

Testimony of Lee R. Crockett
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Of the Senate Commerce, Science and Transportation Committee
Hearing on Individual Fishing Quotas
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Good morning Madam Chair and Members of the Subcommittee, my name is Lee Crockett, I am the Executive Director of the Marine Fish Conservation Network (Network). The Network is a coalition of 102 environmental organizations, commercial and recreational fishing associations, marine science groups, and aquaria dedicated to promoting the long-term sustainability of marine fisheries. Our member organizations represent nearly 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 programs. I will focus my testimony on your legislation, the "Individual Fishing Quota Act of 2001," S. 637. I would also like to discuss the exclusive quota-based management standards that Senator Kerry proposed in S. 2973 during the 106th Congress.

I would first like to commend you and Senators Stevens and Kerry for your leadership in this area. Whether to allow the establishment of individual fishing quota (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. 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 imposed 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. Thanks to the hard work of you Madame Chair, and Senators Stevens and Kerry, Congress extended the IFQ moratorium for two additional years. The Network feels that this extension was appropriate because it will allow Congress adequate time to develop national standards for the design and conduct of IFQ programs.

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

The legislative standards contained in S. 637 and S. 2973 would go a long way toward protecting the public's interest if an IFQ program is established in a fishery. While each proposal has its merits, each could be improved with language providing greater specificity and increased accountability. I have organized my specific comments by the Network's seven IFQ program principles.

No Compensable Property Right

IFQ programs must acknowledge that fisheries resources are publicly owned, that IFQs are not compensable property rights, and that IFQs are revocable. 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.

S. 637 restates existing Magnuson-Stevens Act language explicitly stating that IFQ programs do not create a compensable property right and that IFQs are revocable. It also places a five-year limit on quota shares. We strongly support the five-year limit on quota shares. However, we believe that the bill could be improved by creating more explicit review and renewal or reallocation procedures. In order for the five-year limit to be meaningful, the Network strongly believes that there must be a very real chance that quota shareholders could lose their shares if they fail to comply with all aspects of the IFQ program. If the review becomes perfunctory and shares are automatically renewed, they will take on the trappings of property despite the Magnuson-Stevens Act language to the contrary.

S. 2973 relied on existing Magnuson-Stevens Act language stating that IFQs are not property and are revocable. It did not contain a time limit on quota shares, instead it called for a review every seven years to determine if the quota shares should be renewed or reallocated. The Network feels that this procedure is not as strong as the one contained in Senator Snowe's bill. The Kerry proposal would be more likely to result in a rollover of quota shares because the burden is on the council to prove that the shares should be reallocated.

IFQ Shareholders Must Provide Additional Conservation Benefits to the Fishery

Advocates of IFQ programs often tout their potential to enhance conservation. The argument goes 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, the quota shareholder will have a financial incentive to conserve the resource. The Network does not ascribe to the theory that conservation will automatically be enhanced because an IFQ program is established. We believe that IFQ programs should be required to provide additional conservation benefits to the fishery. To accomplish this, we recommend 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 providing additional and substantial conservation benefits to the fishery. Additional and substantial conservation benefits are scientifically measurable improvements in avoiding bycatch, preventing high-grading, reducing overfishing, rebuilding overfished stocks, and protecting essential fish habitat.

S. 637 moves in the direction of requiring IFQ programs to provide additional conservation benefits, by requiring that programs include provisions to “promote sustainable management of the fishery.” While this is a good first step, greater specificity regarding the meaning of sustainable management is necessary. We also believe that quota shareholders should be required to provide additional conservation benefits. Quota shares held by individuals who are not improving conservation should not be renewed.

S 2973 moved in the right direction when it directed councils and the Secretary of Commerce to “consider(s) the need to meet the conservation requirements of the Act with respect to the fishery, including the reduction of overfishing and the minimization of bycatch and the mortality of unavoidable bycatch.” However, for this provision to have any real impact, councils must be required to meet this standard.

Protection for Individual Fishermen and Fishing Communities

To ensure that IFQ fisheries have broad participation, limits must be established to prevent excessive consolidation of quota shares. Preference should be provided in initial allocations to fishermen who can demonstrate a record of conservation-minded fishing practices, 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 and small vessel operators.

S. 637 contains a number of provisions that will help to protect fishermen and fishing communities. These include much-needed requirements to provide fair and equitable allocation of quota shares and a directive to minimize negative social and economic impacts of IFQ programs on coastal communities. These provisions could be improved by providing greater specificity. For example, the bill requires IFQ programs to include “provisions that prevent any person or entity from acquiring an excessive share of individual quotas issues for the fishery.” We recommend that Congress define excessive share in statute to not exceed 1% of the total quota shares. To recognize 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 also note that S. 637 directs councils to “take into account present participation and historical fishing practices in the fishery.” Again, this is a good first step. However, we recommend that councils be specifically excluded from basing the initial allocation of quota shares on catch history. We believe that using catch history will reward the largest fishermen at the expense of small fishermen. Additionally, we believe that giving the biggest shares to the biggest fishermen could reward those who have caused problems by using large, non-selective, and/or habitat damaging gear. Disallowing the use of catch history will also provide a disincentive for fishermen to fish rapaciously in order to establish catch history when an IFQ program is in the planning stages. Additionally, we recommend that the initial allocations reward fishermen who have a demonstrated record of conservation-minded fishing practices.

