department of Fish and Game. I asked Mr. Whaley to provide each of you copies of that report, entitled Efficiency and Equity Choices in Fishery Rationalization Policy Design: An Examination of the North Pacific Halibut and Sablefish IFQ Policy Impacts on Processors. The report, No. 5J02–02, should also be available on the Alaska Department of Fish and Game web site by the date of this testimony.

While this report analyses how the largest IFQ policy in the United States impacted halibut and sablefish processors, its primary purpose is to provide insight into policy choices concerning future rationalization designs of other fisheries, including transferable quota systems or fishery cooperatives. The report accomplishes this objective by examining empirically the efficiency and distributional components of the IFQ policy design. As such, the results of this empirical study have important implications for IFQ deliberations by this committee and for Magnuson–Stevens Act reauthorization.

The policy design choice centers on policy "intent," i.e., whether policy makers intend to benefit harvesters to the detriment of processors, or whether they intend to recognize the prior economic interests of both sectors by allowing both to benefit from the rationalization policy. In the case of the halibut and sablefish IFQ policy, the North Pacific Fisheries Management Council expressed no intent for the IFQ policies to advantage one sector to the detriment of the other, in either an absolute or relative sense. Nevertheless, more than 82% of the halibut processing sector and 97% of the sablefish processing sector (raw fish weight) were left absolutely worse off. Halibut processors, on average, lost more than half of their pre–IFQ gross operating margin. This policy-induced loss is even more remarkable because the gross value of the halibut fishery nearly doubled due to the IFQ policy. Sablefish processors also were left worse off, losing 75% of their pre–IFQ gross operating margin. See Figure 1. Harvesters were the beneficiaries of the IFQ policy design.

The IFQ policy design was not win-win. It did not allow the processing sector to participate in the policy benefits. In fact, most processors were left worse off in both nominal and real dollars relative to historic levels. These detrimental outcomes were unintended and avoidable.

BACKGROUND

The switch from open access to individual transferable quota management is generally regarded a resounding success because efficiency losses emanating from open access externalities are recaptured. But past analyses of transferable quota polices stop there. There has been little theoretical work and no empirical analysis of who wins, who loses and how much. Yet, these combined efficiency and distributional elements of welfare economics are essential to understanding policy design choices and to advancing desperately needed fishery rationalization policies, whether based on individual transferable quotas or fishery cooperatives. The conceptual framework for analyzing policy design choice is presented in the Appendix to this testimony.

Recent theoretical developments in the individual transferable quota literature argue that a harvester-only allocation of resource rights is beneficial to harvesters, though at the expense of the co-dependent processing sector. Six years after switch-

ing to IFQs in the two largest IFQ fisheries of the United States, there has been little evaluation of the economic impacts that the policy had upon the industry. In particular, no analysis inquired into the impacts on processors. The IFQ policy assured harvesters were left better off due to efficiency gains from fleet decapitalization and consolidation through fully compensated quota trading. Unlike the harvesters, however, the IFQ policy did not allow the pre–IFQ processing sector to be compensated for industry-wide decapitalization or to participate in the rationalization benefits, despite the fact that an overcapitalized fleet begets an overcapitalized processing sector. Simply put, the IFQ policy failed acknowledge the two sectors are inseparable elements of the open access externality that the IFQ policy intended to eliminate (Matulich, Mittelhammer and Reberte 1996 and Matulich and Sever 1999).

Both the empirical and the theoretical literature show that a quota allocation only to harvesters damages co-dependent processors. Lindner, Campbell and Bevin (1992) first raised this issue concerning unintentional redistribution during the transition to an IFQ system as an empirical observation related the New Zealand individual transferable quota (ITQ) fisheries. Matulich, Mittelhammer and Reberte (1996) developed the theoretical framework explaining why a harvester-only IFQ unintentionally transfers wealth from processors to harvesters. Fleet consolidation reduces the harvest rate, which in turn creates excess daily processing capacity and therefore, excess demand for raw fish. Processors will bid up exvessel price to utilize the policy-induced excess capacity, transferring wealth to harvesters. Gardner Brown (2000), citing both studies in his survey of modern renewable resource economics literature, distilled the central policy issue concerning ITQ management. "The rule for allocating ITQs is the crux issue and may be a stumbling block to adoption (p. 895)."

Other than the paper by Matulich and Sever (1999), there has been neither thorough nor rigorous analysis of traditional IFQ allocations or of alternative initial allocation designs. This observation is surprising, since "Advancement of rights based fishing is stymied by industry and congressional concern over distributional issues arising out of traditional ITQ design (Matulich and Sever 1999, p. 203)." In fact, distributional issues arising out of fisheries rationalization policy seem to be the cornerstone of the recently enacted American Fisheries Act (AFA). For example, Senators Stevens and Gorton clarified the legislative intent of AFA in a letter to the Honorable Janet Reno, U.S. Attorney General.

> The purpose of the legislation was to rationalize, Americanize and decapitalize the Bering Sea pollock fishery. The cooperatives established in the AFA were designed to ensure that both [emphasis added] harvesters and processors benefited from the rationalization (Stevens and Gorton 1999).

It would seem that fishery rationalization is evolving beyond the simplistic economic story that assigning transferable rights to harvesters assures gains from trade. Indeed, quota trading among vessels results in fleet consolidation that promotes efficiency. Moreover, no harvester can be made worse off because all trades are fully compensated. This is good. But what about the co-dependent processing sector that was capitalized to process the glut of fish that hit the docks following the derby-style open access fisheries?

In the case of the halibut fishery, over 5,000 vessels landed 50 million pounds in "three or four, one- to two-day openings just prior to introducing IFQs (North Pacific Fisheries Management Council 1997)." Processors were capitalized to stabilize this enormous quantity of fish before it spoiled. Introduction of IFQs liberated the market by encouraging fleet consolidation and allowing the season to elongate eight months. Instead of having to divert 83% of the halibut to a lower-value, frozen market, IFQs stimulated product conversion so that 59% of the fish is now sold in the higher-value, fresh market. Gains were made from both the market side and harvesting cost reductions arising from efficient fleet consolidation. No such product form change occurred with sablefish; it remains a frozen product destined for Asian markets. This juxtaposition of fundamentally different market outcomes provides a near-perfect opportunity to evaluate whether the ability of industry to take advantage of new market opportunities underpins differential impacts on processors.

PROJECT SUMMARY AND RESULTS

Introduction of IFQs in 1995 changed the structure and operating behavior of the halibut and sablefish processing sectors. The resulting changes in absolute and relative economic welfare were measured as changes in gross operating margins or revenues net of variable costs (more formally, changes in quasi rents) that occurred before and after IFQs. This welfare measure captures the extent to which processors participated in the benefits of rationalization. Specifically, the analysis evaluated

whether the policy left processors no worse off and possibly better off, or whether processors were left worse off. A second aspect of economic welfare considered whether processors and harvesters were relatively better or worse off, i.e., whether they shared the joint fishery benefits in the same relative proportions before and after IFQs. Both welfare measures can be decomposed into changes in market share and changes in gross operating margin as a share of wholesale price. The two-years, 1992–1993 represented the pre–IFQ period and the two-years, 1999–2000 represented the post–IFQ period.

Measuring market share changes was easy because state and Federal regulations require statewide buying data to be reported to the Alaska Department of Fish and Game, Division of Commercial Fisheries. The Commercial Operators Annual Reports were used to measure changes in market share. Measuring changes in gross operating margin, however, required knowledge of variable processing costs through the first point of wholesale. There is no requirement to report such cost data. Nor are there any cost studies or economic models to estimate variable processing costs. Accordingly, a cost of production survey was conducted. Changes in net benefits per pound of fish (i.e., changes in the fraction of wholesale price retained by processors, net of variable processing costs and raw fish costs) and ultimately, changes in sector-wide welfare, were measured as a composite of these two elements. A firm that gained or lost market share may have gained or lost absolute or relative economic well-being, depending upon the degree to which it gained or lost its retained share of the wholesale price.

All firms purchasing at least 100,000 pounds of fish in any of the four years were surveyed, while only a sample of small firms (<100,000 pounds) were surveyed. Survey coverage totaled 88% to 96% of all halibut and sablefish purchased during the four years, 1992–1993 and 1999–2000. Considerable care was given to authentication and verification of survey data. Data not collected in person from original invoices or historic source documents (i.e., sales and production summaries and general ledgers) were authenticated and verified as accurate by an ex post audit of historic internal financial documents and reports, including audited financial reports. An outlier test was conducted for the few participating firms that could not be verified in person. Retained survey data verified as authentic account for 52% and 61% of landed halibut (54% and 59% of landed sablefish) in the pre- and post–IFQ periods, respectively. Audit verification coverage totaled 78–93% of the survey data (measured in pounds of raw fish), depending on year.

The empirical evidence provided in this study supports the theoretical literature that a harvester-only allocation of quota redistributes wealth from processors to harvesters. The harvester-only allocation redistributed the pre–IFQ share of joint economic benefits to such an extent that the policy was not win-win.

Both halibut and sablefish processors were impacted in strikingly similar ways, despite the fact that IFQs liberated higher-value fresh market opportunities for halibut, but not for sablefish. The similar outcomes derive from the fact that fleet consolidation under a harvester-only quota allocation creates excess processing capacity and therefore, excess demand for raw fish. The exvessel price concessions required to eliminate excess processing capacity redistribute wealth from processors to harvesters, regardless of product form.

Referring to Figure 1, the pre–IFQ processing sector is estimated to have lost, on average, 56% of its 1992–1993 revenues in excess of variable costs. This loss occurred while wholesale revenues increased. The relative proportion of joint benefits retained by processors dropped 78% between the pre- and post–IFQ periods. Similarly, most of the sablefish processing sector lost revenues in excess of variable costs, though a precise estimate is somewhat more tenuous because the 46% increase in wholesale price did not fully mitigate the 12.1 million pound (41%) decrease in landings. Adjusting for this supply-side effect by holding the wholesale price and purchases at 1992–1993 levels, approximately 97% of the entire sablefish industry (raw fish weight) were financial losers. The sablefish processing sector lost, on average, 75% of their pre–IFQ revenues in excess of variable costs.

Closer examination of the halibut industry impacts portrayed in Figure 1 amplify the extent of policy-induced wealth redistribution. IFQs were responsible for nearly doubling total revenues at the first point of wholesale, up from $79.3 million to $155.5 million. The gross operating margin retained by the pre–IFQ processing sector shrank from $15.5 million to $6.8 million. The harvesting sector, on the other hand, more than doubled exvessel revenues on falling variable fishing expenses.[1]

[1] Although changes in harvesting costs and derivative gross operating margins were not measured, efficiency gains from quota trading and season elongation imply variable harvesting costs per pound dropped. The added cost of longer running distances to fresh market ports may partially offset these gains.

Revenues doubled between the pre-and post IFQ periods because the average wholesale price of halibut increased 66%, from $1.82/lb to $3.01/lb, while total catch increased 19% from 43.6 million pounds to 51.7 million pounds. Harvesters, unlike most processors, were left better off in both fisheries. They captured the entire increase in total revenues; they captured efficiency benefits of reduced harvesting costs; and they captured most of the losses incurred by the processing sector. Those harvesters that exited did so fully compensated, such that none were worse off. Those harvesters that remained increased their gross operating margin. The redistribution, both absolute and relative, was solely a consequence of the IFQ policy design.

Market share impacts were dramatic in both fisheries. Less than one-third (30%) of the halibut processing firms and slightly more than one-third (37%) of the sablefish processing firms survived IFQs. Half of these surviving halibut processors doubled their aggregate market share from 18% to 37%, while the surviving market-share losers lost more than half of their pre–IFQ market share (down from 68% to 28% of the market). Overall, surviving halibut processors lost 14% of their pre–IFQ market share; exiting firms, of course, lost 100% of their market share. Surviving sablefish processors, in contrast, gained an additional 10% share of the market. Surviving market-share winners nearly doubled their aggregate sablefish market share (up from 33% to 64%). Surviving losers lost almost half their sablefish market share (down from 45% to 24%).

The share of wholesale price retained by processors dropped dramatically for processors in both fisheries. Halibut processors lost, on average, nearly two-thirds of their pre–IFQ share of the wholesale price net of variable costs. A few surviving firms gained sufficient market share to become financially better off (at least no worse off), but participated in joint fishery benefits at a rate less than their pre–IFQ share. Prior to IFQs, halibut processors retained a 19.6% share of wholesale revenues. Following IFQs, the gross operating margin for both traditional processed halibut and fish custom processed for others dropped, on average, to 6.7%. Sablefish processors lost nearly three-quarters of their pre–IFQ share of the wholesale price, after adjusting for supply-side effects. Surviving sablefish processors lost, on average, slightly more than two-thirds of their pre–IFQ retained share of the wholesale price. Very few surviving firms gained sufficient market share to remain no worse off or to become better off. Surviving sablefish processors retained, on average, just 6.9% of the wholesale price after IFQs were introduced, down from 24.2% prior to IFQs.

IFQs encouraged significant entry of both primary processors and broker/reprocessors. These new entrants tend to be innovative, low cost (efficient) firms that have an operational advantage in not having to invest much permanent capital, or to service the associated debt. The product form change in halibut enabled new entrants, including broker/reprocessors, with relatively little capital to purchase, process and market fish. These new entrants were not responsible for the product form change. All firms faced the same profit incentive to switch toward the higher valued fresh product. Recall that the average wholesale price for halibut rose roughly 66% as the dominant product form shifted from frozen to fresh; processing costs remained roughly the same between the two policy periods and between the two product forms. Pre–IFQ firms located near the limited Alaska road system or where alternative shipping modes support the fresh market faced similar, if not identical incentives. Remote firms were less able to take advantage of the fresh market. This fact was accentuated by season elongation, which allowed vessels to travel to fresh buyers, redistributing landings toward ports that can support the fresh market.

Fifty-one new firms became primary processors/buyers of halibut, capturing one-third of the halibut market. Four of these new entrants were large (greater than or equal to 1 million pounds) that captured nearly one quarter of the post–IFQ market. Entry also occurred through brokers/reprocessors, though these firms are not reflected in the COAR data. Entry was less important in the sablefish fishery, presumably because capital cost requirements remained high. Still, twenty-five new entrants, all small firms, collectively captured 12% of the market. Broker/reprocessors remain relatively unimportant in the sablefish fishery.

Overall, this study helps clarify the policy choice among future rationalization designs by providing empirical evidence that the initial quota allocation has dramatic welfare ramifications. A harvester-only IFQ allocation (in any manifestation) does not recognize the prior economic interests of both harvesting and processing sectors. It does not allow both sectors to benefit from rationalization. Instead, a harvester-only IFQ policy benefits harvesters to the detriment of processors, precisely as an allocation of quota only to processors would damage harvesters, or an allocation of all quota only to me would damage both sectors. If rationalization policy is intended to benefit both harvesters and processors, a different initial allocation—one that ac-

knowledges prior economic interests of both sectors—is required. Preserving the opportunity for new entry in both the harvesting and processing sectors will enhance the efficiency gains from future fishery rationalization.

Limitations/Caveats

There are three important limitations/caveats to this study. First, examination of pre- and post–IFQ impacts on the processing sector does not necessarily imply causality. This analysis assumed the two-year period 1992–1993 represents an open access long-run equilibrium, consistent with the fisheries economic literature. As such, it is regarded as a reasonable proxy for both a "before" and "without" scenario in a before and after, with and without policy analysis. Nevertheless, the way in which industry restructured may be partially dependent on things other than the switch from license-limited open access to IFQ management.

Second, empirical economic analysis of fisheries policies, particularly retrospective analysis, often is problematic in U. S. fisheries because costs of production data are not collected. This study is no exception. While the changes in market share reflected all halibut and sablefish landed in Alaska, the economic component was based on an industry cost of production survey that required participants to access 10-year-old data. Inferences drawn in this study assume the survey data are representative of the entire processing sector.

Third, policy inferences from this study are intended to guide the design of future rationalization programs in other fisheries. No aspect of this study is intended for the purpose of revisiting/changing the policy designs of these two Alaska IFQ programs. Rather, this study is premised on the principle that once the rules of an IFQ program are established and individuals make investments based on those rules, changing the rules in fundamental ways can strand assets and create losers in much the same way as an initial allocation of quota only to harvesters damaged processors.

[Attachments to Dr. Matulich's statement follow:]

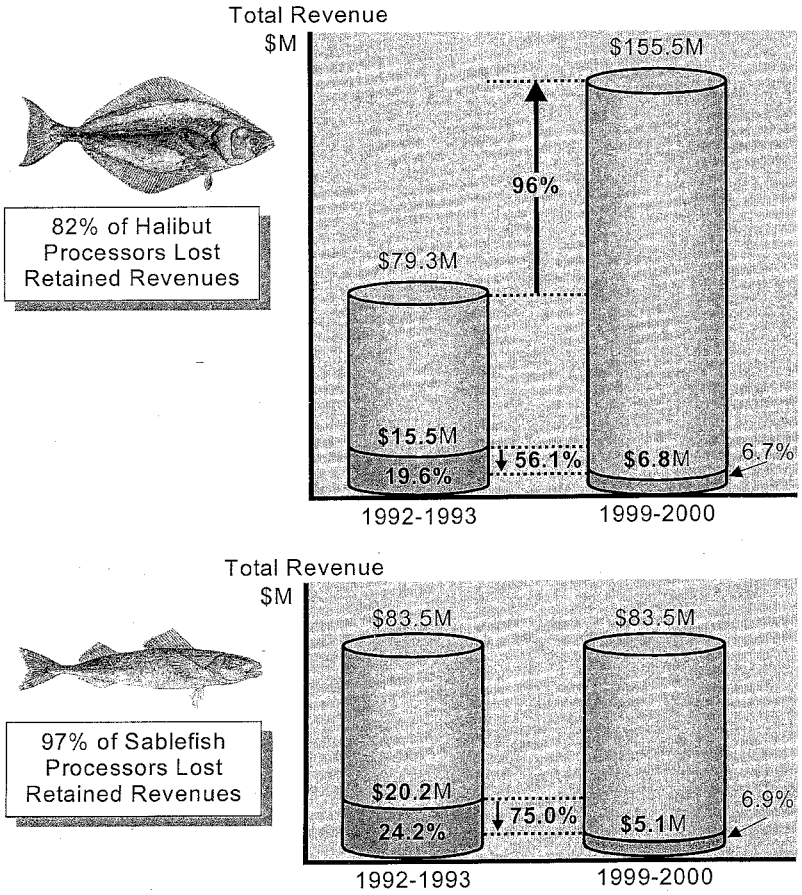


Figure 1. Changes in Industry-Wide Total Revenue Before and After Alaska Halibut and Sablefish IFQs: Impacts on Processors' Gross Operating Margins.

