

TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE
ON
REAUTHORIZATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT
(INDIVIDUAL FISHING QUOTAS)
BEFORE MEMBERS OF THE
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
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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:

- o defines them for the first time in Section 3(21);

- o 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."

- o 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;

o 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";

o 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

o 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 Secretariably-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:

- o "fair and equitable" initial allocations;
- o "excessive concentration of shares" of IFQ; and

- o 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:

- o management/enforcement costs to be recovered through fees; and
- o 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.

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