Finally, S. 637 authorizes IFQ programs to include provisions that allocate quota shares among categories of vessels and set aside a portion of the annual harvest for entry-level fishermen, small vessel owners, or crewmembers. Once again, this is a very good first step that could be improved by making these provisions mandatory.

S. 2973 contained a number of provisions designed to protect fishermen and fishing communities. These included provisions to establish a fair and equitable initial allocation, consider the allocation of a portion of the annual harvest to entry level fishermen, consider the social and economic impacts of IFQs, and consider the effects of excess consolidation. These provisions needed to be mandatory to make them more effective.

IFQ Programs Must Provide Additional Conservation Benefits to the Fishery

The Network strongly advocates a periodic 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 high-grading, reducing overfishing and rebuilding overfished stocks, and protecting essential fish habitat.

As I discussed above, S.637 contains language requiring that IFQ programs promote “sustainable management of the fishery,” which needs further clarification to effectively promote conservation. 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. Additionally, an independent review of the program is necessary to insure that conservation is enhanced.

S. 2973, as discussed above, contained of number of conservation provisions that should be mandatory. It also contained a requirement that each council establish a committee to review the council’s IFQ programs to ensure the programs are meeting the requirements of the Magnuson-Stevens Act, including the conservation requirements. The Network recommends that the Secretary establish a national review panel to review IFQ programs. We feel that a national panel is necessary to ensure a truly independent review of how effective IFQ programs are at meeting conservation objectives.

Independent Review of IFQ Programs and Shareholders

A national IFQ review panel, consisting of individuals knowledgeable about fisheries management, but with no financial interest in any fishery, should be established to review IFQ programs. In addition, 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, to conduct reviews of performance of IFQ shareholders.

S. 637 establishes a national review panel to evaluate success, costs, and economic effects of existing IFQ programs. The panel's comments are submitted to the councils and the Secretary for the revision of existing IFQ programs, and the development of IFQ regulations. We have several recommendations to improve this provision. First, it seems that S. 637 authorizes the development of IFQ programs while the panel is studying existing programs and the Secretary is developing regulations. This would allow the development of IFQ programs that are inconsistent with the new regulations. We recommend that the panel conduct its study and the Secretary promulgate regulations before councils are authorized to establish IFQ programs. Second, we recommend that the panel be established permanently and be charged with reviewing IFQ programs periodically. Finally, to ensure that the panel's reviews are independent, we suggest that individuals with financial interests in IFQ programs be prohibited from serving.

S. 2973 required each council to establish an independent review panel to make recommendations for development, evaluation, and changes to the council's IFQ programs. Appointments to the committee included a broad spectrum of interest groups and IFQ holders were prohibited from participating. These panels have many good aspects, but should be charged with reviewing individual quota shareholders. As stated above a national panel should be charged with reviewing IFQ programs.

Recovery of Costs

Because IFQ shareholders are granted the exclusive privilege to catch fish, we believe that IFQ programs must recover all administrative costs, including costs of enforcement, observer coverage, and independent peer reviews of the programs. Additionally, 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 this important mandate.

S. 637 should be amended to include a provision to require cost recovery.

S. 2973 contained a provision to cost recovery that was very similar to the Network's proposal.

Reserve a Portion of the Catch to Protect Ecosystems

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 ecosystem purposes. This reserve portion would serve as a buffer against scientific uncertainty.

S. 637 does not contain a provision that allows individuals to buy quota shares without fishing them. In fact, the bill prohibits this practice by requiring individuals to engage in fishing three of any five consecutive years or risk having their quota shares revert to the Secretary. This prohibition should be removed from the bill.

S. 2973 contained a provision that limits the allocation of quota shares only to individuals who directly participate in the fishery. This prohibition should also be removed.

Finally, I would like to commend a provision that is in both bills, but is not contained in the Network's proposal. Both bills contain requirements for super majorities of eligible permit holders to endorse an IFQ program before it can be established. We feel that this is a fair and equitable means of insuring that an IFQ program has broad support among affected fishermen.

In summary Madame Chair, you and Senator Kerry are to be commended for introducing legislation that if enacted would provide a badly needed legal framework for IFQ programs. If the two proposals were combined and made more specific as recommended above they would go a long way towards ensuring that both fish and fishermen are protected.

Thank you again for providing the Marine Fish Conservation Network with an opportunity to present its views on IFQ programs. I would be happy to answer any questions you or other members of the Subcommittee may have.