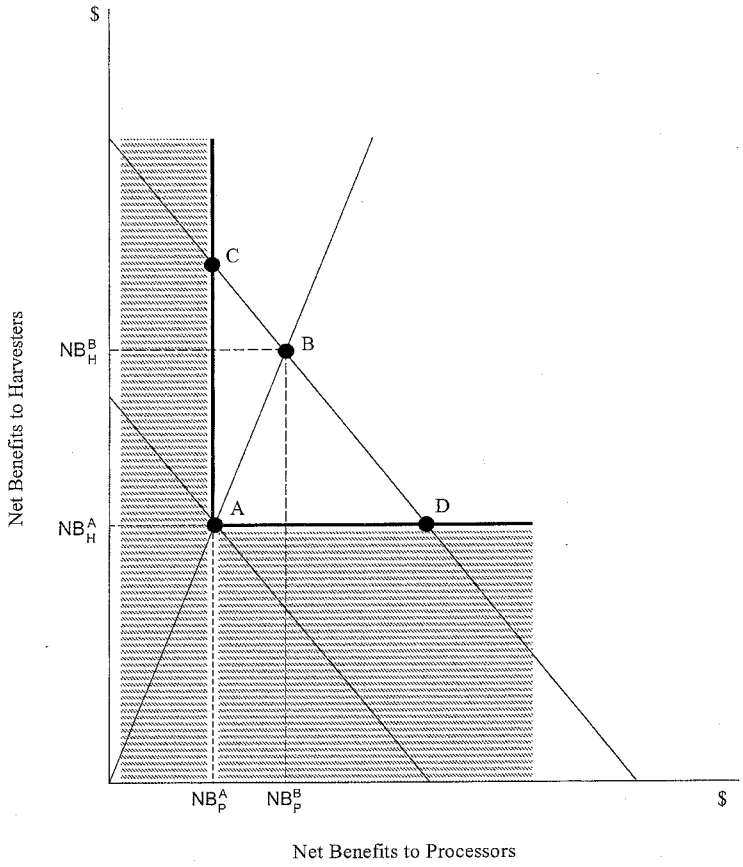


Figure 2. Potential Efficiency and Distributional Impacts of Rationalization Policy Design.

APPENDIX

CONCEPTUAL FRAMEWORK FOR POLICY DESIGN

The essence of policy design choice and evaluation of policy outcomes are conceptualized in Figure 2. This figure illustrates both the efficiency and distributional components of welfare economics that can arise from different rationalization policy designs. The vertical axis measures net economic benefits to harvesters (NB_H), i.e., revenues in excess of variable costs, while the horizontal axis measures net benefits to processors (NB_P). Let point A be the initial distribution of net benefits between the two sectors under a long-run, open access equilibrium. The downward sloped, 45-degree line passing through A, therefore, defines how the level of open access efficiency (joint benefit) is divided between harvesters and processors. Every point on that 45-degree line represents the same level of joint or composite benefits and thus, the same level of overall efficiency. At point A, harvesters earn NB_H^A and processors earn NB_P^A. Any other point along that line indicates a different distribution of the same initial total welfare, $NB_H^A + NB_P^A$.

An outward shift of the downward sloping 45-degree line represents the efficiency gain due to rationalization. If both sectors share in the rationalization benefits in the same relative proportions as under open access $\left(NB_H^A/NB_P^A\right)$, then, efficiency gains would occur on the ray out of the origin through point A. Point B represents such an outcome, where $NB_H^A/NB_P^A = NB_H^B/NB_P^B$.

Two other aspects of this diagram are important to understanding the welfare implications of rationalization policy design. The vertical and horizontal lines emanating from point A define the "win-no-lose" boundaries for processors and harvesters, respectively. Along these boundaries, efficiency gains accrue only to one of the sectors without adversely or beneficially impacting the other sector. For example, point C indicates all of the efficiency gains accrue to harvesters without changing the net benefits retained by processors. Point D reverses the policy beneficiaries; processors capture all efficiency gains from rationalization, while harvesters are left no worse off. The area north and east of the win-no-lose boundaries defines the win-win policy space, where the economic well being of both sectors is improved by the rationalization policy, i.e., both sectors benefit from rationalization. Conversely, any outcome in the crosshatched area leaves one or both sectors worse off. All points left of the vertical win-no-lose line leave processors absolutely worse off, earning lower net benefits than they did under open access. All points below the horizontal line leave harvesters worse off. All points below the initial 45-degree line are inefficient (lower joint benefits) and leave one or both sectors worse off.

Figure 2 focuses the policy design choice on "intent," i.e., whether policy makers intend to benefit one sector to the detriment of the other, or whether they intend to recognize the prior economic interests of both sectors by allowing both to benefit from the rationalization policy. A related design issue concerns political economy. If either sector has political veto power over detrimental policies (the crosshatched area), passage of a particular rationalization policy is at risk. Absent explicit intent to leave one sector worse off, it follows that the default policy designs lead to outcomes in the area, north and east of the win-no-lose boundaries—win-win fishery rationalization policy. Efficiency would be maximized, subject to other social objectives, and both sectors would participate in the benefits anywhere between points C and D. Only at point B would the relative share of joint policy benefits be distributed in precisely the proportion fishery benefits were shared under open access.

Mr. GILCHREST. Thank you.
Dr. Halvorsen?
Dr. HALVORSEN. Yes.
Mr. GILCHREST. Welcome.

STATEMENT OF ROBERT HALVORSEN, PROFESSOR, DEPARTMENT OF ECONOMICS, UNIVERSITY OF WASHINGTON

Dr. HALVORSEN. Thank you for inviting me.
Mr. GILCHREST. Is there any competition between Washington State University and the University of Washington?
Dr. MATULICH. May I answer that?
[Laughter.]
Dr. HALVORSEN. There was not before today, but it is about to start.
[Laughter.]
Dr. HALVORSEN. Thank you for inviting me to present testimony here today. I have submitted some written testimony, and my comments draw upon that, and most of the details that I will be talking about, some of which are analytical, are in that written testimony. But I will summarize my conclusions.

And specifically, what I want to discuss is the case that has been made for Individual Processor Quotas (IPQs) in a fishery. The case has been essentially constructed by Professor Matulich over the past few years in a series of articles and testimony, concluding most recently 2 minutes ago. And what I want to do is briefly outline the basic elements that make up this case and then come back to discuss each one in turn. My conclusion is that the elements themselves are often flawed, and the case as a whole simply does not stand. And I was truly surprised to find out that the IPQs might be considered as something to be nationally mandated for all IFQ programs, because the case for them, in fact, is, I feel, extremely weak.

I should say I am going to be criticizing the case for IPQs. I am not going to be criticizing Professor Matulich. I may say his name repeatedly because he is, I think, the sole proponent for this case. Therefore, I can say Professor Matulich says this or that, and I disagree, I am disagreeing with the literature produced by Professor Matulich, so I am disagreeing with him.

The elements of his argument are as follows: IFQs create efficiency. They may cause losses to processors, so processors may try to block IFQs. Then, you would not attain the efficiency. Processors would not block IFQs if the program was Pareto-safe, meaning nobody would lose, and using a two-pie allocation would ensure that they were Pareto-safe. That is a brief summary of Professor Matulich's position.

And I will have to say this pretty quickly: I certainly agree that IFQs create efficiency, so we agree on that part. But whether or not they cause losses to processors has not been established, even despite the latest evidence you were given today. In a theoretical article, one can show under certain circumstances—very competitive fisheries; processors who take what they get, so to speak—the processors may lose out. But that does not necessarily describe a real-world fishery.

The pollock fishery which I studied in depth for the North Pacific Fishery Management Council does not fit that model, for example. Quite a bit of my written testimony summarizes the reasons why processors have significant bargaining power in that fishery and why, had there been more or less a pure IFQ, a cooperative version of an IFQ program, they would not have necessarily lost. And other studies—there have not been enough of them—but other analytical studies of real world fisheries do not support this case for processor losses.

Professor Matulich presented an empirical case just now, but unfortunately, I believe he is mischaracterizing his results. As I understood from reading the paper, it addresses something called unit quasi-rents and whether they went up or down, but that is not the same thing as wealth. It is not the same thing as profits. Whatever the results one obtains for that funny-sounding concept, using quasi-rents does not indicate anything about profits. It is quite possible for processors' quasi-rents to go down at the same time as their profits are going up.

In regard to the problem that processors might impede implementation of IFQs, I think the councils already have ways of enhancing processors' positions if they think that is necessary in order to obtain a desirable negotiated solution, and they have some experience using them. The idea of Pareto-safety is that nobody will lose. This is an idea that has been around in economics for 150 years but has been rejected as any practical criterion for public policy. It is simply not used in mainstream economic analysis, mainly because it is unattainable, and even if it was attained, I think it is naive to think that just being told that they could not lose would mean that processors would no longer care about trying to enhance their position in an IFQ program.

Last, the two-pie system does not guarantee Pareto-safety. Professor Matulich's analysis for the perfectly competitive case, which is the one in which he initially showed the processors might lose, concludes itself that two-pie would not be Pareto-safe. He then does an analysis of a bilateral monopoly where you have one buyer and one seller and claims to prove it would be true in that case, but the proof is just technically invalid, as discussed in my written testimony.

Therefore, I do not think there has been any case made for IPQs; certainly not a case that justifies using them on a national basis or imposing them. And as I have heard many people say today, I strongly support the idea of leaving regional councils with flexibility, given the great differences across fisheries. How necessary it might or might not be to compensate processors and how effective various methods might be in different fisheries is going to vary, and I do not think national standards and national mandates should be applied on that issue.

Thank you.

[The prepared statement of Dr. Halvorsen follows:]

Statement of Robert Halvorsen, Professor of Economics, Department of Economics, University of Washington, on Behalf of the Crab Rationalization and Buyback Group

Executive Summary

My testimony addresses the issue of whether the guidelines for Individual Fishing Quota (IFQ) programs should require explicit mechanisms to ensure that processors are compensated for losses they might incur as a consequence of the introduction of IFQs. I begin by discussing the importance of market structure in determining the effects on processors and harvesters of rationalizing a fishery, with the primary emphasis placed on the effects of an IFQ program in which quota shares are allocated only to harvesters.

To illustrate the importance of market structure and the balance of bargaining power on the outcomes of a rationalization program, I review a recent analysis of the BSAI inshore pollock fishery that was prepared for the North Pacific Fishery Management Council (Halvorsen, Khalil, and Lawarrée 2000). The analysis demonstrates that market structure is critical in determining the distributive outcomes of IFQ programs. Because the characteristics of market structure differ greatly across fisheries, the distributive effects of rationalization policies require fishery specific analysis. It is concluded therefore that decisions concerning the desirability of mechanisms to compensate processors for potential losses, and the type of mechanism that is most appropriate, should also be fishery specific, rather than attempting a "one-size-fits-all" approach.

Next I discuss the rationales that have been advanced for compensating processors for any losses that they may incur as the result of a rationalization program. My primary emphasis is on the argument that if processors are not compensated they may block the implementation of a rationalization program, with the result that the potential efficiency gains from the program cannot be realized. I note that there are several problems with this argument. First, attempts to block a program unless distributive outcomes are altered may simply reflect an attempt to increase the size of already positive net benefits, rather than to avoid losses. Second, if harvesters become concerned that the attempt to keep processors safe from harm will result in losses for harvesters, they may also try to block implementation. Lastly, when efforts to hinder implementation are rewarded, an incentive is created for increased obstructive behavior in the future.

Following this general discussion, I consider two recently proposed concepts that have received a considerable amount of discussion in the context of rationalization programs in North Pacific fisheries. One is that rationalization programs should satisfy the criterion of being "Pareto safe," which requires that no fishery entities be made worse as a result of rationalization. The other is that an IFQ program should also involve the allocation of Individual Processor Quotas (IPQs) in what has come to be known as the "two-pie" approach.

The two concepts are linked in that the two-pie system has been advocated by Matulich and Sever (1999) as a feasible way of achieving Pareto-safe rationalization in at least some policy-relevant situations. In particular, Matulich and Sever claimed to have proven that a two-pie allocation would be Pareto safe in a bilateral monopoly, that is, a fishery with only one harvester and one processor, and asserted that their analysis of this case would be applicable to the BSAI inshore pollock fishery because it "emulated" a bilateral monopoly. However, neither of these claims is correct. First, as discussed in Halvorsen, Khalil, and Lawarrée (2000), the characterization of the BSAI inshore fishery as a bilateral monopoly was highly misleading because it ignored critical elements of the inshore fishery's market structure. Second, and more importantly, my testimony shows that the claimed proof that a two-pie allocation would be Pareto safe in a bilateral monopoly is invalid. Therefore, even if a real-world fishery could be found that was a bilateral monopoly, there is no reason to believe that a two-pie allocation would be Pareto safe.

Since there are no other market structures for which the Pareto safety of a policy feasible two-pie system has even been asserted, no credence should be given to claims that a two-pie system is a "policy-superior initial allocation of rights" (Matulich, Mittelhammer, and Reberte 1996, page 112). Instead, the inclusion of IPQs in a fishery rationalization program should be viewed as simply one possible mechanism for enhancing outcomes for processors, bearing in mind that the possible outcomes under IPQs have received very little credible economic analysis and are untested by experience in any real-world fishery.

Evaluations of the appropriateness of allocating IPQs as part of a specific rationalization program should include (i) an assessment of whether compensation for processors is desirable, given the characteristics of the specific fishery, in particular

the balance of bargaining power, and (ii) the relative merits of IPQs versus other possible compensation programs, given the characteristics of the specific fishery.

Accordingly, it is desirable that regional councils have flexibility in deciding whether, and how, processors should be compensated for possible losses arising from a fishery rationalization program. Therefore, I recommend that the national standards for fishery conservation and management not require that IPQs or other specific compensation mechanisms be included in future fishery management plans and regulations.

1. Introduction

My testimony addresses the issue of whether the guidelines for Individual Fishing Quota (IFQ) programs should require explicit mechanisms to ensure that processors are compensated for losses they might incur as a consequence of the introduction of IFQs. I will discuss in turn the conditions determining the probability, extent, and incidence of such losses, and the efficiency and equity rationales that have been advanced in favor of compensation.

I will pay particular attention to two recently developed concepts that have received a considerable amount of discussion in the context of rationalization programs in North Pacific fisheries. One is that rationalization programs should satisfy the criterion of being "Pareto safe," which requires that no fishery entities be made worse as a result of rationalization. The other is that an IFQ program should also involve the allocation of Individual Processor Quotas (IPQs) in what has come to be known as the "two-pie" approach. The two concepts are linked in that the two-pie system has been put forward as a feasible way of achieving Pareto-safe rationalization in at least some policy-relevant situations by Professor Scott Matulich and his co-authors (Matulich, Mittelhammer, and Reberte 1996, Matulich and Sever 1999).

2. The Effects of IFQ Programs on Processors

Unless specified otherwise, the phrase "IFQ program" will refer to a program in which IFQs are allocated only to harvesters. In analyzing and predicting the effects of such an IFQ program on the well-being of processors, it is critical to take into account the specific conditions of the fishery being considered.

One important set of conditions concerns the market structure of the fishery. The first analyses to emphasize the possibility of processors incurring losses as a result of the introduction of an IFQ program (Plesha and Riley 1992, Matulich, Mittelhammer and Reberte 1996) assumed that the fishery was perfectly competitive, the end of the race for fish created excess processing capacity with no alternative uses, and the firms in the industry were not vertically integrated (that is, processors did not own harvesters or vice versa). Given these assumptions, they conclude that processors would be made worse off by an IFQ program because they would fail to obtain any of the rents from fish and would also lose part of the value of their capital.

However, if all other circumstances were the same, but processors and harvesters were vertically integrated (as for example in a fishery comprising only factory trawlers), then processors could not be made worse off because they would receive the full benefits of the rationalization program (Matulich and Sever 1999). In a mixed case, with some processors vertically integrated and others not, the incidence of gains and losses might differ by type of entity, with non-integrated processors being more susceptible to suffering losses than integrated (Halvorsen, Khalil, and Lawarrée 2000).

Perfect competition is one of the standard models used in economic analyses, in part because of its analytical simplicity. Examples of other standard models familiar from economic theory include monopoly (a single harvester facing perfectly competitive processors), a monopsony (a single processor facing perfectly competitive harvesters), and a bilateral monopoly (a single harvester facing a single processor). In the first case, the monopolist would obtain all the net benefits of the fishery, in the second case the monopsonist would, and in the third case the division of net benefits would depend, among other things, on the alternative opportunities available to the participants.

These three standard models also have the advantage of analytical simplicity, but are not in general directly applicable to the analysis of the effects of IFQ programs for two reasons. First, the characteristics of the market structures of real-world fisheries are more complex than such simple theoretical models imply. And second, if a fishery did conform to one of these model specifications, then it would be expected to be capable of maximizing aggregate net benefits on its own, which would preclude the development of a race for fish. For instance, a monopolist harvester would optimally allocate its fleet over time rather than engaging in a race to fish

between its own vessels. Accordingly, rationalization programs such as an IFQ program would be redundant.

However, consideration of these standard models does illustrate the wide range of results possible with respect to the division of the net benefits of a fishery, and therefore the need to take market structure into account when assessing the effects of an IFQ program on the participants in the fishery. Also, to the extent that a fishery being considered for an IFQ program has characteristics similar to a standard model, some inferences may be drawn about the probability that processors could be adversely affected by the implementation of the program. For example, other things equal, implementing an IFQ program in a fishery with very few processors and many harvesters is less likely to result in processor losses than in a fishery with many processors and harvesters.

More generally, these examples suggest the importance of bargaining power in determining the distributive effects of an IFQ program, and therefore the need to use the tools of game theory to assess the possible outcomes of a particular IFQ program. These tools include cooperative bargaining theory (e.g., Nash 1953) and non-cooperative bargaining theory (e.g., Osborne and Rubinstein 1990). A recent example of an analysis of a fishery using cooperative and non-cooperative bargaining theory is Halvorsen, Khalil, and Lawarrée (2000). This analysis, which was prepared on behalf of the North Pacific Fishery Management Council, considered the prospective distribution of net benefits from rationalization of the inshore sector of the Bering Sea/Aleutian Islands (BSAI) fishery under the American Fisheries Act (AFA).

Although most of the specific results of the analysis are directly applicable only to that particular fishery, a brief review of the main elements of the analysis is useful to illustrate the issues involved. The review also will be useful as background for the evaluation of the two-pie allocation, which was initially discussed in the context of the inshore pollock fishery.

Halvorsen, Khalil, and Lawarrée evaluated, and rejected, the suitability of several standard economic models that had been proposed for application in the inshore pollock fishery. For example, Wilen (1998) had argued that the inshore fishery was best characterized as a single monopsony, in part because of the dominant position of two firms in the main market for surimi products. Halvorsen, Khalil, and Lawarrée concluded that Wilen's analysis substantiated the hypothesis that processors had significant market power, but that the fishery was not a monopsony.

One reason given for rejecting the conclusion of monopsony was that for the processors to behave as a monopsony they would have to overcome serious economic and legal difficulties associated with being a successful cartel. Also, there was evidence that the processors had not always acted in a united way, as they would have if they were a monopsony. For example, when the Bering Sea Marketing Association (BSMA) went on strike against several processors in 1999, the largest processor in the fishery, which was not a party to the negotiations, had its fleet continue to fish, making prolongation of the strike too costly to both the members of the BSMA and their processors. The existence of the BSMA also argued against the conclusion that the inshore sector was a monopsony, because its collective bargaining is not consistent with harvesters acting as passive price takers. Lastly, as noted above, an effective monopsony would have been capable of substantially rationalizing the fishery without the intervention of the AFA.

The existence of the BSMA was considered especially important by Matulich and Sever (1999), who argued that it implied that the inshore sector was a single bilateral monopoly. They claimed that the dissemination of price information to each processor by the marketing association during the course of negotiations allowed the processors to unify even though they were not sharing information among themselves. In other words, Matulich and Sever were claiming that the BSMA, acting as the representative of independent catcher vessels, unwittingly made it possible for the processors to unite against its own clients.

One serious factual problem with Matulich and Sever's analysis is that the BSMA did not represent all of the independent catcher vessels, and the largest processor was not a party to the negotiations. Also, the theoretical analysis left two critical questions unanswered. First, why would the marketing association not take advantage of the processors' lack of communication and play one against the other by misrepresenting received price offers? Second, even if it did not do so, why would information on prices be sufficient to allow the processors to overcome the other economic and legal difficulties hindering their behavior as a single agent?

Another critical factual problem with Matulich and Sever's analysis is that it ignored the existence of substantial vertical integration in the fishery. Based on National Marine Fishery Service data, processor controlled vessels harvested approximately half the total allocation of catch to the inshore sector. This makes the exist-

ence of a united harvesting sector implausible, because processor controlled vessels would be subject to conflict of interest issues and could not be expected to consider only the effects on harvesters of the results of negotiations with processors.

