

Testimony of Lee R. Crockett

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Wildlife and Oceans

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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 demonstrated 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.