Furthermore, the degree of vertical integration was not uniform across processors. For example, two of the largest processors, which together accounted for about two-fifths of the total inshore catch, were estimated to obtain more than eighty percent of their fish from their own processor controlled vessels, whereas another large processor, with about one-fourth of the total inshore allocation, obtained virtually all of its fish from independent catcher vessels. The differences in the degree of vertical integration implied differences in the effects of a given negotiated outcome, complicating any effort of the processors or harvesters to act in unison.

Based on their assumption that the inshore sector was a bilateral monopoly, Matulich and Sever (1999) recommended that a two-pie rationalization approach be implemented, and claimed that it would result in a Pareto-safe distribution of net benefits.

However, as discussed in section 5 below, Matulich and Sever's theoretical analysis of the two-pie system under bilateral monopoly is fundamentally flawed, and their conclusion that it would guarantee a Pareto safe outcome is simply incorrect. Furthermore, even if their analysis of a two-pie program under bilateral monopoly had been correct in theory, advocacy of this particular policy approach for this specific fishery was based on a highly misleading characterization of the fishery's market structure.

Halvorsen, Khalil, and Lawarrée (2000) used concepts from game theory to evaluate the nature of competition in the industry, and the resulting balance of bargaining power. They concluded that the processors had a number of important bargaining advantages. The large portion of the harvest caught by processor controlled vessels reduced the reliance of the vertically integrated processors on supply from independent catcher vessels, while also providing processors an informational advantage because the independent catcher vessels they bargained with did not own inshore processing plants. Also, because the processing sector was highly concentrated and new entry was prohibited under the AFA, processors would be expected to realize that aggressive tactics yielding short-term gains were unlikely to be profitable in the long-run. Independent catcher vessels did have one bargaining advantage in that they were able to legally bargain as a group. However, it was concluded that on balance the processors had substantially more bargaining power than independent catcher vessels.

The Halvorsen, Khalil, and Lawarrée analysis noted that rationalization of the inshore pollock fishery was expected to result in a large increase in the effective amount of processing capacity, which would provide more opportunities for processors to engage in aggressive competition, but the long-term incentives for refraining from doing so would remain. Therefore they concluded that the rationalized fishery would be characterized by "moderate but not cutthroat competition" among processors.

These conclusions concerning bargaining power were then applied to analyze two alternative rationalization programs being considered by the Council: processor-specific cooperatives (an implicit processor compensation mechanism) and the Dooley–Hall proposal for non-processor-specific cooperatives (an approximation to IFQs). Halvorsen, Khalil, and Lawarrée concluded that there was a significant probability that some independent catcher vessels would be adversely affected by the requirement of processor-specific cooperatives. They also concluded that the Dooley–Hall proposal would be more favorable to independent catcher vessels, and less favorable to processors, than the processor-specific cooperatives.

Their conclusions concerning the relative bargaining power of harvesters and processors in the inshore BSAI pollock fishery would also have been relevant to the analysis of the effects on processors of alternative rationalization programs including IFQs. However, it is important to note that the conclusions were based on the conditions in this specific fishery. Because market structure is critical in determining the distributive outcomes of IFQ programs, and the characteristics of market structure differ greatly across fisheries, the distributive effects of rationalization policies require fishery specific analysis. Accordingly, decisions concerning the desirability of mechanisms to compensate processors for potential losses, and the type of mechanism that is most appropriate, should also be fishery specific, rather than attempting a "one-size-fits-all" approach.

On the other hand, the basic principles underlying the recommendation that processors should be compensated for losses arising from fishery rationalization programs can be addressed at a general level. The following section discusses the principal arguments that have been made in support of compensation based on considerations of efficiency and equity.

3. Rationales for Compensation

One rationale advanced for compensating processors for possible losses is that not doing so could have adverse consequences for economic efficiency by creating impediments to the implementation of efficiency-enhancing rationalization programs. This possible source of inefficiency is emphasized by Matulich, Mittelhammer, and Reberte (1996). Having concluded that processors could suffer losses as the result of the introduction of IFQs in a perfectly competitive fishery, they note (page 112), "These losses could promote political gridlock and jeopardize adoption of an ITQ policy unless they are fully compensated or redistribution is avoided by a policy-superior initial allocation of rights to both harvesters and processors."

This argument assumes that processors do not have enough economic bargaining power in rationalized fisheries to avoid losses, but do have enough political bargaining power to block efficiency-enhancing rationalization programs. However, as the Halvorsen, Khalil, and Lawarrée analysis of the BSAI pollock fishery indicated, processors may in fact have more bargaining power than harvesters in some real-world fisheries.

Therefore, a situation in which processors seek rent-enhancing mechanisms as the price of agreeing to rationalization programs may simply reflect the desire of processors to obtain a larger share of the net benefits the program would create, rather than that they are seeking to protect themselves from suffering losses. Under these circumstances, utilizing mechanisms to enhance the processors' share of the net benefits could actually create new impediments to the implementation of rationalization programs by causing harvesters to fear that they would lose out from the implementation of the program.

The history of the American Fisheries Act is instructive in this regard. Rationalization of the BSAI pollock fishery was based on the creation of harvesting cooperatives. Processors in the inshore sector expressed concern that cooperatives might put them at a bargaining disadvantage. In response, the AFA rules for cooperatives required that they be processor-specific, and that membership in the cooperative for each processor was limited to vessels that were qualified for that processor, as determined by where a catcher vessel had previously delivered the largest share of its total catch.

In response, an association of independent catcher vessel owners expressed concern that the AFA rules for inshore cooperatives would harm them because of the restrictions placed on where they could market their fish, and proposed an alternative set of rules known as the Dooley–Hall proposal. Resolution of this conflict required extensive hearings before the North Pacific Fisheries Management Council. In addition, concerns were raised about the effects of processor-specific cooperatives on small entities as defined in the Regulatory Flexibility Act.

Another possible disadvantage of responding to processors' resistance to the adoption of a rationalization program by incorporating mechanisms to enhance their position is that doing so might have adverse efficiency consequences in the longer run. If it appears that policy makers are willing to appease opponents of rationalization by enhancing their rewards, this will provide incentives for increased obstructive behavior in the future, and thereby imperil the implementation of rationalization programs in other fisheries.

The other principle rationale for compensating processors against possible losses is that it would be inequitable not to do so. For example, Plesha and Riley (1992) and Matulich, Mittelhammer, and Reberte (1996) argue that there is a Fifth Amendment "taking" issue if the rationalization of a fishery results in losses for processors.

Without attempting to address the implied legal issues, some observations can be made on whether investment losses from rationalization are inequitable from an economic point of few. It seems unlikely that the investments assumed to be at risk from rationalization were made with the anticipation that the race for fish was certain to be the long-run equilibrium outcome for the fishery in question. Faced with an uncertain future, processors' investment decisions can be assumed to have taken into account the possibility of various alternative scenarios, including regulatory policies to end the race for fish. Accordingly, investment decisions would be optimized to reflect trade-offs between the various possible future outcomes. For example, there might be a trade-off between further increasing investment in capacity in order to secure competitive advantages by, for example, deterring the entry of new processing firms into the fishery, versus the advantage of having the smaller amount of capacity that would be optimal if the race for fish were ended. It is not clear why losses that had been anticipated to occur under a particular scenario should instead be compensated on equity grounds when that scenario turns out to be the actual outcome.

Another equity issue concerns the distribution of net benefits within the processing sector. For example, as noted above, in a processing sector comprising some

firms that are vertically-integrated and some that are not, the non-integrated processors would be more susceptible to suffering losses from rationalization than would the integrated processors. But the choice to not be vertically-integrated presumably reflects a judgement by these firms that they obtained enough economic advantages by refraining from acquiring harvesting capacity to compensate for the increased risk of losses if the fishery were rationalized. Adopting a policy to compensate all processing firms for possible losses would change the anticipated benefits and costs of these business decisions after the fact and thereby effectively discriminate in favor of the non-integrated firms, partly at the cost of harvesters.

Matulich and Sever (1999) use the term "Pareto safe" to refer to the concept of a rationalization program that is "equitable in the sense of not redistributing status quo ante wealth of historical participants" (page 204). They then argue that if a rationalization program is not Pareto safe, "politically powerful interest groups may form to block a switch to ITQ management, jeopardizing the efficiency benefits of rights-based fishing (page 215). The desirability, and feasibility, of relying on the concept of Pareto safety in designing and evaluating fishery rationalization polices is discussed in the following section.

4. Pareto Safe Rationalization

Although the term "Pareto safe" appears to have originated in the writings of Matulich and his co-authors, essentially the same concept has been long known in the economic policy analysis literature as the Pareto criterion. "The logical criterion for proving that a policy change, or any other change, is beneficial was first stated by a nineteenth century Italian social scientist, Vilfredo Pareto. Pareto's rule is very simple: Program X improves the welfare of the society if it makes at least one person better off and no one worse off." (Gramlich 1990).

The recommendation by Matulich and his co-authors that fishery rationalization policies should be required to be Pareto safe is equivalent to saying that they should satisfy the Pareto criterion. However, the Pareto criterion only provides information on a policy's effect on economic welfare when the policy would result in no individual being made worse off. A policy that involved small losses to one individual, and large gains to many others, would fail the Pareto criterion, even though it might have a large positive effect on economic welfare. And virtually all feasible public policies result in at least one individual being made worse off.

This has led to the general rejection of the Pareto criterion as a practical basis for evaluating public policies. As Ng (1984, page 1033) summarizes, "The Pareto criterion is widely accepted as a sufficient condition for an improvement in social welfare.—However, most, if not all, changes in the real world involve making some better off and some (no matter how small the number) worse off. Thus the Pareto criterion in itself is of little practical use."

The practical difficulties of trying to implement Pareto safe fishery rationalization policies can be illustrated by considering the effects on individual harvesters of implementing an IFQ program. Matulich, Mittelhammer and Reberte (1996, page 112) indicate that an IFQ policy would be Pareto safe within the harvesting sector, because "endowing individual harvesters with fully transferable, permanent, and exclusive fishing rights is tantamount to assigning property rights over the fish stock...[an important benefit]...arises out of gains from free trade in which more efficient users of the resource are able to purchase rights from less efficient users. Such trade fully compensates the sellers." While this is a reasonable summary of the efficiency arguments in favor of IFQs, it does not provide a basis for concluding that no individual harvesters are made worse off.

There are at least two ways in which individual harvesters can be made worse off under an IFQ program. First, it is not feasible to ensure that the original distribution of quota among harvesters matches their actual participation in the fishery. For example, a standard procedure is to base quota share allocations on catch history over some historic period. If a participant's harvest was unusually low during all or part of that period he may not receive sufficient quota to leave him as well off as before. Similarly, if the catch history period is not fairly recent, a large proportion of the quota shares may go to individuals no longer active in the fishery rather than to those currently active (see, for example, North Pacific Fishery Management Council 2002, Appendix 2–7, page 8). Second, the assumption that the price of quota will fully compensate the sellers depends on the implicit assumption that the market for quotas is perfectly competitive, which need not be the case (Anderson 1991).

It should be noted that similar issues could arise in a program involving the allocation of individual processor quotas. The allocation of the quotas might not reflect an individual processor's actual participation in the fishery, for example if a facility was incapacitated during part of the historic period used to determine shares. And

fisheries with a small number of processing firms, or a few large and many small firms, are particularly susceptible to market imperfections that might prevent the price of a quota from fully compensating the seller.

Thus the Pareto safe concept is not of much practical help in evaluating the effects of fishery rationalization programs at the individual participant level. Matulich and his co-authors in fact rarely refer to applying the Pareto safe concept at this level, but instead focus on Pareto safety at the level of the aggregate harvesting and processing sectors. In particular, as noted above in section 3, they suggest that a rationalization policy is unlikely to be adopted if it would create uncompensated losses for the processing sector.

Matulich, Mittelhammer and Reberte (1996, page 126) speculate that a Pareto safe allocation might be obtained under a "symmetrical rights distribution" and suggest, "Candidates worthy of consideration include (i) a split of harvest quota shares between fishers and processors; (ii) a "two-pie" allocation, in which catching rights are awarded to fishers and processing rights are awarded to processors; and (iii) full-utilization quota shares."

Matulich and Sever (1999) investigate the properties of the first two of these proposals, referring to the first one as a "one-pie split allocation." They first consider the application of the one- and two-pie allocations to a fishery that is perfectly competitive and conclude that neither type of allocation is capable of providing policy feasible Pareto safe outcomes. They then consider the application of these allocations to a bilateral monopoly, after asserting that the BSAI inshore pollock fishery "appears to emulate bilateral monopoly" (page 212). The one-pie allocation is again concluded to not be capable of providing policy feasible Pareto safe outcomes. However, they claim to prove that the two-pie system would be Pareto safe not only at the aggregate level but also at the level of individual participants. The validity of this remarkable claim is discussed in the following section.

5. Two–Pie Allocations and Pareto Safety

Matulich and Sever's alleged proof that a two-pie allocation would be Pareto safe in a bilateral monopoly is based on a series of dubious assumptions. The first is their assumption that the bilateral monopoly would be able to negotiate an ex vessel price that maximized joint profits under conditions of a race for fish, but would be unable to negotiate rationalization measures that would end the race for fish and thereby increase the potential joint profits. No explanation is given for this assumed constraint on the bilateral monopoly's ability to maximize joint profits. Instead it is simply implicitly assumed that the race for fish can be ended only by an externally imposed rationalization program.

In their analysis of the two-pie allocation, efficiency is assumed to be attained through quota trading, and to be independent of the bargained ex vessel price. In particular, they note that the ex vessel price might be outside of the Pareto safe range. However, they argue that the actual price will fall within the Pareto safe range because (page 214):

> "While the efficient price does not guarantee Pareto safety, intrinsic bargaining behavior should, provided the bargaining association is responsive to the well being of its entire membership. Bargaining agents have internal incentives to negotiate a price that not only maximizes joint profits (efficiency) but also leaves no member worse off. "at least one Pareto-safe price exists—the open access exvessel price, P^0...As long as the parties desire to reach a Pareto-safe agreement, they can do so by settling on a rent share that implies P0 as the ex vessel price. Thus, there are no functional impediments to achieving an efficient price that is also Pareto safe."

Matulich and Sever then use the Nash (1953) bargaining solution concept to indicate how the rent shares might be determined, given that "the bargaining agents are assumed to act so as to leave no member worse off under ITQs relative to open access" (page 214). Thus solution of the Nash model does not form part of the proof, but instead is performed under the assumption that the price must fall with the Pareto safe range.

In short, their "proof" really just consists of the assumption that bargaining agents will want and be able to set prices that are Pareto safe for all their members. This assumption is merely asserted, rather than derived from economic theory, and is unlikely to be satisfied in a real-world fishery, in which each side would contain possibly large numbers of heterogeneous participants. It is not obvious, and Matulich and Sever do not suggest, how such a difficult principal-agent problem in each sector could be structured so that the agent is constrained to leave no member worse off.

Even if it is assumed for the sake of argument that both sides of the bilateral monopoly desire agreements that are Pareto safe as among their own members, a

Pareto safe price need not be the outcome of the bilateral monopoly negotiation. This can be demonstrated using a Nash bargaining model with the outside options for both sides correctly specified.

To determine the outside option for the harvester sector of the bilateral monopoly, consider what its alternative would be if it did not reach an agreement with the processor sector. Because it would have IFQs it could harvest the fish, but the processor sector could simply refuse to process the harvest. Therefore the outside option for the harvester sector is zero rent. Similarly, the harvester sector could threaten to not fish, so that the outside option for the processor sector is also zero rent, assuming that it has no processor controlled vessels. With these outside options, there is no reason to assume that the bargaining outcome would be Pareto safe. And if the processor sector does have processor controlled vessels, the outcome could be very unfavorable for harvesters, as shown in Halvorsen, Khalil, and Lawarrée (2000).

To summarize, Matulich and Sever's claim that they have provided a proof that a two-pie allocation would be Pareto safe under bilateral monopoly is invalid, and there is no other market structure for which this claim has even been made. Therefore, no credence should be given to claims that a two-pie system is a "policy-superior initial allocation of rights" (Matulich, Mittelhammer and Reberte 1996, page 112). Instead, the inclusion of IPQs in a fishery rationalization program should be viewed as simply one possible mechanism for enhancing outcomes for processors, bearing in mind that the possible outcomes under IPQs have received very little credible economic analysis and are untested by experience in any real-world fishery.

Evaluations of the appropriateness of allocating IPQs as part of a specific rationalization program should include (i) an assessment of whether compensation for processors is desirable, given the characteristics of the specific fishery, in particular the balance of bargaining power, and (ii) the relative merits of IPQs versus other possible compensation programs, given the characteristics of the specific fishery.

Accordingly, it is desirable that regional councils have flexibility in deciding whether, and how, processors should be compensated for possible losses arising from a fishery rationalization program. Therefore, I recommend that the national standards for fishery conservation and management not require that IPQs or other specific compensation mechanisms be included in future fishery management plans and regulations.

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Mr. GILCHREST. Thank you, Dr. Halvorsen.

Dr. Matulich—

Dr. MATULICH. Very good.

Mr. GILCHREST. —are you, then, based on your study, categorically opposed to IFQs?

Dr. MATULICH. Mr. Chairman, absolutely not. All of my writings have been about trying to design better public policy, and the use of the term Pareto-safe by my colleague here on the left—

Mr. GILCHREST. The use of the what? What was that word?

Dr. MATULICH. He used the word Pareto-safe. It means win-win. Everything I have written is about how do you create better public policy by allowing both sectors to win from the policy design? So I certainly am not against individual fishing quotas.

Mr. GILCHREST. So would you say the development of an IFQ should then include a quota to the processors?

Dr. MATULICH. Mr. Chairman, you are asking me to be normative here. I am here as a professor from a university.

Mr. GILCHREST. I am asking you to be what?

[Laughter.]

Dr. MATULICH. You are asking me to make public policy calls. That is not my purview. My purview is to be an analyst. Unless you wish for me to give my personal opinion on this—

Mr. GILCHREST. Your personal opinion will do fine.

[Laughter.]

Mr. GILCHREST. This whole exchange today has been for information that we just put in this big slush fund, and then, over the next couple of weeks—

[Laughter.]

Mr. GILCHREST. —pull it out not at random but with some sense of priority, fairness, equitable, so that we can give to the councils some basis upon which they can proceed with the Magnuson Act for the next 5 years, and we are just going to let people who give testimony to have at it. And anything you want to tell us, we are ready to listen.

Dr. MATULICH. OK; first of all, I would like to address one of your intermediate comments about a slush fund. Does that mean grants are available?

[Laughter.]

Mr. GILCHREST. Susan—what is Susan's married name now?—McConkey. I will give you the number later.

[Laughter.]

Mr. GILCHREST. She is the one in our office who deals with grants.

Dr. MATULICH. In the circumstances where you have bargaining associations representing fishermen, where they are acting as a bargaining cartel, as in the case of the North Pacific Pollock Fishery, as in the case of North Pacific crab fisheries, I most certainly would suggest, as one of several options available to the council, giving processing quotas to processors and fishing quotas to fishers.

In the context of fisheries where there is not countervailing power or where there is a huge transaction cost to creating the countervailing power, meaning it is very—let us take the case of the halibut and sablefish—there were 5,000 vessels fishing for halibut in the North Pacific. It is inconceivable to me that you would have sufficient countervailing power in that particular fishery to award processors processing quota and expect them not to act mischievously with it. Because they did not have countervailing power, and I do not think they would have it after rationalization.

That does not mean that there is not a better policy design, one that does not allow the value and the wealth of these firms to be redistributed, policy-induced redistribution, from the processors to the fishermen. There are other designs that could have been conceived.

Mr. GILCHREST. Dr. Halvorsen, you said the pollock fishery, which is a coop, has worked well under that system.

Dr. HALVORSEN. No; if I said it, I was misspeaking. What I said is that in deciding how well processors may come out under an IFQ system, it is important to consider the characteristics of a particular fishery and that in a particular fishery, processors might well have the upper hand with respect to bargaining power and come out just fine in a straight IFQ program. There is no reason to think that IFQ programs imply losses for processors.

As an example of that, I use the fishery with which I am most familiar, the pollock fishery, in which two colleagues and I were asked by the North Pacific Fishery Management Council to examine the issues being raised there, where precisely what was happening is that processors were trying to enhance their positions by certain cooperative provisions, namely, making them processor-specific, and the harvesters, in turn, were saying that they were scared they would lose, and so, they were coming back with counterproposals.

And we were asked to say who might lose under the various proposals being offered. And one of them, the Dooley-Hall proposal for cooperatives that were not tied to processors, was an approximation to an IFQ program. And so, that was one of the programs we compared to the processor-specific case, and we found they differed, but there was no reason to think that under Dooley-Hall and a reasonable analysis, a game theory analysis of how people would behave, that processors would, in fact, lose.

Mr. GILCHREST. You say a game theory analysis as to how people would behave?

Dr. HALVORSEN. Yes, sir.

Mr. GILCHREST. That is interesting.

Dr. HALVORSEN. Well, I almost paused before I used the expression, but then, I used it. Game theory is actually what much of modern microeconomic theory is about. We have gone beyond using

very simple static models of perfect competition or monopoly or bilateral monopoly or monopsony to consider real-world situations where people are considering using strategy against each other.

Mr. GILCHREST. Now, who invented that game theory? That is going back 60 years.

Dr. HALVORSEN. Yes; game theory has been—I do not know where one would start with it, I guess. Von Neuman and Morganstern would be the most recognized people from the 1940's, and more recently, it had a spell in economics, and then, people did not know what to do with it. Lately, there have been many more advances in it, and it really is the core of most economic theory courses now. And all that it is about essentially is saying let us take into account that sometimes, there are cases of strategic behavior, many times, that what I have to do is before I decide what I should do, I have to take into account how you may react and vice versa, and that complicates finding a solution.

And those are the problems that game theory addresses, and actually, it was for that reason—when we were called up, we were told we think because of the situation with the relatively small number of processors, and we also have a bargaining association for harvesters, we think that there is strategic behavior likely in this industry, and therefore, we need some game theory analysis. And we do not know how to do it; would you do it for us?

Mr. GILCHREST. Mr. Hoard, can you comment on Dr. Matulich's impression of the IFQs and what they have done to the processors in the halibut and sablefish fishery?

Mr. HOARD. Yes, sir. First of all, I would like to say that we are not proposing revisiting black cod and halibut IFQs. There has been too much investment made; too much water under the bridge.

Mr. GILCHREST. You are saying that they should be left the way that they are?

Mr. HOARD. Yes, but we are thinking very strongly that as we go forward into other rationalization programs that we should take some of the things that we have learned here, i.e., losses to processors, and that the processor-side investment should also be part of the rationalization, so it is not all just turned over to the fishermen's side.

Mr. GILCHREST. Do you feel that there has been a significant loss to the processors when halibut and sablefish went to IFQs?

Mr. HOARD. Yes, sir. In the 6 years prior to the IFQ program compared to the 6 years after the IFQ program, we showed a downturn of $20 million in gross profits in black cod and halibut alone.

Mr. GILCHREST. And how did you recover, sustain through that? Have you recovered from that? Did you go to other fish?

Mr. HOARD. We have always been diversified geographically and species-wise and recently got into pollock. But I can assure you that it has been a struggle, and I think some of our fishermen in other species have had to help fit the bills. When we used to have 7 or 8 million pounds of halibut running through our plant, and now, we have a third of that—

Mr. GILCHREST. Is there something in, let us say, the standards that we create in this area dealing with IFQs that should send notice to the councils to try to deal with that, understand that issue, tinker with the IFQ and the processors?

Mr. HOARD. Yes, sir, I think Congress needs to maybe set the bigger picture, and then, certainly, the North Pacific council in the case of other programs up there ought to put the bells and whistles and get everybody's input and go from there.

Mr. GILCHREST. Mr. Stinson, how do you feel about this issue, the IFQs, the processors losing out? Should we get in there and open that up and try to make some sense of it?

Mr. STINSON. Well, Mr. Chairman, I represent a group of vessels, about 35 trawl vessels that are involved in the pollock fishery in the Gulf of Alaska. We harvest less than 10 percent of all of the pollock that is caught in Alaska. The vast majority is caught in the Bering Sea. Their quota this year in the Bering Sea is about 1.485 million tons of pollock. And that fishery has been rationalized. It has been fairly well vertically integrated, both on the catcher-processor side and on the shore-based side that has developed co-ops.

Mr. GILCHREST. Do you like vertical integration?

Mr. STINSON. I have major concerns about excess shares being controlled by any one sector. However, 80 percent is already—80 percent of the pollock fishery has chosen or is moving down that path.

Mr. GILCHREST. Should the pollock fishery have an IFQ?

Mr. STINSON. Pardon?

Mr. GILCHREST. Should the pollock fishery have an IFQ?

Mr. STINSON. I would like to see some sort of rights-based fishery management put in place in the Gulf of Alaska that would allow us to compete on a level playing field with the Bering Sea. Right now, we are at a somewhat economic disadvantage because they are vertically integrated and able to operate under a coop system while we in the Gulf do not have that luxury.

Mr. GILCHREST. Is that a council issue, or should that be some tinkering that we do?

Mr. STINSON. I think it is necessary for Congress to allow the councils tools to move in that direction. I think this is a question best answered at the regional level, but I think the councils need to be given tools to create level playing fields. Right now, we do not have that in Alaska in that certain segments of the fisheries have been rationalized, and others have not.

Mr. GILCHREST. Well, I would like to continue this, but we have another vote. And I would like to continue to communicate with all of you as we go through—we are going to try to come up with something this year. We will see what the Senate is going to do. And we would like to have as much information, pertinent information as possible, to begin to make some intelligent choices in this process. And we may even touch upon the game theory once or twice.

[Laughter.]

Mr. GILCHREST. But I am going to adjourn the Subcommittee hearing rather than to keep you here another period of time to go back and forth. I would like to communicate with you, and any questions we have as a followup to this, we would like you to submit for the record and also ask you to give us your professional judgment and personal opinion. Often, personal opinions are very valuable.

But thank you all very much for your testimony and good luck here in Washington and have a safe trip home. I ask unanimous consent to allow Members to submit statements for the record for the next so many days.

Gentlemen, thank you all very much. I hope to see you again sometime in Washington or Alaska.

The hearing is adjourned.

[Whereupon, at 5:42 p.m., the Subcommittee adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of The Honorable Jim Saxton follows:]

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

Good afternoon Mr. Chairman and Members of the Subcommittee, and thank you to the witnesses for joining us today. I appreciate you taking the time out of your schedules to be here.

I am pleased to be here today to discuss the important issues of both the Individual Fishing Quotas and the reauthorization of the Magnuson–Stevens Fishery Conservation and Management Act. As you know, The Magnuson–Stevens Fishery Conservation and Management Act, passed in 1976 is the primary law dealing with fisheries resources and fishing activities in Federal waters (those waters extending from the edge of State waters to the 200-mile limit).

The primary goals of the Magnuson–Stevens Act were the conservation and management of the U.S. fishery resources, the development of U.S. domestic fisheries and the phasing out of foreign activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline. This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Reagan.

I am pleased the Magnuson–Stevens Act has achieved the goals of eliminating foreign fishing in the EEZ and developing domestic fisheries. The percentage of fish harvested by foreign nations has declined from 71 percent of the total catch in 1977 to near zero percent since 1992.

As you may know, the Sustainable Fisheries Act (SFA) amended the Magnuson–Stevens Fishery Conservation and Management Act.

The SFA added a number of new definitions to the Magnuson–Stevens Act including "individual fishing quota." "The term 'individual fishing quota' means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person."

I have spent a great deal of time over the years working to do everything possible to conserve and rebuild overfished species. We have reached a critical crossroads for many species and if we do not work together to save them they may disappear forever. It is crucial we understand the need to accurately assess the stock levels and take appropriate action to rebuild those that are depleted.

Our oceans are a precious resource and we need to fight to preserve them at any cost. For many, many years little if any thought was given to the need to conserve this resource. Unfortunately, these magnificent bodies of water have been depleted of many species and it is our responsibility to restore them.

I look forward to the ongoing challenge of rebuilding these stocks and ensuring the oceans are healthy for future generations to enjoy fresh seafood, or be able to see a dolphin or whale or a sea turtle for that matter, in the wild. And for those who make their living from the sea, to be able to do so in the future is directly related to rebuilding those species that are currently at very low levels.

Thank you and I look forward to hearing your testimony.

[A statement submitted for the record by Alaskan Leader Fisheries, Clipper Seafoods, and Prowler Fisheries follows:]

Statement of Alaskan Leader Fisheries, Clipper Seafoods, and Prowler Fisheries

Alaskan Leader Fisheries, Clipper Seafoods, Ltd., and Prowler Fisheries are pleased to present the following comments for consideration by the House Resources Subcommittee on Fisheries Conservation, Wildlife & Oceans as it evaluates the

potential use of individual fishing quotas ("IFQs") as a fisheries management tool. These companies collectively own and operate nine freezer longliners that fish for Pacific cod in the Bering Sea and Aleutian Islands area ("BSAI") .

Background on the Freezer Longline Sector of the Pacific Cod Fishery

The freezer longline sector of the Pacific cod fishery is currently fully capitalized and operating in an efficient manner. A majority of fleet members fish for seven months a year, and in some cases nine months when participating in the Pacific cod CDQ fishery.

The freezer longline fleet includes vessels ranging from 59 1/2 to 180 feet, and includes onboard processing and freezing capacity. Benthic longlining requires significant time and area for successful fishing activities, and produces a slow and deliberate fishery. There are no viable options to significantly increase vessel harvest capacity. This is a sharp contrast to the trawl sector, which can increase horsepower and net sizes to dramatically boost their harvest capabilities.

In recent years the North Pacific Fisheries Management Council ("NPFMC" or "Council") and supported by the National Marine Fisheries Service ("NMFS") have worked diligently to respond to concerns relating to the effect of commercial fishing activities in the North Pacific on endangered species such as the Steller sea lion. As noted earlier, the freezer longline fleet uses fishing techniques that are slower and more spread out. NMFS has acknowledged the environmentally sensitive nature of their activities in the context of Steller sea lion protection measures.

> *In terms of effects on ESA-listed species, the slower and more dispersed nature of the hook and line pot fisheries make localized depletions less likely than would be possible with trawl gear. BiOp at 215 (November 30, 2000). The hook and line fishery does fish in a manner that is consistent with the intent to minimize disturbance to the prey field. NOAA Fisheries recognizes that and for this reason is allowing hook and line fishing during periods that other fishing is restricted. Questions & Answers concerning: ESA Sec. 7 Consultation–BiOp at Question 11 (December 1, 2000).*

The freezer longline sector of the Pacific cod fishery is undergoing a rationalization process led by the Council and NMFS. The first step was the adoption of Amendment 64 by the Council, which split the Pacific cod total allowable catch ("TAC") among fixed gear participants (longliners, pot, and jig). This segregation made it possible for the Council to initiate a limited entry system for the entire fixed gear sector and led to the adoption of Amendment 67. The Secretary of Commerce has approved Amendment 67, and NMFS is now finalizing regulations to implement its provisions. This limited entry program will prevent over capitalization and the corresponding adverse pressure on the resource and is a critical element in ensuring the long term health and viability of the freezer longline sector.

The fleet is evaluating potential future steps for further rationalization. These may involve the adoption of a voluntary cooperative, or could take the form of an IFQ program. The focus will continue to be on maintaining the stability of the fishery and the healthy status of the Pacific cod stocks.

Specific Comments on Potential IFQ Program Elements

The above companies recognize that IFQ programs can produce considerable benefits for specific fisheries. However, they also understand that a poorly designed IFQ program will do far more harm than good. The following comments address specific elements that should be considered by Congress in the development of a national policy on IFQs.

1. The Regional Fishery Management Councils should be given sufficient flexibility to design IFQ programs that make sense for a particular fishery

Each fishery is a distinct product of historical trends related to the development of a fishery, fish stock biological dynamics, and seasonal fluctuations. No two fisheries are the same, even within the same region, and sometimes even within the same sector. Therefore, it is important that Congress provide sufficient flexibility to the Regional Councils to accommodate the wide variations found in the nation's fisheries. Restrictive provisions that seem to "simplify" a national IFQ policy run the risk of stifling the innovative ability of individual fisheries to work with the Councils to develop an IFQ program that makes sense for that fishery.

2. Initial IFQ allocations should be based on historical participation in a fishery

Commercial fishing is a capital intensive endeavor that involves unique business risks (including development of new markets) and unparalleled operational dangers.

Companies entering a fishery make considerable investments and dedicate the time and resources necessary to develop a successful fishery. If an IFQ program is adopted for a specific fishery, the initial quota share ("QS") allocation should be based on historical participation and specifically on retained catch. This approach acknowledges the efforts of the pioneer companies who made the fishery possible, and ensures that participants committed to the sustainability of the resource are present to provide continuity. The institutional knowledge possessed by historical participation is an important facet of ongoing improvement of the management of a fishery.

Careful consideration also should be given to the structure of initial allocations. There has been considerable discussion on the merits of an auction system, with unsubstantiated claims that historical participants should not be handed a windfall. IFQs do not create a windfall, they only give historical participants of the fishery a means to harvest fish in an orderly efficient manor—the same fish that they were previously or historically harvesting. This line of thought fails to incorporate the significant, long-term investment made by historical participation in the fishery, as well as legitimate investment back expectations.

Arbitrary and severe caps on QS ownership will disrupt current fisheries, resulting in more difficult management decisions and large-scale economic dislocation. Reasonable limitations on QS ownership percentages may be appropriate to prevent extreme concentrations, but Congress should be wary of seemingly "innocuous" proposals that will have far-reaching impacts.

Finally, Congress should not re-allocate access to specific fisheries by creating a set-aside program for non-owner participants in a fishery, including shippers, crews, or communities. There are sufficient market mechanisms to allow these entities to join a fishery, and no need to create a subsidized class of fishery participants.

3. Congress should reject processor quota shares

In the context of the freezer longline sector of the Pacific cod fishery, processor quota shares make no sense. Freezer longliners harvest and process Pacific cod with absolutely no involvement by processors in the North Pacific. Mandating processor quota shares absent Any historical or practical nexus would produce an absurd result.

Beyond this specific fishery, the above companies have strong reservations regarding the establishment of a national policy authorizing processor quota shares. History demonstrates that processors have exercised considerable influence over the harvesting sector. Establishing a regime that forces harvesters to deal with specific processors will only exacerbate an already unbalanced relationship. Congress should not include in any legislation authorization for processor quota shares.

4. National IFQ policy should focus on creating effective IFQ programs, not serve as a surrogate to impose additional environmental restrictions

The Magnuson–Stevens Act establishes an elaborate framework for the management of federal fisheries. Within this framework, commercial utilization of fishery resources are balanced with conservation and sustainability goals. There are sufficient existing conservation provisions in the Act, and it is not necessary to add new environmental restrictions as part of an IFQ policy. Congress can provide adequate guidance to ensure that IFQ programs are structured consistent with the Act's National Standards, and should avoid any suggestions to turn IFQ policy into a Trojan Horse for unreasonable environmental agendas.

5. National IFQ policy should support rational development of specific programs

To succeed, IFQ programs must have time to mature and make the transition from a theoretical to a real world management regime. Each fishery may require a period of adjustment to overcome unanticipated events and obstacles. Some have argued for statutory sunset periods that would "restart" each IFQ program after only five years, including a fresh redistribution of all QS. This approach would significantly undermine the potential success of an IFQ program, and could jeopardize the achievement of the basic goal of rationalizing the resource. Because commercial fisheries require years to adapt and evolve to changing conditions, participants in an IFQ program will need time to make an effective transition to a new regime. If a statutory sunset is imposed, it will remove much of the incentive for participants to invest the time, effort and resources necessary to improve fishing practices, including reduction of bycatch, increased product retention, and conservation of the resource in general. Congress may consider authorizing the Councils and NMFS to

conduct ongoing evaluations of IFQ programs, and where appropriate, implement mid-course corrections.

Conclusion

The Magnuson–Stevens Act established the Regional Councils to manage the nation's the fisheries, knowing that all fisheries are different and require different management approaches. Congress should not limit the Councils in their ability to manage and should only give broad guidelines (most of which are covered in National Standards). Congress should continue to support the Councils' ability to develop specific policies for individual fisheries.

[A statement submitted for the record by Robert Alverson, Manager, Fishing Vessel Owners Association, follows:]

Statement of Robert Alverson, Manager, Fishing Vessel Owners Association

Chairman Gilchrest:

On behalf of the Fishing Vessel Owners Association ("FVOA"), I would like to thank you for the opportunity to provide this statement. The FVOA is a trade association representing the owners of 84 hook-and-line fishing vessels that operate in fisheries from California to Alaska, and in the mid–Pacific Ocean. Our fisheries include halibut, sablefish, and Pacific cod in the Bering Sea and Gulf of Alaska, and sablefish off the coasts of Washington, Oregon, and California, as well as albacore within and beyond the United States Exclusive Economic Zone in the Pacific Ocean. Although I am, at present, a member of the Pacific Fishery Management Council, and I am a former member of the North Pacific Fishery Management Council, I provide this statement solely in my capacity as Manager of the FVOA. I note that the Deep Sea Fishermen's Union, which represents the crewmen on vessels owned by FVOA members, has endorsed this statement.

The record clearly demonstrates that halibut and sablefish individual fishing quota ("IFQ") program under the jurisdiction of the North Pacific Management Council ended the deadly and damaging open access halibut and sablefish fishing derbies. The program has resulted in improved conservation, safety, efficiency, employment opportunities, and community stability. The statements of Administration witnesses in today's hearing highlight the resource, social, and economic benefits of that IFQ program. When considering the question of whether or what sort of new standards should be enacted for IFQs, Congress should take these facts into account, and in so doing, should be very careful not to affect adversely the existing halibut/sablefish IFQ program.

As observed by Dr. Hogarth in his statement to the Subcommittee, the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) already contains standards that apply to IFQ programs. There are, of course, the ten National Standards, and there are additional requirements, including those applicable to all limited entry programs under section 303(b)(6) of that Act.

The Sustainable Fisheries Act of 1996 followed establishment of the halibut/sablefish IFQ program, and was crafted to ensure that nothing in that legislation would threaten the gains already achieved in those fisheries. The Sustainable Fisheries Act also provided, in several respects, a basis for improved management of our Nation's fisheries, particularly where non–IFQ fisheries, and affected local communities, were in serious difficulty.

The legislation's new National Standards on safety (National Standard 10, 16 U.S.C. 1851(a)(10)) and bycatch (National Standard 9, 16 U.S.C. 1851(a)(9)) are particularly notable for the focus that they have provided on critically important aspects of fisheries management. The FVOA and DSFU were joined by the Alaska Crab Coalition ("ACC") in first proposing the enactment of these new National Standards, and in securing wide support among Washington State and Alaskan fishing industry organizations. (The FVOA, DSFU, and ACC also contributed to the development of conservation-related amendments to the then Magnuson Act in 1990.)

However, one provision of the Sustainable Fisheries Act—the moratorium on IFQs (16 U.S.C. 1853(d)(1)) until October 1, 2000—cannot be viewed as having contributed in a positive way to fisheries management. On the contrary, this congressionally-imposed constraint on fisheries managers has served as a roadblock to effective management, especially, but not exclusively, in fisheries plagued by excess fishing capacity and/or low resource abundance. The FVOA and DSFU strongly believe that the moratorium was a grave mistake in the first place, and that extension of the measure by subsequent legislation (P.L. 106–554) to October 1, 2002, only served

to compound the error. One need only compare the highly favorable situations in the IFQ fisheries against the crises confronting many of the non–IFQ fisheries.

Where the worst has been avoided, it has been by fishery-specific legislation, most notably, the American Fisheries Act ("AFA") (Division C, Title II, P.L. 105–277) applying to the directed pollock fishery of the Bering Sea/Aleutian Islands Area, and legislation to allow rationalization of the fixed gear sablefish fishery under the jurisdiction of the Pacific Fishery Management Council (P.L. 106–554). These were desperation measures, and in the case of the American Fisheries Act, led to a major regulatory exercise on the part of the North Pacific Council and the Commerce Department, and to a series of remedial amendments intended to solve an array of technical and substantive problems. Had the industry, the North Pacific Council and the Commerce Department not been constrained by the IFQ moratorium, Congress would not have felt compelled to pass special legislation and a succession of amendments. At least as importantly, the resulting regime would not have left out some vessels that clearly should have been included, by virtue of their owners' investments and the vessels' participation in the directed pollock fishery during the relevant qualification period with which that Act was concerned.

The legislation for fixed gear sablefish arose, because fisheries managers from the Pacific Fishery Management Council, and the FVOA and DSFU, were seriously alarmed by the conditions prevailing in West Coast groundfish fisheries. Fixed gear sablefish was a case crying out for some form of IFQs. Excess harvesting capacity and extremely depressed resource conditions combined to defeat conventional management. Indeed, it was conventional management necessitated by the IFQ moratorium, and a flawed system of scientific data acquisition and analysis, that caused those conditions. An attempt at creative management by the Pacific Council only resulted in a legal determination that the proposed measures violated the IFQ moratorium. There was no alternative to special legislation.

If Congress again extends the moratorium, or equally as unfortunate, imposes conditions and restrictions that make IFQs impracticable or unattractive to the affected industry and fisheries managers, there is no doubt that additional, special legislation for particular fisheries will be necessary and will inevitably be enacted. Congress should be sensitive to the fact that a one size fits all approach, except for the most general sorts or standards, such as those at present in the law, will fly in the face of the wise statutory scheme of the Magnuson–Stevens Act recognizing the regional nature of our nation's fisheries.

Therefore, based on the very favorable experience in the halibut and sablefish fisheries, the FVOA and DSFU believe that individual transferable quotas should be available for application to any fishery in the United States Exclusive Economic Zone. The FVOA and DSFU urge Congress to allow the statutory moratorium on individual quotas to expire in accordance with its terms, and not to impose unduly burdensome new requirements.

The availability of IFQs to fishery managers is supported by all the Regional Fishery Management Council Chairmen and their respective Councils. Equally notable is the fact that the report to Congress by the National Research Council of the National Academy of Sciences, as directed by the Congress in the 1996 amendments (section 108(f), P.L. 104–297) definitively describes the benefits of individual fishing quotas.

Conservation

As discussed in detail, below, replacement of the open access race for fish by the halibut/sablefish IFQ program has resulted in improved conservation and management. The incidental catch of halibut in the directed sablefish fishery has declined 38%.[1] The incidental catch of groundfish in the sablefish fishery has dropped by 39%. Halibut mortality due to lost fishing gear has decreased by 59.65% (translating to an average [$3.5] million dollar saving, annually).

Incidentally caught sablefish is no longer discarded in the directed halibut fishery. Sablefish in the western and central Gulf of Alaska is now fully harvested, not only avoiding waste, but also generating an economic gain for the industry (an average [$3.93] million gain, annually).

These improvements are in accord with the principal purpose of the Magnuson–Stevens Act, which is conservation, and with a major, related objective of that statute, minimizing bycatch and related mortality. 16 U.S.C. 1851(a)(1), (9).

In the absence of IFQs, the West Coast groundfish fisheries have continued to be plagued by excessive waste. This has contributed to the further decline of once-abundant resources. The recently authorized program for the fixed gear sablefish

[1] The data upon which this testimony relies is the most current in possession of the FVOA and DSFU.

fishery should end the race for fish by reducing the numbers of vessels on the grounds and lengthening the seasons, thus alleviating pressure on the resource.

Safety

As noted above, the Magnuson–Stevens Act requires that fisheries management promote the safety of human life at sea. 16 U.S.C. 1851(a)(10). Replacement of the open access race for fish by the IFQ Program has greatly improved the safety of fishermen in the halibut and sablefish fisheries off the Alaskan coast. The former halibut fishing derby was the second most dangerous occupation in the United States (preceded only by the Bering Sea crab fisheries).

Communities

The Magnuson–Stevens Act requires that fisheries management take into account the interests of fishing communities. 16 U.S.C. 1851(a)(8). Community development quotas ("CDQs"), which are integral to the halibut/sablefish IFQ program, have assured isolated, low-income, Alaskan native coastal communities a major source of employment and revenue. At the same time, economic and social disruption of other communities has been avoided; the top five halibut ports and the top four sablefish ports remain the same as under the open access system. Small vessels serving minor ports have been guaranteed their place in the fisheries, and an industry fee-based loan program has been established for the owners of those vessels and for new entrants to the fisheries. In short, this IFQ program has increased the overall value of the fisheries, making it possible to dedicate a portion to the poorest communities, without adversely affecting the others.

The FVOA and DSFU would by no means suggest that CDQs or an industry-funded loan program be established in the Pacific region. Conditions there are quite different from those in Alaska, where communities are both small and isolated and have fewer sources of income.

Overcapitalization

The Magnuson–Stevens Act provides for consideration of economic efficiency, and for reduction of excess fishing capacity. 16 U.S.C. 1851(a)(5), 1861a (a)–(e). Excess capacity in fisheries has been identified as one of the fundamental causes of resource declines, unsafe conditions, lost economic efficiency, and lower quality product. The halibut/sablefish IFQ program has resulted in a reduction of the halibut fleet from 3,450 (1994) to 1,613 (1999). Restricted Access Management ("RAM") Report, NMFS, 2000, page 23. Conservation risk associated with fishing pressure on the resources has declined radically. Unsafe conditions due to 24-hour halibut derbies and 2-week sablefish seasons have disappeared, as fishermen have gained the opportunity to conduct their operations in periods of good weather during eight months of the year. Longer seasons have led to full-time employment on vessels and in processing plants, and higher fish values have resulted in better lives for vessel owners and crews. Slower paced fisheries have allowed much improved handling of the catches, and thus, better quality product for the consumer. It is reliably estimated that a government-funded buyback achieving what was accomplished by the halibut/sablefish IFQ program would have cost the taxpayers approximately $318.8 million.

Greatest Overall Benefit to the Nation—Conservation, Safety, Efficiency, Quality, Value

The Magnuson–Stevens Act requires that fisheries management achieve the greatest overall benefit to the Nation. 16 U.S.C. 1851(a)(1); see 16 U.S.C. 1802 (28)(A). In addition to achieving improved conservation, safety, and efficiency, the halibut/sablefish IFQ program has resulted in improved product quality and higher product value. As noted above, the slower paced fisheries have translated to greater availability of higher quality product, in particular, fresh halibut for eight months, instead of a few days of the year, and greater bargaining power for U.S. producers in the sablefish export market. RAM Report, NMFS, 2000, page 9.

CONCLUSION

By any rational measure, the halibut/sablefish IFQ program has been a great success. With this example firmly established, individual transferable quotas should be available to fisheries managers nationwide. Any new standards for IFQs should not deter the employment of this valuable management tool. Whatever else Congress does, it should not adversely affect the existing IFQ programs.

[A statement submitted for the record by Gordon Blue, Marine Services Corporation, follows:]

Statement of Gordon Blue, Marine Services Corporation

The Bering Sea and Aleutian Island [BSAI] crab fisheries are in a state of collapse. Professor Dorothy Leonard Barton of Harvard Business School taught that an organization's core competencies in one generation of technology can become "core rigidities" leading to failure, in the next. [Well Springs of Knowledge, 1995]. The core competency of the BSAI crab industry prior to 1999, which was the ability to harvest and process the available resource rapidly and efficiently, has now become the "core rigidity" of this new generation, in which scarcity of product is the rule. The mainstay of the industry, opilio crab production, topped 300 million pounds annually and 30 million pounds per week in the beginning of the nineties. The fishery has hovered around 30 million pounds annually in this decade.[1] This season, 190 harvesters took four weeks to harvest the quota, which generated approximately $38 million in ex-vessel revenues, and consumed more than $40 million in variable costs, alone.

BSAI crab harvesters recognized the problems that were looming, and in 1996 were working to establish an Individual Transferrable Quota [ITQ] system when the national moratorium on new Individual Fishing Quota systems was adopted. Testimony of Mr. Spaeth and Mr. Emerson before the committee, indicates that a chief reason for this moratorium was the resistance of Gulf of Mexico fishermen to an ITQ in the red snapper fishery. There was plenty of resistance from BSAI crab fishermen in those days, as well. According to Mr. Spaeth this resistance has abated as fishermen in his region have become aware of the advantages of an ITQ in their fishery. He asks that the moratorium be dropped. The same transformation of opinion has occurred amongst Bering Sea crab fishermen. There are now no harvesters to be found that oppose ITQs for these fisheries. The collapse of the fisheries has been a harsh teacher. Conservation and rebuilding of the resource are primary motivations of harvesters in the desire to change our operating rules.

Unanimous support for ITQs by crab harvesters has existed since at least August 1999, when the results of the summer stock assessment survey confirmed the collapse of the opilio fishery. What has impeded agreement and action beyond this, is processor opposition to an ITQ system. This is not because processors will not benefit from the improved resources and efficiencies that are expected results of an ITQ program. Neither is there a question whether processors will be awarded ITQ shares in the initial allocation. Through ownership interest in vessels, processors are expected to gain one-quarter of the initial allocation under an ITQ program. Harvesters have studied the findings of the National Academy of Sciences [NAS] study of ITQs, Sharing the Fish. Consequently, harvesters have been willing to consider a system of compensation for processors that would redeem stranded capital processors could show resulted from imposition of an ITQ. Processors have offered no specific information to this end. Harvesters have also been working to address the other issues raised by the NAS report, and have created programs that will protect communities and provide for new entrants to the fisheries in the future.

The controversy is simply that processors are determined there can be no benefits unless the processors are guaranteed the largest share of the future benefits. In the BSAI crab fisheries, processors demand one-quarter of the initial allocation of fishing quota, and all of a new quota type, the processing quota. The controversy is whether the processing quota, or "two-pie" system, proposed by Professor Matulich, represents a fair and equitable division of "benefits" that are anticipated to occur, under the ITQ.

The most powerful of processors have insisted that nothing less than the "two-pie" system will remove their opposition. The "two-pie" system would award fishery quota shares to harvesters, and transferrable, leasable, processing quota shares to processors. A pound of harvester quota (or 8/10 or 9/10 of a pound, in some options), together with a pound of harvested crab, must be matched with a pound of processing quota, in order to be marketed. Both types of quota would be awarded upon the basis of "history," though processor quota years would be selected differently than harvester quota years. Not only would processors be awarded most of the benefits in this system, but the initial benefits would be concentrated to a few companies. For the opilio fishery, the years under consideration would award three-quarters of all processing quota to the top eight processing companies. Depending upon the final selection of option, the top150 to160 harvesters would aggregate an equivalent share of harvest quota.

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[1] See testimony of the CRAB Group to this subcommittee in May, 2001, for more detail. See also: http://www.fakr.noaa.gov/npfmc/Committees/Crab/Crab%20Draft%20January22.pdf This site contains a wealth of detail, in draft analytical form, concerning BSAI crab rationalization

Professor Matulich declares in testimony before the committee, that the halibut/sablefish ITQ, established in 1995, created a new division of "benefits" from the fisheries, which accrued only to harvesters. He chose the years 1992/93 to represent the pre–ITQ regime, and 1999/2000 to represent the post–ITQ regime, and asserts that comparing the "quasi-rents"[2] of these two periods, shows the ITQ program left processors "absolutely worse off."

Dr. Halvorson, in his testimony, indicates five major errors in the chain of supposition which constitutes Matulich's argument for the "two-pie" proposal. For instance, he says, the use of "quasi-rents" as a surrogate for "wealth" ignores the impact of capital investment, and is only useful as a comparative index in the very short term - months, rather than years. Consider the case in which a significant share of processor "quasi-rents" is required to be reinvested in capital equipment, simply in order to continue to capture a share of those open access "quasi-rents."

This is entirely in accord with the testimony of Mr. Hoard: "In those days our company was the major buyer of halibut in Alaska, some years purchasing almost 50% of the catch . . . we continued to expand our capacity . . . we maintained our market share . . ." A more complete statement by Professor Matulich would include this, perhaps as follows: "Prior to the implementation of the ITQ, a processor maintained 'quasi-rents' share through market domination which was achieved at the cost of high levels of capital expenditure. Both "quasi-rents" and the necessity to dissipate rents through capital expenditure, decreased after program implementation."

Not enough information is given by the "two-pie" advocates to determine whether "processors" were actually worse off, or better off, as a result of the program. Which processors benefit and which do not? How much money was saved from decreased capital expenditures after the ITQ program was in place? Any such savings deserve consideration as of benefit to processors.

We might also consider the implications of the testimony with respect to market share. It has been asserted that the program damaged Icicle because the ITQ created an unfair distribution of benefits between harvesters and processors. The data presented does not show this. According to Dr. Halvorson, this is instead, an assumption of the "two-pie" theory. A compelling case could be made, that any actual losses Icicle experienced were the result of a loss of market share to other processors. This occurred when it was no longer possible to continue buying market share through additional capital expenditures for processing equipment. This must inevitably have occurred, with or without ITQs. Is "two-pie" designed to provide a "fair" sharing of rents between harvesters and processors, or is it designed to insure market share to dominant processors?

After review of the numerous errors in the presentation of the "two-pie" case, Professor Halvorson concludes that "there is no merit in the arguments for "two-pie"." I absolutely agree. The theoretic basis for the "two-pie" thesis is bankrupt.

The problem, at this point, is that harvesters are left with no viable solution to the dilemma of processor obduracy. Processors are locked in a position which, though theoretically bankrupt, has been prepared over the course of years, and has been packaged and sold as morally superior, and presented as "win-win" and "fair." This position has developed into the strategic equivalent of a castle keep, built above a bridge. Large processors, walled up within the keep, well provisioned with the income of other fisheries, focus upon preventing the passage of ITQs, and demand an extortionate toll, Processing Quota.

Most harvesters are practical business men and women. For a time, a relatively numerous segment of harvesters summed up the situation thus: "So what if the processors' position is nonsense. As a practical matter, we need to take care of our fishery and as things are, we are going broke. Let's give them what they want, get what we need, and get on with life." This segment has become less numerous, over time, and has recently begun to lose proponents at an increasing rate.

Some of the loss of appeal can be attributed to a draft report on the probable price effects of the "two-pie" proposal, presented to the North Pacific Fishery Management Council by Drs. Milon and Hamilton[3], earlier this month. This study found that in a "fully segmented" two-pie allocation, the value of harvester quota would be zero, and all of the available rents would accrue to the processor quota holder. Although this study has been attacked as theoretical and wrong by "two-pie" advocates, the greatest negative impact on harvester opinion concerning the validity of the "two-pie" thesis, probably has resulted from the work of Dr. Matulich, himself. Some harvesters were prepared to believe, on the basis of processor assertions, that the "two-pie" proposal would guarantee a fair future distribution of "benefits." Many harvesters are now becoming aware of the ideas presented in the study titled

[2] "Quasi rents" = Net revenue, after fixed and variable costs of operations are deducted.

[3] This paper is found at appendix 3–7 of the draft analysis, cited at (1)

"Efficiency and Equity Choices in Fishery Rationalization Policy Design: An Examination of the North Pacific Halibut and Sablefish IFQ Policy Impacts on Processors." [PIP][4] Over time, the game-theoretic bargaining strategy implications of the proposal have become stark, and the reasoning for rejecting it is, once again, completely practical.

Practical experience. Beginning in 2002, the typical Bering Sea crab harvest vessel "quasi-rents" share in the crab fisheries was negative $202,000.[5] This is an operating revenue loss, that in subsequent years has surpassed a quarter of a million dollars per vessel per year, for the typical vessel in this fairly homogenous fleet. This means that over the last three years, harvesters have lost half of the value of the chief harvester asset, the vessel, by fishing for crab.

A survey of independent vessel owners was undertaken by the McDowell Group of Juneau, Alaska, on behalf of the CRAB Group. The survey results were delivered to the North Pacific Fishery Management Council at its Anchorage meeting, December 5, 2001[6]. The independent crab fleet was found to be owned by closely held small business entities which typically have a small number of owners. Although there are a variety of legal forms these entities take, they are, functionally, partnerships of a small number of individuals. Half of this fleet have commercial financing in the form of a preferred marine mortgage. Most mortgages are guaranteed by the individuals participating in the vessel ownership. Many vessels number both retired and active captains as owners.

The impact of the losses generated during the past three years has been: income from vessel operations has disappeared; cash and liquid assets of the owners has dissipated; all available types of credit have been sought and debt maximized; trade debt has mounted and many vessels have lost trade credit and/or acquired liens; mortgage payments have gone into arrears; personal guarantees of vessel owners have been invoked, forcing liquidation of assets, in some instances placing homes in jeopardy; and some vessels and other assets have been seized and sold for debt. A number of families are directly and severely impacted, for each vessel that is struggling.

In each successive year, the ex-vessel price of opilio has dropped—"number one" grade product fetched $1.85/lb. in 2000, $1.55/lb. in 2001 and $1.42 in 2002. "Grading" of product by processors has become a standard practice. Nearly all product was purchased at top grade in 2000. Early reports indicate that 25% of production was graded "number two" in 2002, at steep discounts in price. This has resulted in diminishing effort, from 235 vessels participating in 2000, to 190 in 2002. Fewer harvesters can afford the cost of gearing up. Nonetheless, vessel owners that can manage the costs, continue. Vessels have nowhere else to go. An old adage, "the boat makes no money tied to the dock," is still true. Fixed costs are comparable to the average operating loss, and fixed costs do not disappear when the boat is tied up. Crews represent years of investment by owners in recruiting and training, and this human capital will disappear if the vessel ties up. So long as they are able, vessel owners rationally elect to pose the uncertain hope of an outstanding fishing season, against the certain high costs that must be paid, no matter what.

Ever mindful of these burdens, crab harvesters are also aware that processor margins remain at least as thick as ever. This occurs because the processing sector has been able to idle large segments of its production, and reduce costs through the consolidation of processing operations. Harvesters remember that in the halibut/sablefish fishery, during 1992/93, the "race for fish" drove the typical harvester "quasi-rents" share in the fishery to zero. The PIP study has produced data showing that under these conditions, processor "quasi-rents" was at a maximum. This is not difficult to grasp: the intensified race for fish destroys bargaining leverage of harvesters, and consequently, generates a supply of relatively cheap product for processors.

It is clear to harvesters that the allocation of benefits between processors and harvesters in the halibut/sablefish fisheries in 1992/93 was not sustainable, because fishermen can't fish at a loss for long. Rather than prove that ITQs made processors "absolutely worse off," PIP merely shows that halibut processors in 1999/2000 possibly made less money, possibly retained more money, and in any event, profited[7] from the fishery. The claim that "two-pie" would have provided for a "win-win" in

[4] This paper is found at http://www.cf.adfg.state.ak.us/geninfo/pubs/RIR/5j02–02.pdf

[5] Spreadsheet modeling reported to NPFMC, Anchorage, Alaska, 2/10/2002

[6] Contact: Chris McDowell, Seafood Industry Analyst, McDowell Group, 907 586 6127

[7] In fact, Matulich presents data that shows the number of large halibut processors has actually increased since the ITQ was instituted, and the processing sector is healthy. This is a rare occurrence in the present experience of Alaska fish processors, who claim losses in many fisheries.

the halibut/sablefish fisheries is simply not true - there can be no win for harvesters in a system that institutes losses to fishermen.

In conclusion, a quote from Professor Matulich: "When a theory says one thing, and reality says another, then the theory is wrong!" "Two-pie" proponents seek through theory to demonstrate that processors were harmed by the implementation of halibut/sablefish ITQs. When the filter of theory is removed, the data presented in PIP actually demonstrates that harvesters and processors both benefitted from a sustainable fishery regime brought about by the ITQ.

The Professor's "two-pie" theory is wrong.

In the context of Bering Sea crab, as the fisheries drop to the floor, we have been shown a smoking gun, clasped in the hand of the processing sector. Harvesters, processors and communities would all benefit from an ITQ. Processors seeking a permanent guarantee of an unsustainably high share of the available income of the crab fisheries, have acted to block the implementation of an ITQ in the fisheries.

The consequences of this are: perpetuation of unnecessarily high losses of life and injuries to harvesters; continued high levels of discard and waste in the fisheries; failure of the fisheries to rebuild; and financial failure of the harvesters and the communities that depend upon them.

[A statement submitted for the record by Dorothy Childers, Alaska Marine Conservation Council, follows:]

Statement of Dorothy Childers, Alaska Marine Conservation Council

Chairman Gilchrest and Members of the Subcommittee on Fisheries Conservation, Wildlife and Oceans:

Thank you for holding today's hearing on Individual Fisheries Quotas programs.

The Alaska Marine Conservation Council is a community-based organization of fishermen, subsistence hunters, conservationists, small business owners, and families throughout coastal Alaska whose livelihoods and ways of life depend on a healthy ocean ecosystem. On behalf of over 900 members, we urge you and your committee to develop strong and enduring standards for future IFQ programs to ensure that conservation is achieved and communities are protected.

Attached is our recommended set of standards that should be features of any future IFQ program. Specifically, we believe conservation should be a key feature of IFQ programs, consolidation of access to fisheries should be controlled, opportunity for entry-level fishermen should be provided and competitive markets should be maintained. We do not support processor ownership of quota or other government limitations on who can buy fish from independent fishermen.

We appreciate your leadership on fisheries conservation management and look forward to work on the Magnuson–Stevens Act reauthorization. IFQs play a key role in the future of our fisheries.

National Standards are Needed for IFQs & Other Limited Access Systems

Individual Fishing Quotas (IFQs) are often discussed as a fisheries management model that is expected to have conservation and economic benefits as a natural consequence of slowing down the "race for fish" and making fisheries more economically "efficient." However, IFQ case studies from around the world show that the natural trend in IFQ systems is toward increasing consolidation of participants in a fishery and not necessarily better conservation of the resource. The lesson is that particular outcomes for conservation or the preservation of fishing communities are not achieved unless they are an explicit part of the program design. The National Research Council emphasized the importance of program design in its report to Congress:

Confusion, conflict, and ambiguity about the relative importance and value of the objectives of an IFQ program can result in contradictions and inconsistencies in its design and implementation, making the program more vulnerable to unintended consequences and less likely to succeed. (Sharing the Fish, p. 197)

Only with proper direction from Congress can IFQs be a model that links conservation benefits with long-term needs of our coastal communities and opportunity for fishing families.

Fishery management programs that limit access to the public's resource must:

- Reward clean fishing (promote low bycatch and minimize impact on ocean habitat)[1]
- Create opportunity for future generations of independent fishermen[2]
- Prevent excessive consolidation and vertical integration of the seafood industry[3]
- Preserve healthy competition among seafood processors and prohibit processor monopolies (this includes a prohibition on processing quota because of the controlling effects on markets, coastal communities, independent fishermen and the public process)[4]
- Promote healthy community fishing economies and maintain diverse independent fishing fleets[5]
- Recognize historic regional fishing and processing patterns[6]
- Require good stewardship of the public's marine resources as a condition for continuing participation in IFQ fisheries[7]

The following quotes are from National Research Council. 1999. Sharing the Fish, Toward a National Policy on Individual Fishing Quotas. National Academy Press. Congress requested this report to guide policy on future IFQ programs.

"Examples of factors that may be taken into account beyond catch history include (1) the extent of dependence and commitment to fishing as a way of life, as in the Alaska Limited Entry program; (2) evidence for or against good stewardship and acceptance of conservation goals (e.g. bycatch rates, violation histories, types of fishing gear used); (3) whether rule following is the norm in the fishery; and (4) other criteria that councils deem important. These factors reflect the conservation and equity goals of the Magnuson–Stevens Act"." (p. 204)

IFQ programs allowed to be driven only by free-market forces, such as the quahog/surf clam fishery, resulted in "'loss of jobs, and decreased opportunities for young people and hired captains to become vessel owners and for independent harvesters to find markets for their clams." (p. 3)

"...[F]ish processors are an integral part of the fishing industry. Without processors, much of the fish being brought ashore would never make it to market...but does this entitle processors to be considered for receiving or holding harvesting or processing quotas?" (p. 153) "Processing quotas would, presumably, be a permanent or a long-term arrangement, whereas processors' losses occur only once [in the form of stranded capital that could become redundant in a slower paced fishery]. It must be carefully considered whether it is desirable to put in a place a permanent mechanism...to fix a one-time problem, rather than compensating exiting processors through other means." (p. 154)

"The Secretary of Commerce should ensure that each fishery management plan that incorporates IFQs includes enforcement provisions for regular review and evaluation of the performance of IFQ programs, including a clear timetable, criteria to be used in evaluation, and steps to be taken if the programs do not meet these criteria. Provisions should be made for the collection and evaluation of data required for such assessments." (p. 9)

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[1] A broad range of criteria is important for the distribution of quota including individual catch history, long-term participation, dependence and good stewardship.

[2] "The Magnuson–Stevens Act currently requires that the regional councils and the Secretary of Commerce...address the issue of new entry. Specifically, they are required to have considered allocating a portion of the annual harvest to entry-level fishermen, small-vessel owners, and crew members who do not hold or qualify for IFQs (Sec. 3039D095)." (p. 158)

[3] "The capacity of IFQs for transferability, consolidation, and leasing has led to a general concern that independent owner-operators of fishing vessels or crew members will be led into economic dependence on absentee owners as quota shares increase in value and small investors are excluded from the field." (p. 3)

[4] Allowing processors to have processing quota would require a change in federal law. It is not currently legal to limit who can buy fish from independent fishermen. The National Research Council did not find "...a compelling reason to establish a separate, complimentary processor quota system (the 'two-pie' system)." (p. 205)

[5] The National Research Council noted several ways in which community history and dependence can be recognized. "...[T]he notion of dependence may include geographic isolation; lack of employment alternatives; social, economic and cultural systems that have developed in these locations; and their dependence on fishing as a source of nutrition, livelihood and life style." (p. 19)

[6] The National Research Council recommends that Congress "...allow...councils to allocate quota to communities or other groups, as distinct from vessel owners or fishermen". A range of factors such as proximity to the resource, dependence on the resource, contribution of fishing to the community's economic and social well-being, and historic participation in the fishery, may be among the factors that a council considers when setting criteria for establishing which communities may hold quota." (p. 206–207)

[7] The National Research Council recommends a review process to ensure IFQ programs are achieving desired results and to allow for adjustments to be made as needed.

[A statement submitted for the record by The Coastal Conservation Association follows:]

Statement of The Coastal Conservation Association

The Coastal Conservation Association (CCA) is a national organization of recreational fishermen concerned about the conservation of marine resources. CCA has state organizations in 15 states and now has some 80,000 active members. It has been involved in the management of marine resources since its founding in 1977. The views submitted in this testimony reflect the positions of the organization as approved by its Board of Directors.

Individual transferable quotas (ITQs) are not a new concept to fishery management. The concept of ITQs has been discussed since the inception of the Magnuson Act (the Act). The use of ITQs, coupled with a limited entry system, have in every instance been controversial. As implemented to date, ITQs have not made a material difference in fisheries. However, correctly implemented, ITQs could have positive economic and conservation effects on the resource.

There are several principles that should be adopted before any statutory changes to the Act are made.

1. To begin with, the Councils are the best place to develop an ITQ system. The existing statute (absent the present moratorium) contemplates this scenario. A fishery management council is the decision making body that is the closest to the participants in the fishery. It also has the greatest expertise in both economics and the conservation implications of such a measure. The variables in a limited entry system with ITQs are vast. How to match the basic conservation measures for the fishery and the long-term viability of the fishery is best left with the resource managers. For Magnuson Act fisheries, that decision should be made by the Regional Councils. For HMS fisheries, it should be the advisory panels.[1] They are the bodies in the best position to consider and decide on the complexities of these systems.
2. The Councils should have broad discretion to implement systems that are appropriate to a fishery. To the extent that reasonable ideas about allocating the use of the resource are now precluded by the statute, the statutory obstacles should be removed. Guidelines should broaden the measures that can be implemented, not constrict them. Ideas being bandied about today about auctions, processor preferences, redistribution of quotas, rationalizing fleets, cataloging of rights, etc. may be appropriate in some fisheries but not in others. So long as there is no negative conservation impact and the resource will be used[2], the Councils should be able to consider ITQs.
3. The participants in the fishery should have a significant say in the formulation of any ITQ system impacting them. This includes all of the participants in the fishery, not just the commercial sector. ITQ systems are highly controversial because, even in the most benign of them, the system changes the economic relationships in the fishery. The Council and the participants are the best parties to sort out a rational and workable ITQ system for a given fishery.
4. Limited entry of commercial vessels should be considered before the approval of an ITQ system. ITQs are a good way to rationalize a fleet and their harvest. ITQs usually go hand-in-hand with a limited entry system. Councils should be required to consider the use of limited entry for commercial fisheries before turning to an ITQ system alone.
5. There should never be a limited entry program for recreational vessels. A limited entry program has now been approved for the Gulf of Mexico for the for-hire fleet in the reef fishery. This is a terrible mistake. Recreational fishermen can and do accept seasons, bag limits, gear restrictions and all sorts of other measures to reduce their impact on the resource. They do not accept limitations on access to the fishery. The economic value of a recreational fishery is directly related to access. If access is limited to make the for-hire fleet more efficient, the overall value of the recreational fishery goes down.
6. As long as the resource gets used within the proper biological constraints, there should be no limitations on who can buy an ITQ. In many fisheries today, the fastest growing sector is the recreational public. Yet, in most managed fisheries the commercial and recreational allocations are made on the basis of historic

[1] Reference to the Councils throughout this document is intended to cover Atlantic HMS fisheries as well.

[2] The concept of full use of the resource within conservation limits is of course the basis for both Law of the Sea's treatment of fisheries and the Magnuson–Stevens Act. Permanent conservation reserves in the hands of private parties would violate this underlying principle.

landings, which may have little or no relationship to today's fishery. Transferring the quota from one sector to another through the use of ITQs could be a rational way to reduce the number of commercial vessels in a fishery and provide for increased participation in the recreational sector, without impacting the resource.

7. Finally, there should be no extension of the present moratorium. Limited Entry and ITQs are not the answer for every fishery. In many the use of them may make no sense at all, but that decision should be made by the participants and the Councils, not by the Congress.

[A statement submitted for the record by Dr. Ilene M. Kaplan, Department of Sociology, Union College, and Visiting Researcher, Marine Policy Center, Woods Hole Oceanographic Institution, follows:]

Statement of Dr. Ilene M. Kaplan, Chair, Department of Sociology, Union College, and Visiting Researcher, Marine Policy Center, Woods Hole Oceanographic Institution

Individual Fishing Quotas (IFQ) have become one of the most controversial management proposals for United States fisheries. They represent a complex form of management and need to be considered very carefully, not only with regard to resource conservation needs, but with socio-economic concerns and U.S. geographic or regional needs in mind, as well. Furthermore, implementation of IFQs would be particularly problematic if quotas were to be transferable. Transferability could easily lead to increased pressures and negative socio-economic impacts on small scale fishing communities and businesses, particularly fishermen who own only one or two boats and fishermen who are not vertically integrated, which means they sell their catch to independent processors and dealers. Put simply, bigger operations could intimidate smaller operations and the many community businesses and families that are already facing economic problems could be placed under additional economic and social stress. Such small scale businesses should be given protection under the Regulatory Flexibility Act (RFA) and, in addition, the concomitant fisheries-dependent communities, of which these small businesses are a part, should be assured of fair treatment through the socio-economic impact assessments that need to be conducted according to the National Environmental Protection Act (NEPA).

Much of the New England commercial fishing businesses are made up of small-scale fishing operations. The Massachusetts and Maine coastlines are abundant with such fishing operations. And the scallop industry of New Bedford, one of the mainstay commercial operations of the city, and contributing to New Bedford's high ranking commercial seafood rating in the country, consists largely of such small-scale fishermen. In the event that larger fishing businesses overtook small scale operations, many fishing families, and in some cases, entire fishing communities i.e., communities dependent on commercial fishing operations, would be faced with high levels of unemployment, economic stress and increased social problems.

Socio-economic needs must be considered along with resource conservation strategies. The RFA assures this. IFQs have often been referred to as efficient operations but, efficiency should be looked at, not only from a resource economic perspective, but a socio-economic perspective as well. Increasing the number of families who face unemployment and a loss of family income is not efficient from all points of view. Alternative proposals, with fewer negative socio-economic impacts should be considered, particularly in regions like New England where small-scale fishing activities are in operation and have been the mainstay of economic stability for fishing families and communities.

There is another important consideration to be made regarding the use of quotas as a conservation/regulatory method. The actual allocation of different individual quotas is a practice that has the potential to become, or be perceived as being, unfair and/or abusive. In a community and government network where there is already a high degree of suspicion among stakeholders and government officials, the determination and allocation of individual quotas would promote rather than alleviate the adversarial relationship that has emerged between many fishing groups and the government. Imagined unfairness, even if not accurate, would be a serious problem in the implementation and success of the program.

In sum, the following points must be considered when examining the feasibility of fishing quotas: 1) transferability places undue pressures on small scale fishing businesses 2) socio-economic protections under the RFA and NEPA need to be

assessed 3) geographic regions like New England have a history of small-scale fishing operations, and would be particularly at risk for socio-economic difficulties and 4) the process of allocating individual, transferable quotas can promote perceptions of unfairness that would be counterproductive to the success of any regulatory process.

[A statement submitted for the record by Linda Kozak, Kozak & Associates, Inc. follows:]

Statement of Linda Kozak, Kozak & Associates, Inc.

I would like to submit comments for consideration on the use of individual fishing quotas (IFQs) in the development of fishery management programs in the Federally managed fisheries of the United States. In referencing quota programs as IFQs, it is my expectation that these quotas will and should be transferable.

Background

I am a lifelong Alaska resident and have fished salmon in Bristol Bay all of my life. Since 1987 I have worked as a consultant to vessel owners who participate in the fixed gear fisheries of sablefish, halibut, Pacific cod, and crab in Alaska. My IFQ background and experience includes attending nearly every North Pacific Fishery Management Council meeting for the last 15 years and representing my clients on IFQ issues. I was a charter member on the Council's IFQ Implementation Team and served on the West Coast Advisory Panel for the National Research Council study, which resulted in the document, "Sharing the Fish". I am now working with crab vessel owners in Alaska who have been attempting to have their fishery rationalized for several years. These vessel owners support an IFQ program for their fishery.

Need for IFQs in Developing Limited Access Programs

During the development of the sablefish and halibut IFQ program in Alaska, my clients and I opposed the adoption of such a program. I testified to the North Pacific Fishery Management Council a total of 22 times in opposition to that program as it was developed.

After the IFQ program was implemented and I began to see the advantages for resource conservation and economic efficiency, I became a strong believer in the potential benefits of quota programs. I now believe it is imperative for regional fishery management councils to have the flexibility to implement an IFQ program on a fishery by fishery basis.

In my view, the moratorium on new IFQ programs has been harmful to the resource and the fishery participants. In spite of limited entry for the groundfish and crab fisheries in Alaska, many of the fisheries in Alaska are still over-capitalized and need further rationalization. The North Pacific Council must have the ability to implement IFQ programs as needed in the various fisheries.

Comments on Developing a National Policy on IFQs

The National Standards to assist the regional councils in their development of IFQ programs should be broad enough to provide guidance, without requiring certain, specific action. There are different and varied needs and concerns for each region and fishery that should be addressed on an individual basis. In light of the desire to have guidelines that don't limit the flexibility of managers, there are several recommendations to consider.

1. Initial Allocation: The initial allocation for IFQs should be done on the basis of historical participation. The vessel owners that have invested years in a specific fishery, and in many cases developed niche markets for their product, should be recognized as those who initially benefit from a rationalization program. In regard to the concept of auctions or lottery system, I believe that this would be harmful to the resource and provide a lack of stability for the fishermen. In addition, those who would most benefit from an auction as the vehicle for allocation are the large companies that could afford to bid on the harvesting rights. This does not seem equitable to longtime, independent fishermen who may not have the resources to bid. It is most equitable to look at participation, with the councils having the ability to weigh dependence, as well as recent participation, when they consider the initial allocation. The needs of skippers and crewmembers can and should be addressed in developing a program. One way is to implement a low-cost loan program for new entry, which would provide a mechanism for skippers and crew to invest in the fishery. This has been done in the sablefish and halibut IFQ program in Alaska. Another way is to set aside a percentage of the IFQ at the first sale that would be in reserve for qualified crewmembers and skippers to purchase. There are many

ways to design this, but the specifics should be left to the councils. The needs of skippers and crewmembers will vary from region to region and fishery to fishery.

The coastal communities in Alaska and in many parts of the country depend on commercial fishing. The needs of the coastal communities need to be considered in developing an IFQ program, but in most cases a direct allocation is not appropriate or necessary.

2. Sunset or Mandatory Review Provisions: I believe that any IFQ program will go through a series of modifications in the first several years, as was the case of the sablefish and halibut program in Alaska. The North Pacific Council at present is reviewing yet another change to that program which will allow the small coastal villages in the Gulf of Alaska to purchase IFQ and lease it to their fishermen. There should NOT be a sunset provision, as this would cause instability and uncertainty for the participants. A mandatory review in five to seven years, which would look at the program in light of specific objectives, is very appropriate and probably desirable. A shorter time period would be problematic, as it takes about five years to see the effects of a major change in the management of a resource.

3. Policy Regarding Processor Shares: When addressing the question of how processors should be considered in an IFQ program, there are two basic issues.

The first is whether processors should receive harvesting quota shares based on their harvesting history in a manner similar to independent vessels that are not vertically integrated. In the sablefish and halibut program in Alaska, it was never questioned that the processing companies should be awarded harvesting shares based on the history of their vessels. I believe it is time to review this policy in light of the concern that most processing companies in Alaska are highly diversified and process product from a variety of species and regions. This gives them a great deal of flexibility that an independent vessel owner who participates in only one or two fisheries does not have. Their very ownership of harvesting vessels gives them an advantage in price negotiations, while their diversification in other fisheries is also a distinct advantage. While a total ban on processing companies owning harvesting vessels is probably not appropriate, some level of control in the ownership of harvesting vessels may be necessary, regardless of whether an IFQ program is in effect or not.

The second issue is much more troubling and potentially devastating to the independent harvester. That is whether processors should receive individual processing quota (IPQ) based on their processing history in a given fishery. This would require that a harvester must match all or some of his harvesting IFQ to a processor's IPQ in order to deliver product. The consideration of creating a national or regional policy to provide for the ability of the councils to allocate processing privileges as quotas, or even limited entry, goes against one of the objectives of a rationalization program. That is, the flexibility harvesters must have in a rationalization program to fish safely and in a manner which provides for conservation of the resource. This flexibility will not exist if processor quotas are allowed. Another important objective of an IFQ program should be to provide for open and free markets, with the ability for harvesters to receive a competitive and fair price for their product. This will provide a greater benefit to the skippers, crewmembers and communities. It is believed by many that if processor shares are allowed, the independent harvesters will not receive a fair and competitive price for their product, as the guarantee for processing a certain amount of fish will completely eliminate any incentive a processor might have to offer a competitive price. This will likely result in independent harvesters going out of business and being bought out by the larger, diversified vessel owners—the processing companies. The concern about what processor shares could do to the value of harvesting shares has been articulated in a recent report prepared for the North Pacific Fishery Management Council by Drs. Milon and Hamilton. Other economists, including Dr. Robert Halvorsen, have presented testimony to this subcommittee expressing concern about the potential impacts of processor shares and opposing the implementation of such a program.

Conclusion

The moratorium on new IFQ programs has been in effect for too long. It is a management tool that the regional councils urgently need in order to complete the rationalization of many fisheries. IFQ programs are needed to benefit the resource and provide some stability and certainty to the harvesters of specific fisheries. In creating National Standards for IFQ programs, it is important to create standards that will give general direction to the councils, without mandating a specific action or result. In the case of processor shares, Congress should NOT authorize or mandate the allocation of processor quota shares on a national or regional basis. Additionally, there may need to be some consideration for limiting the ownership of harvesting vessels and IFQ by processors.

[A statement submitted for the record by Jeffrey Stephan, United Fishermen's Marketing Association, Inc., follows:]

Statement of Jeffrey R. Stephan, United Fishermen's Marketing Association, Inc.

On behalf of the United Fishermen's Marketing Association, Inc. (UFMA), I respectfully submit this testimony to the record of the February 13, 2002, Oversight Hearing on Individual Fishing Quotas (IFQs) before the House Subcommittee on Fisheries Conservation, Wildlife & Oceans.

We would appreciate any future opportunity to personally testify to your Committee with respect to issues that address the Magnuson–Stevens Fishery Conservation and Management Act, and especially with respect to issues that address rationalization of U.S. fishery resources, including the allocation to the Harvesting or Processing Sectors of the U.S. Fishing Industry of permits for the exclusive use of a U.S. fishery resource.

The membership of the United Fishermen's Marketing Association, Inc. (UFMA) includes vessel owners and operators who harvest crab, sablefish, halibut, salmon, herring, p. cod and other groundfish in state and federal waters of the Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands (BSAI). A substantial component of our membership harvests sablefish and halibut under the Individual Fishing Quota (IFQ) Program for Halibut and Sablefish in the waters off Alaska that are within the jurisdiction of the North Pacific Fishery Management Council (NPFMC). UFMA was closely involved in the development of the rationalization of the halibut and sablefish fisheries (Halibut/Sablefish IFQ program), and is presently involved in ongoing activities that address implementation of and amendment to such IFQ program. Moreover, UFMA is actively involved and impacted by rationalization initiatives that are currently underway with respect to several Fishery Management Plans (FMP) that govern U.S. fishery resources within the jurisdiction of the NPFMC, including the FMPs for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs, BSAI Groundfish, and Gulf of Alaska (GOA) Groundfish. UFMA believes that the Halibut/Sablefish IFQ program has been generally successful in achieving rationalization of the halibut and sablefish fisheries, attaining realistic resource, conservation and management goals, and addressing reasonable social and economic considerations.

While we are especially interested in Congressional initiatives that may impact the allocation of permits that grant exclusive use of those U.S. fishery resources that are governed by the FMPs over which the NPFMC has authority, we agree that Congress must address several relevant issues and concerns of national significance and impact that are associated with the provision of authority to the Fishery Management Councils (Councils) and to the U.S. Secretary of Commerce (Secretary) to allocate permits that grant exclusive use of all U.S. fishery resources.

I. General Recommendations and Observations

We support the lifting of the Moratorium (IFQ Moratorium) that was placed on the implementation of new Individual Fishing Quota programs for the Harvesting Sector of the U.S. Fishing Industry (Harvester Individual Fishing Quotas, or IFQs).

We support existing provisions of U.S. law that prohibit the allocation of permits to the Processing Sector of the U.S. Fishing Industry ("Individual Processing Quotas", or "IPQs") to process a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a processing entity.

We do not support a change to federal legislation, including U.S. antitrust laws and the Magnuson–Stevens Act (MSA), that would permit the allocation of IPQs to the Processing Sector of the U.S. Fishing Industry.

Economic protectionism is the objective and expected outcome of IPQs, and will provide the U.S. Processing Sector with an economic windfall. The problems that IPQs attempt to seek are not clear. IPQs do not seek to solve resource conservation and management problems.

IPQs are a serious impediment to the economic freedom of the Harvesting and Processing Sectors to conduct their businesses in a competitive and market-driven manner, and will significantly constrain historical fishing practices, the achievement of optimum yield and the greatest overall benefit to the Nation, and thwart the growth of a sound and economic U.S. fishing industry.

We do not support Congressional authorization for Councils to impose "Regionalization" restrictions and requirements on either the U.S. Harvesting or Processing Sectors. Such Regionalization requirements force the Harvesting Sector to deliver their harvest of a U.S. fishery resource to a specific port, force the Processing Sector

to process a U.S. fishery resource in a particular port, and otherwise impose regional restrictions on deliveries of U.S. fishery resources to processors, and to certain geographical regions. Regionalization is a serious impediment to the economic freedom of the Harvesting and Processing Sectors to conduct their businesses in a competitive and market-driven manner.

We understand that the IFQ Moratorium on the implementation of new Individual Fishing Quota programs addresses only the allocation of IFQs to the U.S. Harvesting Sector. The IFQ Moratorium has no linkage to the allocation of IPQs to the U.S. Processing Sector. We ask Congress to remain silent on IPQs in the MSA.

We request the Congress to commission the Federal Trade Commission and the Department of Justice Antitrust Division, in consultation with the Secretary of Commerce, to prepare a comprehensive report that examines the use of IPQs in fisheries management, and that such a report should be completed and considered by the Congress prior to Congressional consideration of any National Standards that would authorize the use of IPQs in fisheries management.

Several U.S. fishery resources are commodities that contribute to U.S. domestic and export trade, and are important to interstate and foreign commerce. We ask Congress to examine whether Regionalization violates the Port Preference Clause of the U.S. Constitution, and whether IPQs or Regionalization have impact on domestic and foreign trade, including the impacts of IPQs on international treaties, trade agreements and foreign laws that contain provisions, obligations and conditions that govern domestic and international commerce of U.S. products that may be associated with subsidies, anticompetitive combinations, etc. (e.g., NAFTA, European Commission of the European Union, etc.).

We support specific, relevant and comprehensive National Standards for IPQs and Regionalization to which all Councils are equally required to adhere. If Congress wishes to consider rewriting current federal legislation, including U.S. antitrust laws and the MSA, to provide for Council and Secretarial consideration of IPQs, then we respectfully request Congress to legislate specific, relevant and comprehensive National Standards that address the consideration of IPQs and Regionalization by all Councils, and that such National Standards must equally apply to all Councils, and should be national in scope.

We do not support a Congressional authorization that permits a specific Council, absent specific and comprehensive National Standards that are National in scope, to recommend to the Secretary FMP Amendments and associated regulations that intend to implement Individual Processing Quotas (IPQs) or Regionalization restrictions with respect to a U.S. fishery. We do not support a specific authorization to a specific Council to develop and adopt a rationalization plan that includes IPQs or Regionalization absent National Standards that apply equally to all Councils. That is, we ask Congress to not leave it to the Councils to determine whether or not, and to what extent, to recommend IPQs or Regionalization to the Secretary; we believe that all Councils should adhere equally to National Standards that address IPQs and Regionalization.

We do not support independent and unilateral Congressional action that mandates IPQs or Regionalization for a specific U.S. fishery, especially when such action is not the subject of the thoughtful and deliberative review that is otherwise attempted and available with respect to the public process that customarily governs legislative action (e.g., bicameral review; review by Subcommittees and Committees with primary jurisdiction; Congressional hearings; debate; public submission of comment and testimony; markup; reports; etc.). We are concerned that the major policy and economic implications and the complex operational details of rationalization are not available for public assessment and analysis when Congress legislates the precise operational details of rationalization. We are given significant trepidation and disquiet by the specter of Washington D.C. lobbyists fixing the specific details and solutions for their special interest clients with respect to complex regional management challenges, including the rationalization of specific U.S. fisheries. We respectfully request that Congress eschew the pressure to legislate even the minor details of such complex rationalization programs that carry such significant consequences.

We do not support a Congressional mandate or directive that the Secretary impose a Secretarial rationalization plan for a specific U.S. fishery, especially one that incorporates the precedents of Processor IPQs and Regionalization.

We respectfully caution Congress that many of the resource, conservation, management and reasonable economic and social benefits that may derive from a straightforward Harvester IFQ program are quickly extinguished, or significantly distorted, when provisions, requirements and regulatory and other costs are attached to Harvester IFQ programs that seek to attain economic and social objectives, and the allocation of economic and social subsidies, protections and advantages, that go far beyond reasonable objectives of rationalization, and of fisheries

management generally. Many of these costs should otherwise more properly be addressed through focused appropriations from the general tax structure, or through other legislative or regulatory remedies that are available to Congress and the individual States.

Although the U.S. Maritime Administration collects and compiles important vessel ownership information that is of benefit and use to the Secretary and the Councils in support of making informed decisions with respect to ownership issues that are associated with IPQs, including information that is necessary for evaluating participation in U.S. fisheries, they do not make such information available to the Councils or the Secretary. If there is valuable and useful data that is available from the Maritime Administration that would help the Secretary and the Council understand the implications and impacts of their regulatory actions, we respectfully request that Congress authorize the U.S. Maritime Administration to make this data available.

We respectfully request Congress to evaluate the impacts and implications of IPQs with respect to competition of, and methods to prevent, limit and control, foreign ownership interest in, and economic control of the U.S. fishing industry.

We respectfully suggest that Congress should evaluate the use of divestiture as a means to mitigate the anticompetitive impacts that will result from the application of IPQs in rationalization programs for U.S. fisheries. There are several benefits to requiring the Processing Sector to divest Harvesting Sector IFQs and harvesting vessels as a reasonable precondition for considering the allocation of IPQs.

II. Removal of the Congressional Moratorium on Individual Fishing Quota Programs

We support the lifting of the Moratorium (IFQ Moratorium) that was placed on the implementation of new Individual Fishing Quota programs for the Harvesting Sector of the U.S. Fishing Industry (Harvester Individual Fishing Quotas, or IFQs). That is, we support the allocation of permits to the Harvesting Sector of the U.S. Fishing Industry to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Harvester IFQs is a reasonable management tool, is currently in use in the geographical jurisdiction of several different Councils, has been successfully implemented, can be addressed from a national perspective in a reasonably straightforward manner, and is legal when the IFQ Moratorium is lifted.

The utility of using Harvester IFQs as a rationalization tool for the Harvesting Sector is clear, and has been identified and supported by the past action of several Councils, NMFS and Congress.

There appears to be a need for fleet rationalization in certain U.S. fisheries, and those many factors that are customarily considered as a rationale for the implementation of Harvesting Sector rationalization, and specifically with respect to IFQs, are present in many of these U.S. fisheries.

IFQs as a method of Harvesting Sector rationalization are an accepted concept, and a practical and reasonable management instrument that have proven to achieve significant resource, conservation, management, safety and economic and social benefits and outcomes.

IFQs can result in the achievement of many benefits, including the minimization of vessel overcapitalization; benefits to the conservation and productivity of U.S. fishery resources; improvement in management efficiencies, costs and operation; improved vessel and human safety (for commercial vessels, harvesters, rescue vessels, rescuers); more efficient and competitive market mechanisms; economic stability for the Harvesting Sector that is generally made up of small independent businesses; improved product quality and marketability; consumer benefits; more efficient and competitive product distribution; etc.

The Alaskan Halibut/Sablefish IFQ program has generally been a management instrument that has resulted in beneficial impacts to the resource, industry, safety, quality, marketability, competitive markets, consumers, product value, product and market distribution, etc.

The linking, tying, and concurrent consideration, development and analysis of IFQs and IPQs are largely a political issue, and are not central to the resource, conservation and management issues that are relevant to rationalization of U.S. fisheries. IFQs and IPQs are separate concepts that are significantly different with respect to their costs, benefits, impacts and effects. IFQs and IPQs are distinctively different and unconnected in their respective application and effects.

III. Allocation of Permits for Exclusive Use of U.S. Fisheries Resources to the Processing Sector of the U.S. Fishing Industry (IPQs)

We support existing provisions of U.S. law that prohibit the allocation of permits to the Processing Sector of the U.S. Fishing Industry ("Individual Processing Quotas", or "IPQs") to process a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a processing entity. The prohibitions against the allocation of IPQs are good public policy, in the best interest of the U.S. Harvesting and Processing Sectors, of the U.S. Fishing Industry generally, and of the consumer. The continued prohibition of IPQs helps to ensure that vigorous competition and free market mechanisms will continue to operate in the U.S. fishing industry.

We do not support a change to federal legislation, including U.S. antitrust laws and the Magnuson–Stevens Act (MSA), that would permit the allocation of IPQs to the Processing Sector of the U.S. Fishing Industry. IPQs pose significant antitrust and anticompetitive issues, and issues with respect to anticompetitive combinations, concentrations, mergers and vertical integration that seriously risk the competitiveness and future economic vitality and growth of the U.S. fishing industry.

The enduring principles that underlie the Sherman Antitrust Act, the Clayton Antitrust Act, the Robinson–Patman Act, and other antitrust laws of the United States should be every bit as relevant today as when this important antitrust legislation was passed.

We understand that the IFQ Moratorium on the implementation of new Individual Fishing Quota programs addresses only the allocation of IFQs to the U.S. Harvesting Sector, and has no linkage to the allocation of IPQs to the U.S. Processing Sector. We ask Congress that the MSA remain silent on IPQs.

Economic protectionism is the objective and expected outcome of IPQs, and will provide the U.S. Processing Sector with an economic windfall. The problems that IPQs attempt to seek are not clear. IPQs do not seek to solve resource conservation and management problems. While some advocates of IPQs promote them as a means to rationalize the Processing Sector, IPQs are clearly not a means of rationalization, nor do they have any meaningful impact with respect to resource, conservation, management or safety objectives, effects or benefits.

IPQs are an unproven and hypothetical theoretical concept that is not validated in observation, practical application or experience. This is also true for the unproven theory that is referred to as the "two-pie" system that is commonly associated with Dr. Scott Matulich. While Dr. Matulich has used the concept of the "two-pie" system in support of, and as a means of, his advocacy of allocating IPQs and other property rights to the Processing Sector, his "two-pie" theory does not seem to be supported in the economic literature.

IV. Processing Sector IPQs Foreshadow Significant Antitrust and Anticompetitive Impacts

IPQs are a serious impediment to the economic freedom of the Harvesting and Processing Sectors to conduct their businesses in a competitive and market-driven manner, and will significantly constrain historical fishing practices, the achievement of optimum yield and the greatest overall benefit to the Nation, and thwart the growth of a sound and economic U.S. fishing industry.

Significant examples of market dominance exist in U.S. Processing Sector; IPQs will exacerbate this condition.

IPQs significantly constrain the entry of new, small, innovative and non-dominant Processing Sector entities. While the actual quantities U.S. fishery resources that have been historically purchased and processed by new, small, innovative and non-dominant processors may not be proportionally high when compared to the totals that have been purchased and processed by established and dominant processors, it is an undeniable assertion that the very presence of new, innovative, small and non-dominant processors in the marketplace, and the commensurate freedom, opportunity and ability that they posses to compete for the purchase of U.S. fishery resources, provides significant competitive benefits and positive effects that sustain free and open markets, competition generally, competitive ex-vessel pricing, product diversity, product distribution , and many other benefits that result from free and open markets and competition.

New, small, innovative and non-dominant Processing Sector entities have special economic needs and competitive positions that are different from established and dominant processors, and IPQs will prima facie limit the market freedom, opportunity and ability of these processors, and the U.S. Processing Sector generally, to freely compete for the purchase of U.S. fishery resources from the U.S. Harvesting Sector.

IPQs significantly limit market freedom, competition and harvester choice for the Harvesting Sector, and limit the ability of Harvesting Sector vessels to choose the processing entity to whom they sell their crab.

The distribution of IPQs to the U.S. Processing Sector presents significant impacts to interstate commerce and foreign trade.

Mechanisms to control, regulate and mitigate the many adverse impacts that will result from the allocation of IPQs to the U.S. Processing Sector are very difficult, if not impossible, to achieve and enforce.

The principles of free and open markets and vigorous competition should be encouraged and maintained in the U.S. Processing Sector. The U.S. Processing Sector, partially because of the limited number of participants, relative distribution of economic power and influence, and culture and history, per se possesses significant potential to effect and restrain free and open markets and vigorous competition in the U.S. fishing industry. IPQs significantly increase the potential and likelihood that anticompetitive behavior will impact the U.S. fishing industry.

The distribution of IPQs to the U.S. Processing Sector presents significant issues with respect to foreign ownership restrictions; ownership caps; use caps; company caps; entity-specific caps; individual caps; excessive ownership issues; maintenance of Processing Sector characteristics; antitrust and anticompetitive considerations; vertical integration; combination and concentration considerations; merger and acquisition considerations; excessive economic and market control, power and concentration considerations; monopoly, monopsony and oligopoly considerations; divestiture issues; etc.

The unintended consequences and effects of IPQs to the U.S. fishing industry will be significantly greater and more complex than those consequences that are initially intended, identified and considered; they include impacts to consumers, markets, communities that depend on the resource, competition, ex-vessel prices, wholesale prices, product distribution, and the less dominant participants in the Processing Sector. The impacts of IPQs do not only effect the U.S. Harvesting sector, but they also impact the consumer, markets, communities that depend on U.S. fisheries resources, competition, and the less dominant participants in the U.S. Processing Sector.

V. Regionalization Considerations

We do not support Congressional authorization for Councils to impose "Regionalization" restrictions and requirements on either the U.S. Harvesting or Processing Sectors. Such Regionalization requirements force the Harvesting Sector to deliver their harvest of a U.S. fishery resource to a specific port, force the Processing Sector to process a U.S. fishery resource in a particular port, and otherwise impose regional restrictions on deliveries of U.S. fishery resources to processors, and to certain geographical regions. Regionalization is a serious impediment to the economic freedom of the Harvesting and Processing Sectors to conduct their businesses in a competitive and market-driven manner, and will significantly constrain historical fishing practices, the achievement of optimum yield and the greatest overall benefit to the Nation, and thwart the growth of a sound and economic U.S. fishing industry.

There are significant anti-competitive impacts and effects that must be understood and analyzed with respect to the combination of the theoretical concept of IPQs with the concept of "Regionalization". There is a significant and undeniable anticompetitive economic environment that is created if the Harvesting Sector is forced to deliver a required percentage of the Total Allowable Catch (TAC) for any fisheries resource species to a particular community or port. The anticompetitive environment is greatly enhanced if only one processing entity, or only a few processing entities, are permitted to purchase or process a specific fisheries species in a specific port. These anticompetitive effects are further exacerbated if such entity (or few entities):

- are dominant;
- operate processing operations in other regions and communities;
- operate processing operations for other U.S. fishery resources;
- are beneficiaries to the largesse of the American Fisheries Act (AFA);
- have other economic or political arrangements or associations with the community or region, or with other economic or political entities in the community or region (such entities that may own the land upon which the processing entity is situated, or that may have some ownership interest with the processing entity, etc.);
- are permitted to lease IPQs from other Processors in the Region;
- are vertically integrated with ownership in several harvesting vessels;
- etc.

The combined anticompetitive impacts and barriers that result from the coupling of IPQs with Regionalization present anticompetitive and other economic barriers to the entry of other processing entities into whatever community or region is governed by the restrictions of Regionalization, and are significantly more intense than the separate and respective impacts of IPQs and Regionalization.

The effects of Regionalization and IPQs respectively, and separately, and also of the coupling of Regionalization and IPQs, are difficult to analyze and understand. However, it is imperative that a thorough examination and understanding of these anticompetitive and other social and economic impacts are thoroughly investigated, explored and understood prior to a serious consideration of using Regionalization or IPQs in fisheries management.

VI. National Study of Individual Processor Quotas (IPQs)

We understand that the IFQ Moratorium on the implementation of new Individual Fishing Quota programs addresses only the allocation of IFQs to the U.S. Harvesting Sector. The IFQ Moratorium has no linkage to the allocation of IPQs to the U.S. Processing Sector. We ask Congress to remain silent on IPQs in the MSA. We further request that Congress commission the Federal Trade Commission and the Department of Justice Antitrust Division, in consultation with the Secretary of Commerce, to prepare a comprehensive report that examines the use of IPQs in fisheries management, and that such a report should be completed and considered by the Congress prior to Congressional consideration of any National Standards that would authorize the use of IPQs in fisheries management. The 1999 Report from the National Research Council of the National Academy of Sciences ("Sharing the Fish: Toward a National Policy on IFQs", or "Sharing the Fish") was a very complete, well-written and thoroughly researched report. However, it focused primarily on the impacts, effects and mechanisms of Harvesting Sector IFQs, and did not provide a comprehensive focus on or evaluation of the impacts, effects and mechanisms of IPQs, especially with respect to the significant anticompetitive and economic power issues that are undeniably present when IPQs are contemplated for use in fisheries management.

Following, we respectfully submit a suggested outline for an "Individual Processor Quota Report" that contains a range of topics that we envision should be included in such a report:

Individual Processing Quota Report:

(1) Not later than October 1, 2007, the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice shall jointly submit to the Congress a comprehensive report on Individual Processing Quotas (IPQs). The report shall address all aspects of such IPQs, including an analysis of——

(A) Impacts and implications to competition of, methods to evaluate and measure, and mechanisms to prevent, limit and control, Processing Sector ownership interest in, and economic control of:

(i) harvesting vessels,

(ii) permits or licenses that permit the Harvesting Sector to operate a vessel in a fishery where there exists a limitation on the number of vessels that are permitted to harvest a U.S. fishery resource (e.g., license limitation programs),

(iii) permits or licenses that permit the Harvesting Sector to have exclusive rights to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person (e.g., IFQs),

(iv) fishing history of the Harvesting Sector (i.e., landings, participation and other criteria that will determine the qualification of Harvesting Sector entities to receive IFQs, licenses, permits, etc.)

(v) U.S. fisheries resources.

(B) Impacts and implications to competition of, methods to evaluate and measure, and mechanisms to prevent, limit and control, foreign ownership interest in, and economic control of:

(i) harvesting vessels,

(ii) permits or licenses that permit the Harvesting Sector to operate a vessel in a fishery where there exists a limitation on the number of vessels that are permitted to harvest a U.S. fishery resource (e.g., license limitation programs),

(iii) permits or licenses that permit the Harvesting Sector to have exclusive rights to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person (e.g., IFQs),

(iv) fishing history of the Harvesting Sector (i.e., landings, participation and other criteria that will determine the qualification of Harvesting Sector entities to receive IFQs, licenses, permits etc),

(v) U.S. fisheries resources.

(C) Impacts and implications to competition of, methods to evaluate and measure, and mechanisms to prevent, limit and control particular individuals, corporations, or other entities from acquiring an excessive share of IPQs.

(D) Methods and means by which the Processor Sector and foreign entities exert or hold economic control or power in the U.S. fishing industry, including an examination of partnerships, corporations, loan guarantees, promissory notes, other loans, cash advances, debt instruments, credits, market control, etc.

(E) Impacts and implications to competition of, and mechanisms to prevent, limit and control, the leasing of IPQs.

(F) Impacts and implications to competition of, and mechanisms to prevent, limit and control, the ownership or leasing of IFQs by the Processing Sector.

(G) Methods and means to require, under an IPQ program, that the Processing Sector divest itself of all ownership interest in, and economic control of:

(i) harvesting vessels,

(ii) permits or licenses that permit the Harvesting Sector to operate a vessel in a fishery where there exists a limitation on the number of vessels that are permitted to harvest a U.S. fishery resource (e.g. license limitation programs),

(iii) permits or licenses that permit the Harvesting Sector to have exclusive rights to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person (e.g., IFQs),

(iv) fishing history of the Harvesting Sector (i.e., landings, participation and other criteria that will determine the qualification of Harvesting Sector entities to receive IFQs, licenses, permits etc).

(H) The anti-competitive impacts and economic barriers that may result from the cumulative and combined impacts of Individual Processing Quotas (IPQs) coupled with Regionalization. For example, are the combined impacts and barriers of IPQs and Regionalization different than the individual and respective impacts of IPQs or Regionalization and, if so, to what extent?

(I) The general economic and social impacts on free and open markets, vigorous competition, price mechanisms, costs, distribution of rents and other competitive mechanisms in the U.S. fishing industry that may result from the use of IPQs in fisheries management, including impacts that are associated with:

(i) IPQs generally,

(ii) mergers, acquisitions, combinations, concentrations and vertical integration in the Processing Sector,

(iii) foreign ownership interest in and economic control of the Processing Sector, Harvesting Sector or U.S. fishery resources.

(J) Spillover effects of IPQs on other fisheries.

(K) The impact of limiting the duration of an IPQ program.

(L) Mechanisms to provide for effective monitoring and enforcement of IPQ programs.

(M) Mechanisms to ensure that new Processing Sector entrants are treated fairly and equitably, and that new entry are facilitated, under an IPQ program.

(N) potential social and economic costs and benefits to the nation under an IPQ program.

(O) Impacts of IPQs on domestic and foreign trade, the linkage of IPQs with U.S. antitrust laws, and the impacts of IPQs on international treaties, trade agreements and foreign laws that contain provisions, obligations and conditions that govern domestic and international commerce of U.S. products that may be associated with subsidies, anticompetitive combinations, etc. (e.g., NAFTA, European Commission of the European Union, etc.).

(2) The report shall include a detailed analysis of Individual Processing Quota (IPQ) programs already implemented in the United States or in other countries, including the impacts:

(A) of any limits on transferability,

(B) on past and present participants,

(C) on fishing communities,

(D) on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery,

(E) on the safety of life and vessels in the fishery,

(F) on any excess processing capacity in the fishery,

(G) on any gear conflicts in the fishery,

(H) on product quality from the fishery,

(I) on the effectiveness of enforcement of IPQs,

(J) on the size and composition of the Processing entities,

(K) on the economic value created by Individual Processing Quotas for initial recipients and non-recipients,

(L) on conservation of the fishery resource,

(M) on processors who rely on participation in several fisheries,

(N) on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating IPQs and controlling transferability.

(3) The report shall identify and analyze alternative systems such as federally guaranteed buyout loans to region-specific or fishery-specific sectors of the Processing Sector that would finance the removal of excess capital from the U.S. Processing Sector.

(4) The Federal Trade Commission, and the U.S. Department of Justice Antitrust Division, in consultation with The Secretary of Commerce, shall conduct public hearings in each Council region to obtain comments on Individual Processing Quotas for use by the Federal Trade Commission and the U.S. Department of Justice Antitrust Division in preparing this joint report required by this subsection. The Federal Trade Commission, and the U.S. Department of Justice Antitrust Division shall submit a draft report to the Secretary of Commerce by January 1, 2007. The Secretary of Commerce shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the Federal Trade Commission and the U.S. Department of Justice Antitrust Division in their final joint report.

VII. Trade Considerations With Respect to IPQs and Regionalization in a Rationalization Plan for a U.S. Fishery Resource

Several U.S. fishery resources are commodities that contribute to U.S. domestic and export trade, and are important to interstate and foreign commerce. We ask Congress to examine whether Regionalization violates the Port Preference Clause of the U.S. Constitution, and whether IPQs or Regionalization have impact on domestic and foreign trade, including the impacts of IPQs on international treaties, trade agreements and foreign laws that contain provisions, obligations and conditions that govern domestic and international commerce of U.S. products that may be associated with subsidies, anticompetitive combinations, etc. (e.g., NAFTA, European Commission of the European Union, etc.).

VIII. National Standards for IPQs and Other Related Legislative Issues

We support specific, relevant and comprehensive National Standards for IPQs and Regionalization to which all Councils are equally required to adhere. If Congress wishes to consider rewriting current federal legislation, including U.S. antitrust laws and the MSA, to provide for Council and Secretarial consideration of IPQs, then we respectfully request Congress to legislate specific, relevant and comprehensive National Standards that address the consideration of IPQs and Regionalization by all Councils, and that such National Standards must equally apply to all Councils, and should be national in scope.

We do not support a Congressional authorization that permits a specific Council, absent specific and comprehensive National Standards that are National in scope, to recommend to the Secretary FMP Amendments and associated regulations that intend to implement Individual Processing Quotas (IPQs) or Regionalization restrictions with respect to a U.S. fishery. We do not support a specific authorization to a specific Council to develop and adopt a rationalization plan that includes IPQs or Regionalization absent National Standards that apply equally to all Councils. That is, we ask Congress to not leave it to the Councils to determine whether or not, and to what extent, to recommend IPQs or Regionalization to the Secretary; we believe that all Councils should adhere equally to National Standards that address IPQs and Regionalization.

We do not support independent and unilateral Congressional action that mandates IPQs or Regionalization for a specific U.S. fishery, especially when such action is not the subject of the thoughtful and deliberative review that is otherwise attempted and available with respect to the public process that customarily governs legislative action (e.g., bicameral review; review by Subcommittees and Committees with primary jurisdiction; Congressional hearings; debate; public submission of comment and testimony; markup; reports; etc.). We are concerned that the major policy and economic implications and the complex operational details of rationalization are not available for public assessment and analysis when Congress legislates the precise operational details of rationalization. We are given significant trepidation and

disquiet by the specter of Washington D.C. lobbyists fixing the specific details and solutions for their special interest clients with respect to complex regional management challenges, including the rationalization of specific U.S. fisheries. We respectfully request that Congress eschew the pressure to legislate even the minor details of such complex rationalization programs that carry such significant consequences.

We do not support a Congressional mandate or directive that the Secretary impose a Secretarial rationalization plan for a specific U.S. fishery, especially one that incorporates the precedent of Processor IPQs and Regionalization.

IX. Extension of IFQs to Address Economic and Social Issues, and to Impose De Facto and Indirect Taxes, That Should More Properly Be Addressed Through Other Legislative or Regulatory Remedies that are Available to Congress and the Individual States.

We respectfully caution Congress that many of the resource, conservation, management and reasonable economic and social benefits that may derive from a straightforward Harvester IFQ program are quickly extinguished, or significantly distorted, when provisions, requirements and regulatory and other costs are attached to Harvester IFQ programs that seek to attain economic and social objectives, and the allocation of economic and social subsidies, protections and advantages, that go far beyond reasonable objectives of rationalization, and of fisheries management generally. Many of these costs should otherwise more properly be addressed through focused appropriations from the general tax structure, or through other legislative or regulatory remedies that are available to Congress and the individual States. These and other artificial constraints and restraints to the efficient application of IFQs as a resource, conservation and management tool significantly impair historical fishing practices, the achievement of optimum yield and the greatest overall benefit to the Nation, thwart the natural market driven growth of a sound and viable economic U.S. fishing industry, and generally choke efficient economic and market mechanisms.

We believe that it is not in the interest of the Nation, nor in the best interest of resource conservation and management, to seek to attain through fisheries management legislation or regulation, or to grossly extend and distort the use of a legitimate tool for resource conservation and management (i.e., IFQs), the provision and allocation of economic and social benefits, subsidies, protections and advantages that are meant to gratify economic and social needs that result from:

- inefficient and imprudent investments by private businesses or public officials,
- inefficient and imprudent decision-making by private businesses or public officials,
- influences and factors that are external to fisheries resource conservation and management,
- influences and factors that are external to, and not reasonably associated with, the economic mechanisms of the U.S. fishing industry,
- the general economic environment of a region,
- other economic and social circumstances that are external to the U.S. Harvesting Sector specifically, and to the U.S. fishing industry generally.

Many of the economic subsidies and social challenges that some propose for remedy through fisheries management legislation and regulation should otherwise more properly be addressed through focused appropriations from the general tax structure, or through other legislative or regulatory remedies that are available to Congress and the individual States. Solutions to many of the challenging economic and social circumstances that exist should be pursued in fulfillment of responsibilities that are more properly within the purview of the Congress, federal government and the individual States. It is not in the interests of the Nation, nor is it reasonable to expect, that the U.S. Harvesting Sector bear the costs of meeting federal and state economic and social responsibilities, and of addressing economic and social needs that derive from influences and factors that are external to, and that have little association or relationship with, the U.S. fishing industry. De facto taxation or other transfer payment mechanisms represent costs to pay for mitigation of these economic and social circumstances, and restrict and penalize the exercise of efficient market mechanisms in the Harvesting Sector that may otherwise provide promise for addressing many of these economic and social needs.

X. Legislation is Needed to Provide Access to U.S. Maritime Administration Records and Data

Although the U.S. Maritime Administration collects and compiles important vessel ownership information that is of benefit and use to the Secretary and the Councils in support of making informed decisions with respect to ownership issues that are associated with IPQs, including information that is necessary for evaluating

participation in U.S. fisheries, they do not make such information available to the Councils or the Secretary. If there is valuable and useful data that is available from the Maritime Administration that would help the Secretary and the Council understand the implications and impacts of their regulatory actions, we respectfully request that Congress authorize the U.S. Maritime Administration to make this data available.

It is important that the Councils and the Secretary possess detailed knowledge of the ownership structure of interests in the fisheries so that they are able to examine and analyze the general and anticompetitive impacts that flow from the concentration of interests that may result from rationalization programs that propose to allocate permits that grant exclusive use of U.S. fishery resources, especially IPQs.

A thorough understanding of vessel and fishing history ownership is necessary and essential if the Councils and the Secretary are to be expected to adequately evaluate and analyze the threat of a particular individual, corporation, or other entity acquiring an excessive share of those fishing privileges that result from the allocation of permits that grant exclusive use of U.S. fishery resources. Significant potential for excessive concentrations of economic power are likely to result from proposed rationalization programs that contemplate the allocation of IPQs to the Processing Sector. The potential for anticompetitive combinations in the Processing Sector is further exacerbated when IPQs are allocated in a fishery in which only a small field of processors participate, that contains only a few dominant processors, or includes processors that own or otherwise control harvesting vessels (i.e., vertical integration). Anticompetitive impacts may result within the Processing sector itself as a result of the eligibility of some processors to receive a significant allocation of Harvesting Sector IFQs, while others possess little or no such eligibility.

The 1999 report from the National Research Council, "Sharing the Fish: Toward a National Policy on IFQs" ("Sharing the Fish"), listed several suggestions for conditions that should exist for an IFQ program to be successful (p. 192). Three of these suggestions seem to have applicability to the need for the Councils and the Secretary to have ready and easy access to data that is collected and compiled by the U.S. Maritime Administration:

1. "The goals of improving economic efficiency and reducing the numbers of firms, vessels and people in the fishery have a high priority."
2. "Adequate Data Exist. Because of long term impacts and potential irreversibility of IFQ programs, it is important that sufficient data are available to address and allow the mitigation of, insofar as possible, the potential social and economic impacts of IFQs on individuals and communities."
3. "The likelihood for spillover of fishing activities into other fisheries is recognized and provision is made to minimize its negative effects."

While "Sharing the Fish" did not primarily focus on Processing Sector IPQs, it is reasonable to look at IPQs from the viewpoint of at least the three suggestions that are noted above, and to draw some conclusions:

- that a reduction of the number of Processing Sector entities in most U.S. fisheries would be detrimental to the maintenance of a vigorous competitive environment in most U.S. fisheries;
- that IPQs encourage and promote reductions in the Processing Sector that result in anticompetitive consolidations, combinations and vertical integration;
- that any National policy that addressed IPQs, or any Council that considered IPQs, should thoroughly understand the impacts of IPQs with respect to a reduction in the "... number of firms, vessels and people in the fishery...".
- that because of significant long term impacts and potential irreversibility of an IPQ program, and when compared to the effects of an IPQ program on an IFQ program where Processing Sector entities are also permitted to own Harvesting Sector IFQs and harvesting vessels, it is important that existing and sufficient data that is collected and compiled by the U.S. Maritime Administration are made "... available to address and allow the mitigation of, insofar as possible, the potential social and economic impacts of IFQs on individuals and communities."
- that because there is a great likelihood for IPQs to cause significant "... spillover of fishing activities into other fisheries ...", it is essential that existing and relevant data that are collected and compiled by the U.S. Maritime Administration be made available so that the spillover impacts that flow from IPQs are "...recognized and provision is made to minimize..." the negative effects.

A brief reference that addresses this problem is found in a recent draft document from the North Pacific Fishery Management Council ("Initial Council Review Draft, BSAI Crab Rationalization Program Alternatives"; Prepared by NPFMC Staff,

January 22, 2002) within the section entitled "1.3.4 Vessel Ownership and Concentration of Interests" (p. 34):

> "Use and ownership caps on harvesting and processing shares in the fisheries and limits on vertical integration in particular require detailed knowledge of the ownership structure of interests in the fisheries. Limited data is available concerning this ownership. Many vessels and LLP licenses are corporate owned with individual ownership concealed by the corporate structure. Vessel ownership information is collected by the US Maritime Administration is not release by that agency. The agency collects complete ownership information to verify US ownership necessary for participation in US fisheries. LLP license ownership and vessel ownership records are maintained by the NMFS/RAM office. These records, however, include only the named legal owner or owners. Regardless of the purpose for this choice of ownership, corporate ownership has the effect of concealing the concentration of interests in the fishery."

XI. Foreign Ownership Considerations

We respectfully request Congress to evaluate the impacts and implications of IPQs with respect to competition of, and methods to prevent, limit and control, foreign ownership interest in, and economic control of:

- harvesting vessels,
- permits or licenses that permit the Harvesting Sector to operate a vessel in a fishery where there exists a limitation on the number of vessels that are permitted to harvest a U.S. fishery resource (e.g., license limitation programs),
- permits or licenses that permit the Harvesting Sector to have exclusive rights to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person (e.g., IFQs),
- fishing history of the Harvesting Sector (i.e., landings, participation and other criteria that will determine the qualification of Harvesting Sector entities to receive IFQs, licenses, permits etc),
- U.S. fisheries resources generally.

XII. Divestiture of IFQs and BSAI Crab Vessels in the BSAI Crab Processing Sector

We respectfully suggest that Congress should evaluate the use of divestiture as a means to mitigate the anticompetitive impacts that will result from the application of IPQs in rationalization programs for U.S. fisheries. There are several benefits to requiring the Processing Sector to divest Harvesting Sector IFQs and harvesting vessels as a reasonable precondition for considering the allocation of IPQs. One element of the Congressional evaluation of divestiture should address the potential impacts to competition, economic control and fair market pricing that are presented by the circumstance that some participants in the Processing Sector own and operate harvesting vessels, and some do not.

Thank you for your consideration of our comments.

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